

SENATE BILL 735

C4

3lr2549

By: **Senator Astle**

Introduced and read first time: February 1, 2013

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Insurance – Premium Financing**

3 FOR the purpose of including motor clubs and motor club memberships in certain
4 provisions relating to premium financing; altering the maximum amount of a
5 finance charge and the method of calculating the charge; providing for a certain
6 refund credit to be calculated in a certain manner; altering certain delinquency
7 and collection and cancellation charges; authorizing a premium finance
8 agreement to require the payment of certain charges after certain notice under
9 certain circumstances; altering certain requirements for alternative notice
10 delivery methods; providing for the issuance of a notice of intent to cancel with a
11 certain date under certain circumstances; authorizing a managing general
12 agent to return certain gross unearned premiums in a certain manner under
13 certain circumstances; authorizing the inclusion of previous premium financing
14 agreements in the calculation of certain amounts due on the account of an
15 insured; making conforming changes; altering certain definitions; and generally
16 relating to premium financing and private passenger motor vehicle insurance.

17 BY repealing and reenacting, with amendments,

18 Article – Insurance

19 Section 23–101, 23–201, 23–301, 23–304, 23–306, 23–307, 23–307.1, 23–401.1,
20 23–402, 23–403, and 23–405

21 Annotated Code of Maryland

22 (2011 Replacement Volume and 2012 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article – Insurance**

26 23–101.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) In this title the following words have the meanings indicated.

2 (b) (1) “Premium finance agreement” means an agreement:

3 (i) by which an insured [or], A prospective insured, A **MOTOR**
4 **CLUB MEMBER, OR A PROSPECTIVE MOTOR CLUB MEMBER** promises to pay a
5 premium finance company the amount advanced or to be advanced under the
6 agreement, together with interest and a service fee, to an insurer [or], an insurance
7 producer, **OR A MOTOR CLUB** in payment of premiums; and

8 (ii) that contains an assignment of or is otherwise secured by
9 the unearned premium or refund obtainable from the insurer **OR MOTOR CLUB** on
10 cancellation of the insurance contract **OR MOTOR CLUB MEMBERSHIP**.

11 (2) “Premium finance agreement” does not include a premium
12 financed in connection with a time sale of goods or services or an extension of credit
13 without charge by an insurance producer **OR A MOTOR CLUB**.

14 (c) “Premium finance company” means a person that engages in the business
15 of entering into or accepting premium finance agreements.

16 23–201.

17 (a) A premium finance company must register with the Commissioner before
18 engaging in business as a premium finance company in the State.

19 (b) An insurer [or], AN insurance producer, **OR A MOTOR CLUB** must
20 register with the Commissioner before engaging in the business of financing premiums
21 in the State.

22 23–301.

23 (a) (1) A premium finance agreement shall be dated and signed by or on
24 behalf of the insured.

25 (2) The printed part of the premium finance agreement shall be in
26 approximately 8–point type and be easily readable by an average individual.

27 (b) A premium finance agreement shall contain:

28 (1) the name and place of business of the insurance producer
29 negotiating the related insurance contract **AND, IF APPLICABLE, THE NAME AND**
30 **PLACE OF BUSINESS OF THE MOTOR CLUB PROVIDING MOTOR CLUB SERVICE;**

31 (2) the name and residence or place of business of the insured as
32 specified by the insured;

1 (3) the name and place of business of the premium finance company to
2 which payments may be made;

3 (4) an itemized list for each insurance contract or coverage financed
4 under the premium finance agreement that includes:

5 (i) the applicable application number, binder number, or policy
6 number;

7 (ii) the effective date of the insurance contract or coverage;

8 (iii) the name of the company issuing the insurance contract or
9 coverage; and

10 (iv) the premium for the insurance contract or coverage; and

11 (5) if applicable, the following items:

12 (i) the total amount of the premiums **AND MOTOR CLUB**
13 **COSTS;**

14 (ii) the amount of the down payment;

15 (iii) the principal balance (the difference between items (i) and
16 (ii) of this item);

17 (iv) the amount of the finance charge;

18 (v) the balance payable by the insured (the sum of items (iii)
19 and (iv) of this item);

20 (vi) the number of installments required, the amount of each
21 installment expressed in dollars, and the due date or period of each installment; and

22 (vii) the electronic payment fee.

23 (c) (1) The items set out in subsection (b)(5) of this section need not be
24 stated in the sequence in which they appear.

25 (2) Additional items may be included to explain the computations
26 made in determining the amount to be paid by the insured.

27 (d) A premium finance agreement may provide for additional insurance
28 premiums to be financed and added to the initial premium finance agreement.

29 23-304.

1 **(A)** The finance charge shall be computed:

2 (1) on the amount of the entire premium loan advanced, including any
3 taxes or fees that are financed under § 23–301.1 of this subtitle, after subtracting any
4 down payment on the premium loan made by the insured;

5 (2) from the inception date of the insurance contract or from the due
6 date of the premium, disregarding any grace period or credit allowed for payment of
7 the premium, through the date when the final installment under the premium finance
8 agreement is payable; and

9 (3) [at a rate] **IN AN AMOUNT** not exceeding **THE SUM OF 1.15%** for
10 each 30 days[, charged] **OF THE LOAN, COMPUTED** in advance.

11 **(B) NOTWITHSTANDING ANY PROVISION OF A PREMIUM FINANCE**
12 **AGREEMENT:**

13 **(1) ANY INSURED:**

14 **(I) MAY PREPAY THE OBLIGATION IN FULL AT ANY TIME;**
15 **AND**

16 **(II) SHALL RECEIVE A REFUND CREDIT;**

17 **(2) THE AMOUNT OF THE REFUND SHALL BE CALCULATED BY THE**
18 **ACTUARIAL METHOD OF CALCULATING REFUNDS; AND**

19 **(3) INTEREST IS EARNED IN 30–DAY INCREMENTS ON THE FIRST**
20 **DAY OF EACH 30–DAY PERIOD.**

21 **(4) NO MORE INTEREST MAY BE RETAINED BY THE PREMIUM**
22 **FINANCE COMPANY THAN IS ACTUALLY EARNED UNDER THIS SECTION.**

23 23–306.

24 (a) A premium finance agreement may require the insured to pay a
25 delinquency and collection charge on each installment that is in default for a period of
26 not less than 5 days.

27 (b) A delinquency and collection charge shall be at least \$1, up to a
28 maximum of 5% of the installment in default, but may not exceed:

29 (1) **[\$8] \$15**, with respect to private passenger automobile or personal
30 fire or liability insurance; and

1 (2) \$100, with respect to commercial automobile, fire, or liability
2 insurance.

3 (c) Only one delinquency and collection charge may be collected on an
4 installment, regardless of the period during which the installment remains in default.

5 23–307.

6 (a) A premium finance agreement may require the insured to pay a
7 cancellation charge if:

8 (1) a default in paying an installment results in the [cancellation of an
9 insurance contract listed in the premium finance agreement] **ISSUANCE OF A NOTICE**
10 **OF INTENT TO CANCEL UNDER § 23–402 OF THIS TITLE; AND**

11 (2) **THE DEFAULTED INSTALLMENT IS RECEIVED ON OR AFTER**
12 **THE CANCELLATION DATE STATED IN THE NOTICE.**

13 (b) A cancellation charge shall be:

14 (1) with respect to private passenger automobile or personal fire or
15 liability insurance, equal to the difference between a delinquency and collection charge
16 imposed under § 23–306 of this subtitle with respect to the installment in default and
17 **[\$15] \$25; and**

18 (2) with respect to commercial automobile, fire, or liability insurance,
19 5% of the installment, not to exceed an amount equal to the difference between a
20 delinquency and collection charge imposed under § 23–306 of this subtitle with respect
21 to the installment in default and \$100.

22 [(c) If a notice of cancellation is withdrawn and the insurance coverage is
23 reinstated, the premium finance agreement may require the insured to pay a
24 reinstatement charge in the same amount as the cancellation charge that would have
25 been paid if the cancellation had actually taken effect.]

26 **(C) A PREMIUM FINANCE AGREEMENT MAY REQUIRE THE PAYMENT OF**
27 **A REINSTATEMENT CHARGE THAT IS IN PLACE OF AND IN THE SAME AMOUNT AS**
28 **THE CANCELLATION CHARGE IF, ON OR AFTER THE CANCELLATION DATE**
29 **STATED IN THE NOTICE UNDER § 23–402 OF THIS TITLE, THE INSURED PAYS THE**
30 **DEFAULTED INSTALLMENT.**

31 23–307.1.

1 (a) In this section, “electronic payment” includes payment by credit card [or],
2 debit card, **OR ELECTRONIC CHECK.**

3 (b) A premium finance agreement may require the insured to pay an
4 electronic payment fee if the insured elects to pay a premium finance company by
5 means of an electronic payment.

6 (c) A premium finance company may charge an electronic payment fee,
7 which may not exceed \$8, for actual expenses incurred by the premium finance
8 company for the electronic payment.

9 23–401.1.

10 (a) Subject to subsection (b) of this section, at the option of the insured a
11 premium finance company may send any notice required under this subtitle by
12 personal delivery, first–class mail, commercial delivery service, electronic mail, or
13 facsimile transmission.

14 (b) A notice delivery method other than personal delivery, first–class mail, or
15 commercial delivery service may be used only with the [written] consent of the
16 insured.

17 23–402.

18 (a) At least 10 days before canceling an insurance contract **OR A MOTOR**
19 **CLUB MEMBERSHIP**, a premium finance company shall deliver or mail to the insured
20 written notice of intent to cancel the insurance contract **OR MOTOR CLUB**
21 **MEMBERSHIP** unless the defaulted installment payment is received within the
22 10–day notice period.

23 (b) For an automobile liability insurance contract, the notice of intent to
24 cancel shall include a statement in clear and specific terms that if the insured fails to
25 replace the automobile liability insurance within the 10–day notice period, § 17–106 of
26 the Transportation Article provides that uninsured motorist penalties be assessed and
27 that all evidences of registration be surrendered to the Motor Vehicle Administration
28 and that failure to surrender the evidences of registration may result in suspension of
29 current and future registration privileges.

30 (c) The cancellation of an insurance contract **OR MOTOR CLUB**
31 **MEMBERSHIP** on the date stated in a notice of intent to cancel or a notice of
32 cancellation is not superseded by a premium finance company’s issuance of a
33 subsequent notice of intent to cancel sent under this section or a notice of cancellation
34 sent under § 23–403 of this subtitle.

35 **(D) IF A PAYMENT IS DISHONORED FOR INSUFFICIENT FUNDS, THE**
36 **PREMIUM FINANCE COMPANY MAY ISSUE A NOTICE OF INTENT TO CANCEL WITH**

1 THE SAME DATE OF CANCELLATION THAT WOULD HAVE BEEN USED IF THE
2 PAYMENT HAD NOT BEEN MADE IN A TIMELY MANNER.

3 23-403.

4 (a) (1) After the end of the notice period under § 23-402(a) of this subtitle,
5 the premium finance company may cancel the insurance contract **OR MOTOR CLUB**
6 **MEMBERSHIP** by submitting to the insurer **OR MOTOR CLUB** a notice of cancellation
7 that specifies the effective date of the cancellation.

8 (2) (i) The premium finance company shall deliver or mail a copy of
9 the notice of cancellation to the insured at the last known address of the insured.

10 (ii) With respect to commercial automobile, fire, or liability
11 insurance, the premium finance company shall deliver the notice in accordance with
12 the insured's request under § 23-401.1 of this subtitle.

13 (b) (1) If the insurer **OR MOTOR CLUB** receives a notice of cancellation
14 issued under subsection (a) of this section within 30 days after the effective date of
15 cancellation specified in the notice, the insurer **OR MOTOR CLUB** shall cancel the
16 insurance contract **OR MOTOR CLUB MEMBERSHIP** effective on the date specified in
17 the notice.

18 (2) Subject to paragraph (3) of this subsection, if the insurer **OR**
19 **MOTOR CLUB** receives a notice of cancellation issued under subsection (a) of this
20 section more than 30 days after the effective date of cancellation specified in the
21 notice, the insurance contract **OR MOTOR CLUB MEMBERSHIP** shall be canceled
22 effective on the date the insurer **OR MOTOR CLUB** receives the notice.

23 (3) If a premium finance company fails to meet the 30-day notice
24 requirement under paragraph (1) of this subsection because the installment payment
25 of the insured is dishonored after the effective date specified in the notice of
26 cancellation, the dishonored payment is ineffective and the insurer **OR MOTOR CLUB**
27 may waive the 30-day notice requirement.

28 (c) A cancellation under this section shall be made as if the notice of
29 cancellation had been submitted by the insured, but without requiring the return of
30 the policy.

31 23-405.

32 (a) (1) Notwithstanding any other provision of this article, when an
33 insurance contract is canceled, whether by a premium finance company, an insurer, or
34 an insured, the insurer **OR MANAGING GENERAL AGENT** shall return any gross
35 unearned premiums that are due under the insurance contract, computed pro rata,
36 and excluding any expense constant, administrative fee, or any nonrefundable charge

1 filed with and approved by the Commissioner, to the premium finance company for the
2 account of the insured within a reasonable time not exceeding 45 days after:

3 (i) receipt by the insurer **OR MANAGING GENERAL AGENT** of a
4 notice of cancellation from the premium finance company or the insured;

5 (ii) the date the insurer cancels the insurance contract; or

6 (iii) completion of any payroll audit necessary to determine the
7 amount of premium earned while the insurance contract was in force.

8 (2) An audit under paragraph (1)(iii) of this subsection shall be
9 performed within 45 days after the insurer receives the notice of cancellation.

10 (b) (1) After the insurer **OR MANAGING GENERAL AGENT** returns to the
11 premium finance company any gross unearned premiums that are due under the
12 insurance contract, the premium finance company shall refund to the insured the
13 amount of unearned premium that exceeds any amount due under the [premium
14 finance agreement] **ACCOUNT OF THE INSURED, WHICH MAY INCLUDE PREVIOUS**
15 **PREMIUM FINANCE AGREEMENTS.**

16 (2) A premium finance company need not make a refund to the
17 insured if the amount of the refund would be less than \$5.

18 (c) Whenever an insurer **OR MANAGING GENERAL AGENT**, after receiving
19 notice of the existence of a premium finance agreement, returns any unearned
20 premiums to a person other than the premium finance company named in the
21 premium finance agreement, the insurer **OR MANAGING GENERAL AGENT** shall be
22 directly responsible to the premium finance company for all unearned premiums
23 arising from the cancellation of the premium finance agreement.

24 (d) (1) An insurer **OR A MANAGING GENERAL AGENT** that fails to return
25 any premium required under this section shall pay interest of 1% per month on the
26 unearned premium that has not been returned until the unearned premium is
27 returned.

28 (2) Any payment under this subsection to the premium finance
29 company shall be credited to the account of the insured.

30 (e) An insurer **OR A MANAGING GENERAL AGENT** may not deduct from any
31 return premium any amount owed to the insurer **OR MANAGING GENERAL AGENT** by
32 the insured under any other insurance contract.

33 (f) An insurance producer shall return any gross unearned commissions,
34 calculated as provided in subsection (a)(1) of this section, to an insurer **OR A**

1 **MANAGING GENERAL AGENT** within a reasonable period of time as required by the
2 insurer **OR MANAGING GENERAL AGENT**.

3 **SECTION 2. AND BE IT FURTHER ENACTED**, That this Act shall take effect
4 June 1, 2013.