

Conover

1 IN THE *House*

By Request
BY *Mr. Gilbert*

2 *House* BILL NO. *700*

3 IN THE LEGISLATURE OF THE TERRITORY OF ALASKA

4 TWENTY SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Unfair Methods of Com-
7 petition and Unfair and Deceptive Acts and
8 Practices in the Business of Insurance."

9 BE IT ENACTED BY THE LEGISLATURE OF THE TERRITORY OF ALASKA:

10 Section 1. Declaration of Purpose. The purpose of this Act
11 is to regulate trade practices in the business of insurance in ac-
12 cordance with the intent of Congress as expressed in the Act of
13 Congress of March 9, 1945 (Public Law 15, 79th Congress), by de-
14 fining, or providing for the determination of, all such practices
15 in this territory which constitute unfair methods of competition
16 or unfair or deceptive acts or practices and by prohibiting the
17 trade practices so defined or determined.

18 Section 2. Definitions. When used in this act:

19 (a) "Person" shall mean any individual, corporation,
20 association, partnership, reciprocal exchange, inter-insurer,
21 Lloyd's insurer, fraternal benefit society, and any other legal
22 entity engaged in the business of insurance, including agents,
23 brokers and adjusters.

24 (b) "Commissioner" shall mean the Commissioner of Insur-
25 ance of this territory.

26 Section 3. Unfair Methods of Competition or Unfair and De-
27 ceptive Acts or Practices Prohibited. No person shall engage in
28 this territory in any trade practice which is defined in this Act
29 as, or determined pursuant to this Act to be, an unfair method of

1 competition or an unfair or deceptive act or practice in the busi-
2 ness of insurance.

3 Section 4. Unfair Methods of Competition and Unfair or De-
4 ceptive Acts or Practices Defined. The following are hereby de-
5 fined as unfair methods of competition and unfair and deceptive
6 acts or practices in the business of insurance:

7 (1) Misrepresentations and False Advertising of Policy Contracts.
8 Making, issuing, circulating, or causing to be made, issued or
9 circulated, any estimate illustration, circular or statement mis-
10 representing the terms of any policy issued or to be issued or the
11 benefits or advantages promised thereby or the dividends or share
12 of the surplus to be received thereon, or making any false or mis-
13 leading statement as to the dividends or share of surplus previous-
14 ly paid on similar policies, or making any misleading representa-
15 tion or any misrepresentation as to the financial condition of any
16 insurer, or as to the legal reserve system upon which any life in-
17 surer operates, or using any name or title of any policy or class
18 of policies misrepresenting the true nature thereof, or making any
19 misrepresentation to any policyholder insured in any company for
20 the purpose of inducing or tending to induce such policyholder to
21 lapse, forfeit, or surrender his insurance.

22 (2) False Information and Advertising Generally. Making, pub-
23 lishing, disseminating, circulating, or placing before the public,
24 or causing, directly or indirectly, to be made, published, dissem-
25 inated, circulated, or placed before the public, in a newspaper,
26 magazine or other publication, or in the form of a notice, circu-
27 lar, pamphlet, letter or poster, or over any radio station, or in
28 any other way, an advertisement, announcement or statement contain-
29 ing any assertion, representation or statement with respect to the

1 business of insurance or with respect to any person in the conduct
2 of his insurance business, which is untrue, deceptive or mislead-
3 ing.

4 (3) Defamation. Making, publishing, disseminating, or circulat-
5 ing, directly or indirectly, or aiding, abetting or encouraging
6 the making, publishing, disseminating or circulating of any oral
7 or written statement or any pamphlet, circular, article or liter-
8 ature which is false, or maliciously critical of or derogatory to
9 the financial condition of an insurer, and which is calculated to
10 injure any person engaged in the business of insurance.

11 (4) Boycott, Coercion and Intimidation. Entering into any
12 agreement to commit, or by any concerted action committing, any
13 act of boycott, coercion or intimidation resulting in or tending
14 to result in unreasonable restraint of, or monopoly in, the busi-
15 ness of insurance.

16 (5) False Financial Statements. Filing with any supervisory or
17 other public official, or making, publishing, disseminating, cir-
18 culating or delivering to any person, or placing before the public,
19 or causing directly or indirectly, to be made, published, dissemi-
20 nated, circulated, delivered to any person, or placed before the
21 public, any false statement of financial condition of an insurer
22 with intent to deceive. Making any false entry in any book, re-
23 port or statement of any insurer with intent to deceive any agent
24 or examiner lawfully appointed to examine into its condition or
25 into any of its affairs, or any public official to whom such insur-
26 or is required by law to report, or who has authority by law to
27 examine into its condition or into any of its affairs, or, with
28 like intent, wilfully omitting to make a true entry of any material
29 fact pertaining to the business of such insurer in any book, report

1 or statement of such insurer.

2 (6) Stock Operations and Advisory Board Contracts. Issuing or
3 delivering or permitting agents, officers, or employees to issue
4 or deliver, agency company stock or other capital stock, or bene-
5 fit certificates or shares in any common-law corporation, or
6 execution of any special or advisory board contracts or other
7 contracts of any kind promising returns and profits as an induce-
8 ment to insurance.

9 (7) Unfair Discrimination. (a) Making or permitting any unfair
10 discrimination between individuals of the same class and equal ex-
11 pectations of life in the rates charged for any contract of life
12 insurance or of life annuity or in the dividends or other benefits
13 payable thereon, or in any other of the terms and conditions of
14 such contract. (b) Making or permitting any unfair discrimination
15 between individuals of the same class and of essentially the same
16 hazard in the amount of premium, policy fees, or rates charged for
17 any policy or contract of accident or health insurance or in the
18 benefits payable thereunder, or in any of the terms or conditions
19 of such contract, or in any other manner whatever.

20 (8) Rebates. (a) Except as otherwise expressly provided by
21 law, knowingly permitting or offering to make or making any con-
22 tract of life insurance, life annuity or accident and health insur-
23 ance, or agreement as to such contract other than as plainly ex-
24 pressed in the contract issued thereon, or paying or allowing, or
25 giving or offering to pay, allow, or give, directly or indirectly,
26 as inducement to such insurance, or annuity, any rebate of premiums
27 payable on the contract, or any special favor or advantage in the
28 dividends or other benefits thereon, or any valuable consideration
29 or inducement whatever not specified in the contract; or giving,

1 or colling, or purchasing or offering to give, sell, or purchase
2 as incident to such insurance or annuity or in connection there-
3 with, any stocks, bonds, or other securities of any insurance com-
4 pany or other corporation, association, or partnership, or any
5 dividends or profits accrued thereon, or anything of value what-
6 soever not specified in the contract. (b) Nothing in clause 7 or
7 paragraph (a) of clause 8 of this subsection shall be construed as
8 including within the definition of discrimination or rebates any
9 of the following practices: (i) in the case of any contract of
10 life insurance or life annuity, paying bonuses to policyholders or
11 otherwise abating their premiums in whole or in part out of sur-
12 plus accumulated from nonparticipating insurance, provided that
13 any such bonuses or abatement of premiums shall be fair and equit-
14 able to policyholders and for the best interests of the company
15 and its policyholders; (ii) in the case of life insurance pol-
16 icies issued on the industrial debit plan, making allowance to
17 policyholders who have continuously for a specified period made
18 premium payments directly to an office of the insurer in an amount
19 which fairly represents the saving in collection expense; (iii)
20 readjustment of the rate of premium for a group insurance policy
21 based on the loss or expense experience thereunder, at the end of
22 the first or any subsequent policy year of insurance thereunder,
23 which may be made retroactive only for such policy year.

24 Section 5. Power of Commissioner. The Commissioner shall
25 have power to examine and investigate into the affairs of every
26 person engaged in the business of insurance in this territory in
27 order to determine whether such person has been or is engaged in
28 any unfair method of competition or in any unfair or deceptive act
29 or practice prohibited by Section 3 of this Act.

Section 6. Hearings, Witnesses, Appearances, Production of
Books and Service of Process.

(a) Whenever the Commissioner shall have reason to believe that any such person has been engaged or is engaging in this territory in any unfair method of competition or any unfair or deceptive act or practice defined in Section 4, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect, and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than 30 days after the date of the service thereof.

(b) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the Commissioner requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the Commissioner shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

(c) Nothing contained in this Act shall require the observance at any such hearing of formal rules of pleading or evidence.

(d) The Commissioner, upon such hearing, may administer oaths, examine and cross-examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The Commissioner, upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial

1 review is sought, the Commissioner shall prepare a statement of
2 the evidence and proceeding for use on review. In case of a re-
3 fusal of any person to comply with any subpoena issued hereunder
4 or to testify with respect to any matter concerning which he may
5 be lawfully interrogated, the District court of the District of
6 Alaska, of the Judicial Division where such party resides, on ap-
7 plication of the Commissioner, may issue an order requiring such
8 person to comply with such subpoena and to testify; and any failure
9 to obey any such order of the court may be punished by the court
10 as a contempt thereof.

11 (c) Statements of charges, notices, orders, and other processes
12 of the Commissioner under this Act may be served by anyone duly
13 authorized by the Commissioner, either in the manner provided by
14 law for service of process in civil actions, or by registering and
15 mailing a copy thereof to the person affected by such statement,
16 notice, order, or other process at his or its residence or princi-
17 pal office or place of business. The verified return by the per-
18 son so serving such statement, notice, order, or other process,
19 setting forth the manner of such service shall be proof of the
20 same, and the return postcard receipt for such statement, notice,
21 order, or other process, registered and mailed as aforesaid, shall
22 be proof of the service of the same.

23 Section 7. Cease and Desist Orders and Modifications Thereof.

24 (a) If, after such hearing, the Commissioner shall determine
25 that the method of competition or the act or practice in question
26 is defined in section 4 and that the person complained of has en-
27 gaged in such method of competition, act or practice in violation
28 of this act, he shall reduce his findings to writing and shall
29 issue and cause to be served upon the person charged with the

violation an order requiring such person to cease and desist from engaging in such method of competition, act or practice.

(b) Until the expiration of the time allowed under section 8(a) of this Act for filing a petition for review if no such petition has been duly filed within such time or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the District court, as hereinafter provided, the Commissioner may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(c) After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the Commissioner may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

Section 8. Judicial Review of Cease and Desist Orders.

(a) Any person required by an order of the Commissioner under section 7 to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 4 may obtain a review of such order by filing in the District court of the District of Alaska, within 20 days from the date of the service of such order, a written petition praying that the order of the Commissioner be set aside. A copy of such petition shall be forthwith served upon the Commissioner, and thereupon the Commissioner forthwith shall certify and file in such

1 court a transcript of the entire record in the proceedings, in-
2 cluding all the evidence taken and the report and order of the
3 Commissioner. Upon such filing of the petition and transcript
4 such court shall have jurisdiction of the proceeding and of the
5 question determined therein, shall determine whether the filing of
6 such petition shall operate as a stay of such order of the Commis-
7 sioner, and shall have power to make and enter upon the pleadings,
8 evidence, and proceedings set forth in such transcript a decree
9 modifying, affirming or reversing the order of the Commissioner,
10 in whole or in part. The findings of the Commissioner as to the
11 facts, if supported by the preponderance of the evidence, shall be
12 conclusive.

13 (b) To the extent that the order of the Commissioner is af-
14 firmed, the court shall thereupon issue its own order commanding
15 obedience to the terms of such order of the Commissioner. If
16 either party shall apply to the court for leave to adduce addi-
17 tional evidence, and shall show to the satisfaction of the court
18 that such additional evidence is material and that there were
19 reasonable grounds for the failure to adduce such evidence in the
20 proceeding before the Commissioner, the court may order such ad-
21 ditional evidence to be taken before the Commissioner and to be
22 adduced upon the hearing in such manner and upon such terms and
23 conditions as to the court may seem proper. The Commissioner may
24 modify his findings of fact, or make new findings by reason of the
25 additional evidence so taken, and he shall file such modified or
26 new findings which, if supported by the preponderance of the evi-
27 dence shall be conclusive, and his recommendation, if any, for the
28 modification or setting aside of his original order, with the re-
29 turn of such additional evidence.

1 (c) A cease and desist order issued by the Commissioner under
2 section 7 shall become final (1) upon the expiration of the time
3 allowed for filing a petition for review if no such petition has
4 been duly filed within such time; except that the Commissioner may
5 thereafter modify or set aside his order to the extent provided in
6 section 7(b); or (2) upon the final decision of the court if the
7 court directs that the order of the Commissioner be affirmed or
8 the petition for review dismissed.

9 (d) No order of the Commissioner under this Act or order of a
10 court to enforce the same shall in any way relieve or absolve any
11 person affected by such order from any liability under any other
12 laws of this territory.

13 Section 9. Procedure as to Unfair Methods of Competition and
14 Unfair or Deceptive Acts or Practices which are not Defined.

15 (a) Whenever the Commissioner shall have reason to believe that
16 any person engaged in the business of insurance is engaging in
17 this territory in any method of competition or in any act or
18 practice in the conduct of such business which is not defined in
19 section 4, that such method of competition is unfair or that such
20 act or practice is unfair or deceptive and that a proceeding by
21 him in respect thereto would be to the interest of the public, he
22 may issue and serve upon such person a statement of the charges in
23 that respect and a notice of a hearing thereon to be held at a
24 time and place fixed in the notice, which shall not be less than
25 30 days after the date of the service thereof. Each such hearing
26 shall be conducted in the same manner as the hearings provided for
27 in section 8. The Commissioner shall, after such hearing, make a
28 report in writing in which he shall state his findings as to the
29 facts, and he shall serve a copy thereof upon such person.

1 (b) If such report charges a violation of this Act and if such
2 method of competition, act or practice has not been discontinued,
3 the Commissioner may, through the Attorney General of this terri-
4 tory, at any time after 20 days after the service of such report
5 cause a petition to be filed in the District court of the District
6 of Alaska in the Judicial Division wherein the person resides or
7 has his principal place of business, to enjoin and restrain such
8 person from engaging in such method, act or practice. The court
9 shall have jurisdiction of the proceeding and shall have power to
10 make and enter appropriate orders in connection therewith and to
11 issue such writs as are ancillary to its jurisdiction or are neces-
12 sary in its judgment to prevent injury to the public pending lite.

13 (c) A transcript of the proceedings before the Commissioner in-
14 cluding all evidence taken and the report and findings shall be
15 filed with such petition. If either party shall apply to the court
16 for leave to adduce additional evidence and shall show, to the
17 satisfaction of the court, that such additional evidence is mater-
18 ial and there were reasonable grounds for the failure to adduce
19 such evidence in the proceeding before the Commissioner the court
20 may order such additional evidence to be taken before the Commis-
21 sioner and to be adduced upon the hearing in such manner and upon
22 such terms and conditions as to the court may seem proper. The
23 Commissioner may modify his findings of fact or make new findings
24 by reason of the additional evidence so taken, and he shall file
25 such modified or new findings with the return of such additional
26 evidence.

27 (d) If the court finds that the method of competition complained
28 of is unfair or that the act or practice complained of is unfair
29 or deceptive, that the proceedings by the Commissioner with respect

thereto is to the interest of the public and that the findings of the Commissioner are supported by the preponderance of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.

Section 10. Judicial Review by Intervenor. If the report of the Commissioner does not charge a violation of this Act, then any intervenor in the proceedings may within days after the service of such report, cause a petition to be filed in the District court of the District of Alaska in the Judicial Division as aforesaid for a review of such report. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such report of the Commissioner, constitutes a violation of this Act.

Section 11. Penalty. Any person who violates a cease and desist order of the Commissioner under section 7, after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the Territory a sum not to exceed \$50, which may be recovered in a civil action, except that, if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed \$500.

Section 12. Provisions of Act Additional to Existing Law. The powers vested in the Commissioner by this Act, shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

Section 13. Immunity from Prosecution. If any person shall

1 ask to be excused from attending and testifying or from producing
2 any books, papers, records, correspondence or other documents at
3 any hearing on the ground that the testimony or evidence required
4 of him may tend to incriminate him or subject him to a penalty or
5 forfeiture, and shall notwithstanding be directed to give such
6 testimony or produce such evidence, he must none the less comply
7 with such direction, but he shall not thereafter be prosecuted or
8 subjected to any penalty or forfeiture for or on account of any
9 transaction, matter or thing concerning which he may testify or
10 produce evidence pursuant thereto, and no testimony so given or
11 evidence produced shall be received against him upon any criminal
12 action, investigation or proceedings, provided, however, that no
13 such individual so testifying shall be exempt from prosecution or
14 punishment for any perjury committed by him while so testifying
15 and the testimony or evidence so given or produced shall be ad-
16 missible against him upon any criminal action, investigation or
17 proceeding concerning such perjury, nor shall he be exempt from
18 the refusal, revocation or suspension of any license, permission
19 or authority conferred, or to be conferred, pursuant to the Insur-
20 ance law of this territory. Any such individual may execute, ac-
21 knowledge and file in the office of the Commissioner a statement
22 expressly waiving such immunity or privilege in respect to any
23 transaction, matter or thing specified in such statement and there-
24 upon the testimony of such person or such evidence in relation to
25 each transaction, matter or thing may be received or produced be-
26 fore any judge or justice, court, tribunal, grand jury or otherwise,
27 and if so received or produced such individual shall not be en-
28 titled to any immunity or privilege on account of any testimony he
29 may so give or evidence so produced.

1 Section 14. Separability Provision. If any provision of this
2 Act, or the application of such provision to any person or circum-
3 stances, shall be held invalid, the remainder of the Act, and the
4 application of such provision to persons or circumstances other
5 than those to which it is held invalid, shall not be affected
6 thereby.

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30