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Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

CS

2 HOUSE BILL NO. 558

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of insurance
7 practices."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 21.36.010 is amended to read:

10 Sec. 21.36.010. PURPOSE. The purpose of [SECS. 10 - 150 OF]
11 this chapter is to regulate trade practices in the business of in-
12 surance in accordance with the intent of Congress as expressed in the
13 Act of Congress of March 9, 1945 (Public Law 15, 79th Congress (ch.
14 20, 59 U.S. Stat. at Large 33)), by defining or providing for determi-
15 nation of all the practices in this state which constitute unfair
16 methods of competition or unfair or deceptive acts or practices and by
17 prohibiting them.

18 * Sec. 2. AS 21.36.030 is repealed and re-enacted to read:

19 Sec. 21.36.030. MISREPRESENTATION AND FALSE ADVERTISING OF
20 INSURANCE POLICIES. (a) No person may make, issue, circulate, broad-
21 cast, or have made, issued, circulated, or broadcast an estimate,
22 circular, statement, illustration, comparison, or other written or
23 oral presentation which

24 (1) misrepresents the benefits, advantages, conditions,
25 sponsorship, source or terms of an insurance policy;

26 (2) misrepresents the dividends or share of the surplus to
27 be received on an insurance policy;

28 (3) misrepresents an insurance policy as being a share or
29 shares of stock;

1 (4) makes a false or misleading statement as to the divi-
2 dends or shares of the surplus previously paid on an insurance policy;

3 (5) misrepresents or makes a misleading statement as to the
4 financial condition of an insurer or as to the legal reserve system
5 upon which a life insurer operates;

6 (6) uses a name or title of an insurance policy or class of
7 insurance policies misrepresenting its true nature;

8 (7) is a misrepresentation for the purpose of inducing, or
9 which tends to induce the lapse, forfeiture, exchange, conversion or
10 surrender of an insurance policy;

11 (8) is a misrepresentation for the purpose of effecting or
12 tending to effect a pledge or assignment of or loan against an in-
13 surance policy;

14 (9) appears to be an actual policy for a named individual
15 when it is merely an advertisement;

16 (10) does not clearly designate the name of the insurer
17 providing the coverage or about which the statements are made; or

18 (11) is in any other way misleading, false, or deceptive.

19 (b) For purposes of this section, "misrepresentation" includes
20 any statement or omission of a statement which when taken in the
21 context of the whole presentation may tend to mislead or deceive the
22 person or persons address.

23 * Sec. 3. AS 21.36.060 is amended to read:

24 Sec. 21.36.060. FALSE FINANCIAL STATEMENTS. (a) No person may
25 knowingly file with a [SUPERVISORY OR OTHER] public official, or
26 knowingly make, publish, disseminate, circulate or deliver to a person,
27 or place before the public, or knowingly cause directly or indirectly,
28 to be made, published, disseminated, circulated, delivered to a person,
29 or placed before the public, a false statement of the financial con-

1 dition of a person in the insurance business [AN INSURER WITH INTENT
2 TO DECEIVE].

3 (b) No person may make a false entry in a book, report or state-
4 ment of a person in the insurance business, knowing it to be a false
5 entry, [AN INSURER WITH INTENT TO DECEIVE AN AGENT OR EXAMINER LAW-
6 FULLY APPOINTED TO EXAMINE INTO ITS CONDITION OR INTO ANY OF ITS
7 AFFAIRS, OR A PUBLIC OFFICIAL TO WHOM THE INSURER IS REQUIRED BY LAW
8 TO REPORT, OR WHO HAS AUTHORITY BY LAW TO EXAMINE INTO ITS CONDITION
9 OR INTO ANY OF ITS AFFAIRS,] or [,] knowingly [WITH LIKE INTENT,
10 WILFULLY] omit to make a true entry of a material fact pertaining to
11 the business of a person in the insurance business [THE INSURER] in a
12 book, report or statement [OF THE INSURER].

13 * Sec. 4. AS 21.36.070 is amended to read:

14 Sec. 21.36.070. DEFAMATION. (a) No person may make, publish,
15 disseminate, or circulate, directly or indirectly, or aid, abet or en-
16 courage the making, publishing, disseminating or circulating of an
17 oral or written statement or a pamphlet, circular, article or litera-
18 ture which is false, or maliciously critical of or derogatory to the
19 financial condition of a person in the insurance business or proposing
20 to enter the insurance business [AN INSURER, OR OF AN ORGANIZATION
21 PROPOSING TO BECOME AN INSURER,] and which is calculated to injure a
22 person engaged or proposing to engage in the business of insurance.

23 (b) Persons providing the director with information concerning
24 the financial condition or practices of a licensee of the division are
25 immune from liability for defamation.

26 * Sec. 5. AS 21.36.090 is amended by adding a new subsection to read:

27 (c) No person may make or permit arbitrary or unfair discrimi-
28 nation between insureds or property having like insuring or risk
29 characteristics, in the premium or rates charged for a policy or

1 contract of property, casualty, surety, marine, wet marine or trans-
2 portation insurance, or in the dividends or other benefits payable on
3 the insurance, or in the selection of it, or in any other of the terms
4 and conditions of the insurance.

5 * Sec. 6. AS 21.36 is amended by adding a new section to read:

6 Sec. 21.36.125. UNFAIR CLAIM SETTLEMENT PRACTICES. No person
7 may commit or engage in any of the following acts or practices:

8 (1) misrepresent facts or policy provisions relating to
9 coverage of an insurance policy;

10 (2) fail to acknowledge and act promptly upon communica-
11 tions regarding a claim arising under an insurance policy;

12 (3) fail to adopt and implement reasonable standards for
13 prompt investigation of claims;

14 (4) refuse to pay a claim without a reasonable investi-
15 gation of all of the available information and an explanation of the
16 basis for denial of the claim or for an offer of compromise settle-
17 ment;

18 (5) fail to affirm or deny coverage of claims within a
19 reasonable time of the completion of proof-of-loss statements;

20 (6) fail to attempt in good faith to make prompt and equit-
21 able settlement of claims in which liability is reasonably clear;

22 (7) compel insureds to litigate for recovery of amounts due
23 under insurance policies by offering substantially less than the
24 amounts ultimately recovered in actions brought by those insureds;

25 (8) attempt to make an unreasonably low settlement by
26 reference to printed advertising matter accompanying or included in an
27 application;

28 (9) attempt to settle a claim on the basis of an appli-
29 cation which has been altered without the consent of the insured;

1 (10) make a claims payment without including a statement of
2 the coverage under which the payment is made;

3 (11) make known to insureds or claimants a policy of
4 appealing from arbitration awards in favor of insureds or claimants
5 for the purpose of compelling them to accept settlements or compromises
6 less than the amount awarded in arbitration;

7 (12) delay investigation or payment of claims by requiring
8 submission of unnecessary or substantially repetitive claims reports
9 and proof-of-loss forms;

10 (13) fail to promptly settle claims under one portion of a
11 policy for the purpose of influencing settlements under other portions
12 of the policy;

13 (14) fail to promptly provide a reasonable explanation of
14 the basis in the insurance policy in relation to the facts or appli-
15 cable law for denial of a claim or for the offer of a compromise
16 settlement; or

17 (15) offer a form of settlement or pay a judgment in any
18 manner prohibited by AS 21.89.030.

19 * Sec. 7. AS 21.36.130 is amended to read:

20 Sec. 21.36.130. STOCK OPERATIONS AND ADVISORY BOARD CONTRACTS.
21 No person may issue or deliver or permit its agents, officers, or
22 employees to issue or deliver, agency company stock or other capital
23 stock, or benefit certificates or shares in a common-law corporation,
24 or securities, or an advisory board contract or other similar contract
25 of any kind promising returns and profits as an inducement to insur-
26 ance.

27 * Sec. 8. AS 21.36 is amended by adding new sections to read:

28 Sec. 21.36.165. FAVORED AGENT OR INSURER; COERCION OF DEBTORS.
29 No person may

1 (1) require, as a condition to the lending of money or
2 extension of credit, or a renewal of the loan or extension of credit,
3 that the obligee of the money or credit negotiate a policy or contract
4 of insurance through any particular person or group of persons;

5 (2) disapprove the insurance policy provided by a borrower
6 for the protection of property securing credit or a lien if disapproval
7 is based on other than reasonable standards uniformly applied and re-
8 lating to the extent of coverage required and the financial soundness
9 and the services of the insurer; nor may the standards discriminate
10 against a particular type of insurer, or call for the disapproval of a
11 policy containing coverage in addition to that required;

12 (3) require a borrower, mortgagor, purchaser, insurer,
13 broker or agent to pay a separate charge for handling an insurance
14 policy required as security for a loan on real property, or to pay a
15 separate charge to substitute the insurance policy of one insurer for
16 that of another, except that interest may be charged on premium loans
17 of premium advancements in accordance with the security instrument;

18 (4) use or disclose information resulting from a require-
19 ment that a borrower, mortgagor or purchaser furnish insurance of any
20 kind on real property being conveyed or used as collateral security to
21 a loan, when the information is to the advantage of the mortgagee,
22 vendor, or lender, or is to the detriment of the borrower, mortgagor,
23 purchaser, insurer, agent, or broker complying with the requirement.

24 Sec. 21.36.320. HEARINGS AND ORDER ON VIOLATION. (a) On the
25 complaint of a person or on his own motion, the director may conduct
26 an investigation to determine whether a person in this state is
27 engaged in an unfair method of competition or unfair or deceptive act
28 or practice prohibited by this chapter.

29 (b) If there are grounds for believing that a person is engaged

1 in an act or practice prohibited by this chapter, the director may
2 institute proceedings under AS 21.06.170 -- 21.06.240.

3 (c) On a finding of a violation of this chapter, the director
4 shall serve upon the person charged an order requiring that person to
5 stop the acts or practices.

6 (d) In addition to an order issued under (c) of this section,
7 the director may also order a penalty of not more than \$10,000 for
8 each act or practice in violation of this chapter.

9 (e) If the person charged knew or should have known he was in
10 violation of this chapter, a penalty in addition to that prescribed in
11 (d) of this section of not more than \$5,000 for each act or practice
12 in violation of this chapter, or suspension or revocation of the
13 person's license, or both, may also be ordered by the director.

14 (f) If the director believes that a person has violated a stop
15 order issued under (c) of this section, he may certify the relevant
16 facts to the superior court in the appropriate district, for proceedings
17 under AS 44.62.590. In addition to the penalties and remedies provided
18 for in AS 44.62.590, the superior court, upon finding that the stop
19 order has been violated, may order the violator to pay a penalty of
20 not more than \$10,000 for each violation, and may revoke or suspend
21 the violator's license, or both.

22 Sec. 21.36.330. INJUNCTIVE RELIEF. The director may seek
23 injunctive relief to aid in the enforcement of the provisions of this
24 chapter.

25 Sec. 21.36.340. PROVISIONS OF CHAPTER ADDITIONAL TO OTHER LAW.
26 The powers vested in the director by this chapter are in addition to
27 any other powers to enforce penalties, fines or other forfeitures
28 authorized by law with respect to acts and practices declared in this
29 chapter to be unfair or deceptive.

1 * Sec. 9. AS 21.90.050 is amended to read:

2 Sec. 21.90.050. "PERSON" DEFINED. In this title, "person"
3 ["PERSON"] includes an individual, insurer, company, association,
4 organization, Lloyds, society, fraternal benefit society, medical
5 service or hospital service plan as defined in chapter 87 of this
6 title, reciprocal or interinsurance exchange, partnership, syndicate,
7 business trust, corporation, and any other legal entity engaged in the
8 business of transacting insurance, including agents, brokers, and
9 claims adjusters.

10 * Sec. 10. AS 21.90 is amended by adding a new section to read:

11 Sec. 21.90.110. OTHER DEFINITIONS. In this title

12 (1) "policy" means the written contract of or written
13 agreement for or effecting insurance, by whatever name called, and
14 includes all clauses, riders, endorsements and papers attached to it
15 and a part of it;

16 (2) "premium" is the consideration for insurance, by
17 whatever name called, and by whatever method paid or collected, includ-
18 ing an assessment, or membership, policy, survey, inspection, service
19 or similar fee or charge made in consideration for an insurance
20 contract.

21 * Sec. 11. AS 21.36.140 and AS 21.42.360 are repealed.
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