

Introduced: 1/20/78
Referred: Commerce

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE
BY REQUEST

2 CS HOUSE BILL NO. 667 AMS
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 TENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurance premium financing."

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

8 * Section 1. AS 06 is amended by adding a new chapter to read:

9 CHAPTER 35. PREMIUM FINANCING ACT.

10 Sec. 06.35.010. LICENSE REQUIRED. Except as provided in sec. 20
11 of this chapter, no person may engage in the business of financing
12 premiums on insurance sold in this state or risks located in this state,
13 either directly or indirectly, or otherwise act as a premium finance
14 company in this state without being licensed by the department.

15 Sec. 06.35.020. APPLICABILITY. This chapter does not apply to

16 (1) any insurer authorized to transact business in this state
17 with respect to premiums on policies which the insurer issues;

18 (2) any bank, trust company, savings association, or other
19 financial institution subject to the other chapters of this title and
20 authorized to transact business in this state that does not possess or
21 acquire any right, title or interest with respect to the insurance
22 policy for which the premiums are financed other than in the proceeds of
23 it in the event of loss;

24 (3) the inclusion of a charge for insurance in connection
25 with an installment sale in accordance with AS 45.10; and

26 (4) persons licensed under AS 21.27 financing only their own
27 accounts if they are in compliance with AS 21.36.122.

28 Sec. 06.35.030. BOND. (a) The applicant shall file with the
29 application a bond to be approved by the department in which the

1 applicant shall be the obligor, in the sum of \$5,000 with one or more
2 sureties. The bond shall be for the use of the state and any person who
3 may have a cause of action against the obligor under this chapter. The
4 bond shall state that the obligor will faithfully conform to and abide
5 by the provisions of this chapter and of all regulations lawfully made
6 by the department, and will pay to the state and to any person all money
7 that may become due or owing to the state or to the person from the
8 applicant under this chapter.

9 (b) If at any time the commissioner finds that the bond is un-
10 satisfactory for any reason, he may require the licensee to file, within
11 10 days after the receipt of a written demand for it, an additional bond
12 complying with the provisions of (a) of this section.

13 Sec. 06.35.040. ANNUAL LICENSE FEE. On or before December 20 of
14 each year, each licensee shall pay a fee of \$200 to the department as an
15 annual license fee for the next succeeding calendar year. At that same
16 time the licensee shall file with the department a new bond which com-
17 plies with sec. 30 of this chapter.

18 Sec. 06.35.050. APPLICATION FOR LICENSE; FEE. (a) Application
19 for a license under this chapter shall be in writing and in the form
20 prescribed by the department.

21 (b) All reasonable investigation expenses incurred by the depart-
22 ment in processing an application for approval of a proposed premium
23 finance company shall be charged to and paid by the applicant in accor-
24 dance with AS 06.01.010. At the time of submitting the application to
25 the department, the applicant shall pay to the department \$500 in par-
26 tial payment of the investigation expenses incurred by the department.
27 If the investigation expenses incurred by the department do not exceed
28 \$500, the remainder shall be promptly refunded to the applicant.

29 (c) The person to whom the license may be or is issued shall file

1 sworn answers to interrogatories required by the commissioner. The
2 commissioner shall have authority, at any time, to require the licensee
3 fully to disclose the identity of all directors, partners, officers and
4 managerial employees, and he may, in his discretion, refuse to issue or
5 continue a license in the name of any firm or corporation if he deter-
6 mines that any officer, employee, stockholder or partner of the firm or
7 corporation who may materially influence the licensee's conduct does not
8 meet the requirements of this chapter.

9 (d) All premium finance licenses shall continue in force until
10 suspended or revoked, subject to the payment by the licensee of the
11 annual license fee and to the licensee being in compliance with other
12 provisions of this chapter.

13 Sec. 06.35.060. PLACE OF BUSINESS. (a) A licensee may maintain
14 only one place of business under his license. The department may issue
15 more than one license to the same licensee upon application and com-
16 pliance by the licensee with the provisions of this chapter governing
17 the original issuance of a license.

18 (b) Whenever a licensee changes his place of business to another
19 location, he shall give written notice to the department. The depart-
20 ment shall attach the written notice of the change to the license to-
21 gether with the date. Thereafter, the licensee may operate the business
22 under the license at the new location.

23 Sec. 06.35.070. INVESTIGATION: QUALIFICATIONS FOR LICENSE. (a)
24 Upon the filing of an application and payment of the investigation fee
25 specified in sec. 50(b) of this chapter, the commissioner shall conduct
26 an investigation of an applicant and shall issue a premium finance com-
27 pany license if the applicant meets the requirements of this chapter.
28 If the commissioner does not so find, he shall, within 30 days after he
29 has received the application, at the request of the applicant, give the

1 applicant a full hearing.

2 (b) The commissioner shall issue a license to an applicant when he
3 is satisfied that the applicant

4 (1) is competent and trustworthy and intends to act in good
5 faith in the capacity involved by the license applied for;

6 (2) has a good business reputation and has had experience,
7 training, or education so as to be qualified in the business for which
8 the license is applied; and

9 (3) if a corporation, is a corporation incorporated under the
10 laws of this state or a foreign corporation authorized to transact
11 business in this state.

12 Sec. 06.35.080. REVOCATION AND SUSPENSION OF LICENSE. The commis-
13 sioner may revoke or suspend the license of any licensee when, upon
14 completion of an investigation, the commissioner determines that

15 (1) the license issued to the company was obtained by fraud;

16 (2) there was misrepresentation in the application for the
17 license;

18 (3) the holder of the license has otherwise shown himself
19 untrustworthy or incompetent to act as a premium finance company; or

20 (4) the licensee has violated any of the provisions of this
21 chapter.

22 Sec. 06.35.090. ADVERTISING OF MISLEADING STATEMENTS PROHIBITED;
23 DISCLOSURE OF INTEREST. (a) No person may advertise, print, display,
24 publish, distribute, or broadcast or cause or permit to be advertised,
25 printed, displayed, published, distributed, or broadcast, in any manner,
26 any statement or representation with regard to the rates, terms, or con-
27 ditions for the lending of money, credit, goods, or things in action
28 which is false, misleading, or deceptive.

29 (b) The licensee or lender shall state the interest rate charged

1 in a premium finance agreement fully and clearly as an annual percentage
2 rate.

3 Sec. 06.35.100. RECORD KEEPING; EXAMINATION OF RECORDS. (a)

4 Every licensee shall maintain records of its premium finance trans-
5 actions, and the records shall be open to examination and investigation
6 by the commissioner at the office of the licensee. All records per-
7 taining to insurance contracts financed by Alaska residents shall be
8 maintained or readily available in the licensee's office. The commis-
9 sioner may, at any reasonable time, require the licensee to bring
10 records pertaining to premium finance agreements to his office for
11 examination. The expenses incurred by the department in conducting an
12 examination shall be charged to and paid by the licensee in accordance
13 with AS 06.01.010.

14 (b) Every licensee shall preserve its records of premium finance
15 transactions, including cards used in a card system, for at least three
16 years after making the final entry relating to any premium finance
17 agreement. The preservation of records in photographic form constitutes
18 compliance with this requirement.

19 (c) Each licensee shall, on or before March 15 of each year, file
20 a report with the department containing information as the department
21 may reasonably require concerning the business and operations during the
22 preceding calendar year of each licensed place of business conducted by
23 the licensee. The report shall be made under oath, shall be in the form
24 prescribed by the department, and shall be kept available as a public
25 record.

26 Sec. 06.35.110. CONTENTS OF PREMIUM FINANCE AGREEMENT. (a) A
27 premium finance agreement shall

28 (1) be dated, signed by the borrower, and the printed portion
29 of it shall be in at least eight-point type;

1 (2) contain the name and place of business of the insurance
2 agent negotiating the related insurance policy, the name and residence
3 or the place of business of the borrower as specified by him, the name
4 and place of business of the licensee to which payments are to be made,
5 an identification of the insurance policy involved and the amount of the
6 premium charged for it; and

7 (3) set out the following items where applicable:

8 (A) the total amount of the premiums;

9 (B) the amount of the down payment;

10 (C) the principal balance (the difference between items
11 (A) and (B));

12 (D) the annual percentage rate of interest; and

13 (E) the number of payments required, the amount of each
14 payment expressed in dollars, and the due date or period of it.

15 (b) The items set out in (a)(3) of this section need not be stated
16 in the sequence or order in which they appear in (a) of this section,
17 and additional items may be included to explain the computations made in
18 determining the amount to be paid by the insured.

19 (c) The repayment schedule relating to dwelling fire, homeowner,
20 private passenger automobile, mobile home insurance policies, and fire
21 insurance policies covering owner-occupied multiple unit dwellings for
22 four families or less shall be such that the total amount due the licen-
23 see at any time does not exceed the unearned premium on the policy being
24 financed at that time. No deficiency balance may be established or
25 collected from the borrower.

26 (d) The licensee or the insurance agent shall deliver to the
27 borrower, or mail to him at his address shown in the agreement, a com-
28 plete copy of the agreement.

29 Sec. 06.35.120. MAXIMUM INTEREST PERMITTED: PREPAYMENT, REFUND.

1 (a) A premium finance company may not charge, contract for, receive, or
2 collect a service charge other than as permitted by this chapter.

3 (b) The service charge is to be computed on the balance of the
4 premiums due, after subtracting the down payment made by the borrower in
5 accordance with the premium finance agreement, from the effective date
6 of the insurance coverage, for which the premiums are being advanced, to
7 and including the date when the final payment of the premium finance
8 agreement is payable.

9 (c) The service charge may not exceed interest at the nominal
10 annual rate of 18 per cent plus an additional charge of \$10 per premium
11 finance agreement which need not be refunded upon cancellation or pre-
12 payment. However, any borrower may prepay his premium finance agreement
13 in full at any time before the due date of the final payment and in that
14 event the unearned service charge shall be refunded. The amount of any
15 refund shall be calculated in accordance with the rule commonly known as
16 the "Rule of 78" or regulations adopted by the commissioner.

17 Sec. 06.35.130. DELINQUENCY CHARGE. (a) A premium finance agree-
18 ment may provide for the payment by the borrower of a delinquency charge
19 for any payment that is in default for a period of 10 days or more. The
20 charge may be made for each month or fraction of a month that the pay-
21 ment is in default. The amount of the charge may be a minimum of \$1 and
22 as a maximum shall be subject to the following limits:

23 (1) for delinquent payments of less than \$250, five per cent
24 of the payment or \$5, whichever is less; or

25 (2) for delinquent payments of \$250 or more, two per cent of
26 the payment.

27 (b) A borrower may at his option separate the financing of the
28 premiums for one insurance policy from a premium finance agreement by
29 requesting in writing that the premium finance company provide that

1 service and by paying a \$10 separate charge.

2 Sec. 06.35.140. CANCELLATION OF POLICY; REQUIREMENTS. (a) When a
3 premium finance agreement contains a power of attorney enabling the
4 licensee to cancel the insurance policy listed in the agreement, the
5 insurance policy may not be cancelled by the licensee unless the can-
6 cellation is effectuated in accordance with this section.

7 (b) The licensee shall give not less than 10 days written notice
8 to the borrower, by mailing by certified mail or documented by an affi-
9 davit of mailing, of the licensee's intent to cancel the insurance
10 policy unless the default is cured within that 10-day period. A copy of
11 the notice shall also be mailed by certified mail or documented by an
12 affidavit of mailing to the insurance agent indicated on the premium
13 finance agreement.

14 (c) After expiration of the 10-day period specified in (b) of this
15 section, the licensee may, in the name of the borrower, cancel the in-
16 surance policy by mailing by certified mail or documented by an affi-
17 davit of mailing to the insurer a notice of cancellation. The insurance
18 policy shall be cancelled as if the notice of cancellation had been
19 submitted by the borrower himself, but without requiring the return of
20 the insurance policy. The licensee shall also mail by certified mail or
21 documented by an affidavit of mailing a notice of cancellation to the
22 borrower at his last-known address and to the insurance agent indicated
23 on the premium finance agreement.

24 (d) All statutory, regulatory and contractual restrictions pro-
25 viding that the insurance policy may not be cancelled unless notice is
26 given to a governmental agency, mortgagee, or other third party shall
27 apply where cancellation is effected under the provisions of this
28 section. The insurer shall give the prescribed notice on behalf of
29 itself or the borrower to any governmental agency, mortgagee, or other

1 third party on or before the second business day after the day it re-
2 ceives the notice of cancellation from the licensee and shall determine
3 the effective date of cancellation taking into consideration the number
4 of days' notice required to complete the cancellation.

5 Sec. 06.35.150. RETURN OF UNEARNED PREMIUMS. (a) Whenever a
6 financed insurance policy is cancelled, the insurer within 60 days of
7 the effective date of cancellation shall return any gross unearned pre-
8 miums that are due under the insurance policy to the licensee for the
9 account of the borrower if the licensee has complied with the notice
10 provisions of sec. 40(b) of this chapter.

11 (b) If the crediting of return premiums to the account of the
12 borrower results in a surplus over the amount due from the borrower, the
13 licensee shall refund the excess to the borrower; however, no refund is
14 required if it amounts to less than \$1.

15 Sec. 06.35.160. CIVIL AND CRIMINAL PENALTIES. (a) A lender who,
16 in the making of any contract, loan or premium finance agreement or the
17 collection of interest or charges, does any act which violates secs. 10,
18 90, or 110 - 130 of this chapter shall at the option of the commissioner
19 reimburse that portion of the interest and charges in excess of that
20 provided in those sections, or, in the case of repeated violations of
21 those sections by the lender, the lender shall adjust the contract,
22 loan, or premium finance agreement interest and other charges down to
23 the contract interest limitation specified in AS 45.45.010(a).

24 (b) Any person, copartnership, association, or corporation, and
25 its members, officers, directors, agents, and employees, who violates or
26 participates in a violation of the provisions of sec. 10 of this chap-
27 ter, is guilty of a misdemeanor and upon conviction is punishable by a
28 fine of not more than \$5,000, or by imprisonment for not more than one
29 year, or by both. In case of conviction of a corporation for violation

1 of this chapter, the corporation is punishable by a fine of not more
2 than \$20,000.

3 Sec. 06.35.170. FILING NOT REQUIRED TO PERFECT VALIDITY OF AGREE-
4 MENT. No filing under AS 45.05 of the premium finance agreement is
5 necessary to perfect the validity of the agreement as a secured trans-
6 action against creditors, subsequent purchasers, pledgees, encum-
7 brancers, successors or assigns.

8 Sec. 06.35.180. REGULATIONS, ORDERS. The commissioner shall adopt
9 regulations necessary to carry out this chapter, and the commissioner
10 may order any person to cease violation of this chapter or a regulation
11 adopted under it.

12 Sec. 06.35.190. DEFINITIONS. As used in this chapter, unless the
13 context otherwise requires,

14 (1) "commissioner" means the commissioner of commerce and
15 economic development or his designee;

16 (2) "department" means the Department of Commerce and
17 Economic Development;

18 (3) "premium finance agreement" means an agreement by which a
19 borrower or prospective borrower promises to pay to a licensee or to its
20 assignee the amount advanced or to be advanced under the agreement to an
21 insurer or to an insurance agent or broker in payment of premiums on an
22 insurance policy sold in this state or covering risks located in this
23 state together with a service charge, and as a security for it the
24 premium finance company receives an assignment of the unearned premium;
25 however, no mortgage, conditional sale contract, or other security
26 agreement covering property which authorizes the lien holder to pay or
27 advance premiums for insurance under the mortgage, contract, or other
28 security agreement is considered to be a premium finance agreement;

29 (4) "premium finance company" means a person engaged in the

1 business of entering into premium finance agreements with borrowers or
2 of acquiring premium finance agreements from insurance agents, brokers
3 or other premium finance companies.

4 * Sec. 2. AS 21.36 is amended by adding a new section to read:

5 Sec. 21.36.122. PREMIUM FINANCING. No person licensed under ch.
6 27 of this title may

7 (1) enter into any insurance transaction in which the premium
8 is financed by other than the licensee unless the person providing the
9 financing is licensed under and in compliance with AS 06.35 or is
10 exempted from licensure under AS 06.35.020; or

11 (2) finance premiums or extend credit to persons purchasing
12 insurance except as provided in regulations adopted by the director; the
13 director shall adopt regulations establishing the conditions under which
14 licensees may extend credit or finance premiums except that in no event
15 may the regulations permit a rate of interest on amounts lent or credit
16 extended greater than that provided in AS 06.35.120.

17 * Sec. 3. The provisions of this Act do not void a lawful contract
18 entered into before the effective date of this Act.

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