

Original sponsor: Commerce Committee
By Request

Offered: 4/14/78
Referred: Rules

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR HOUSE BILL NO. 667

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 40. PREMIUM FINANCING ACT.

10 Sec. 06.40.010. LICENSE REQUIRED. Except as provided in sec. 20
11 of this chapter, no person may engage in the business of entering into
12 premium finance agreements on insurance sold in this state or risks
13 located in this state, either directly or indirectly, or otherwise act
14 as a premium finance company in this state without being licensed by the
15 department.

16 Sec. 06.40.020. APPLICABILITY. This chapter does not apply to

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

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

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

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

29 Sec. 06.40.030. BOND. (a) The applicant shall file with the

1 application a bond to be approved by the department in which the appli-
2 cant shall be the obligor, in the sum of \$5,000 with one or more sure-
3 ties. The bond shall be for the use of the state and any person who may
4 have a cause of action against the obligor under this chapter. The bond
5 shall state that the obligor will faithfully conform to and abide by the
6 provisions of this chapter and of all regulations lawfully made by the
7 department, and will pay to the state and to any person all money that
8 may become due or owing to the state or to the person from the applicant
9 under this chapter. The aggregate liability of the surety for all
10 breaches of the bond condition may not exceed the penal sum of the bond,
11 and the bond may be cancelled by the surety on 30 days notice to the
12 commissioner.

13 (b) If at any time the commissioner finds that the bond is un-
14 satisfactory for any reason, he may require the licensee to file, within
15 10 days after the receipt of a written demand for it, an additional bond
16 complying with the provisions of (a) of this section.

17 Sec. 06.40.040. ANNUAL LICENSE FEE. On or before December 20 of
18 each year, each licensee shall pay a fee of \$200 to the department as an
19 annual license fee for the next succeeding calendar year. At that same
20 time the licensee shall file with the department a new bond which com-
21 plies with sec. 30 of this chapter.

22 Sec. 06.40.050. APPLICATION FOR LICENSE; FEE. (a) Application
23 for a license under this chapter shall be in writing and in the form
24 prescribed by the department.

25 (b) All reasonable investigation expenses incurred by the depart-
26 ment in processing an application for approval of a proposed premium
27 finance company shall be charged to and paid by the applicant in accor-
28 dance with this title. At the time of submitting the application to the
29 department, the applicant shall pay to the department \$500 in partial

1 payment of the investigation expenses incurred by the department. If
2 the investigation expenses incurred by the department do not exceed
3 \$500, the remainder shall be promptly refunded to the applicant.

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

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

17 Sec. 06.40.060. PLACE OF BUSINESS. (a) A licensee may maintain
18 only one place of business under his license. The department may issue
19 more than one license to the same licensee upon application and com-
20 pliance by the licensee with the provisions of this chapter governing
21 the original issuance of a license.

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

27 Sec. 06.40.070. INVESTIGATION: QUALIFICATIONS FOR LICENSE. (a)
28 Upon the filing of an application and payment of the investigation fee
29 specified in sec. 50(b) of this chapter, the commissioner shall conduct

1 an investigation of an applicant and shall issue a premium finance com-
2 pany license if the applicant meets the requirements of this chapter.
3 If the commissioner does not so find, he shall, within 30 days after he
4 has received the application, at the request of the applicant, give the
5 applicant a full hearing.

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

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

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

13 (3) if a corporation, is a corporation incorporated under the
14 laws of this state or a foreign corporation authorized to transact
15 business in this state.

16 Sec. 06.40.080. REVOCATION AND SUSPENSION OF LICENSE. The
17 commissioner may revoke or suspend the license of any licensee when,
18 upon completion of an investigation, the commissioner determines that

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

20 (2) there was misrepresentation in the application for the
21 license;

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

24 (4) the licensee has violated any of the provisions of this
25 chapter.

26 Sec. 06.40.090. ADVERTISING OF MISLEADING STATEMENTS PROHIBITED;
27 DISCLOSURE OF INTEREST. (a) No person may advertise, print, display,
28 publish, distribute, or broadcast or cause or permit to be advertised,
29 printed, displayed, published, distributed, or broadcast, in any manner,

1 any statement or representation with regard to the rates, terms, or con-
2 ditions for the lending of money, credit, goods, or things in action
3 which is false, misleading, or deceptive.

4 (b) The licensee or lender shall state the interest rate charged
5 in a premium finance agreement fully and clearly as an annual percentage
6 rate.

7 Sec. 06.40.100. RECORD KEEPING; EXAMINATION OF RECORDS. (a)
8 Every licensee shall maintain records of its premium finance trans-
9 actions, including the insurance agents through which the licensee pro-
10 vides loans to residents of this state and the records shall be open to
11 examination and investigation by the commissioner at the office of the
12 licensee. All records pertaining to insurance contracts financed by
13 Alaska residents shall be maintained or readily available in the licen-
14 see's office. The commissioner may, at any reasonable time, require the
15 licensee to bring records pertaining to premium finance agreements to
16 his office for examination. The expenses incurred by the department in
17 conducting an examination shall be charged to and paid by the licensee
18 in accordance with this title.

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

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

1 record.

2 Sec. 06.40.110. CONTENTS OF PREMIUM FINANCE AGREEMENT. (a) A
3 premium finance agreement shall

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

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

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

13 (A) the total amount of the premiums;

14 (B) the amount of the down payment;

15 (C) the principal balance (the difference between items
16 (A) and (B));

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

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

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

24 (c) The repayment schedule relating to dwelling fire, homeowner,
25 private passenger automobile, boats not used for commercial purposes,
26 owner-occupied mobile homes, and fire insurance policies covering owner-
27 occupied multiple unit dwellings for four families or less shall be such
28 that the total amount due the licensee at any time does not exceed the
29 unearned premium on the policy being financed at that time. No defi-

1 ciency balance may be established or collected from the borrower. This
2 section does not preclude the licensee from establishing or collecting a
3 deficiency balance to the extent the insurer offsets unearned premiums
4 on the policy financed by premiums earned by reason of endorsements to
5 that same policy not paid for by the insured or financed by the licen-
6 see.

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

10 Sec. 06.40.120. MAXIMUM INTEREST PERMITTED: PREPAYMENT, REFUND.

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

13 (b) The service charge is to be computed on the balance of the
14 premiums due, after subtracting the down payment made by the borrower in
15 accordance with the premium finance agreement, from the effective date
16 of the insurance coverage, for which the premiums are being advanced, to
17 and including the date when the final payment of the premium finance
18 agreement is payable.

19 (c) The service charge may not exceed interest at the nominal
20 annual rate of 12 per cent plus an additional charge of \$10 per premium
21 finance agreement which need not be refunded upon cancellation or pre-
22 payment. However, any borrower may prepay his premium finance agreement
23 in full at any time before the due date of the final payment and in that
24 event the unearned service charge shall be refunded. The amount of any
25 refund shall be calculated in accordance with regulations adopted by the
26 commissioner.

27 Sec. 06.40.130. DELINQUENCY CHARGE. (a) A premium finance agree-
28 ment may provide for the payment by the borrower of a delinquency charge
29 for any payment that is in default for a period of 10 days or more. The

1 charge may be made for each month or fraction of a month that the pay-
2 ment is in default. The amount of the charge may be a minimum of \$1 and
3 as a maximum shall be subject to the following limits:

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

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

8 (b) A borrower may at his option separate the financing of the
9 premiums for one insurance policy from a premium finance agreement by
10 requesting in writing that the premium finance company provide that
11 service and by paying a \$10 separate charge.

12 Sec. 06.40.140. CANCELLATION OF POLICY; REQUIREMENTS. (a) When a
13 premium finance agreement contains a power of attorney enabling the
14 licensee to cancel the insurance policy listed in the agreement, the
15 insurance policy may not be cancelled by the licensee unless the can-
16 cellation is effectuated in accordance with this section.

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

24 (c) After expiration of the 10-day period specified in (b) of this
25 section, the licensee may, in the name of the borrower, cancel the in-
26 surance policy by mailing by certified mail or documented by an affi-
27 davit of mailing to the insurer a notice of cancellation. The insurance
28 policy shall be cancelled as if the notice of cancellation had been
29 submitted by the borrower himself, but without requiring the return of

1 the insurance policy. The licensee shall also mail by certified mail or
2 documented by an affidavit of mailing a notice of cancellation to the
3 borrower at his last-known address and to the insurance agent indicated
4 on the premium finance agreement.

5 (d) All statutory, regulatory and contractual restrictions pro-
6 viding that the insurance policy may not be cancelled unless notice is
7 given to a governmental agency, mortgagee, or other third party shall
8 apply where cancellation is effected under the provisions of this sec-
9 tion. The insurer shall give the prescribed notice on behalf of itself
10 or the borrower to any governmental agency, mortgagee, or other third
11 party on or before the fifth business day after the day it receives the
12 notice of cancellation from the licensee and shall determine the effec-
13 tive date of cancellation taking into consideration the number of days'
14 notice required to complete the cancellation.

15 Sec. 06.40.150. RETURN OF UNEARNED PREMIUMS. (a) Whenever a
16 financed insurance policy is cancelled and provided the insurer has been
17 notified of the assignment of interest of the insured to the licensee,
18 the insurer within 60 days of the effective date of cancellation shall
19 take such steps as are necessary to have any gross unearned premiums
20 that are due under the insurance policy returned to the licensee for the
21 account of the borrower if the licensee has complied with the notice
22 provisions of sec. 140(b) of this chapter.

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

27 Sec. 06.40.160. CIVIL AND CRIMINAL PENALTIES. (a) A lender who,
28 in the making of any contract, loan or premium finance agreement or the
29 collection of interest or charges, does any act which violates secs.

1 10 - 20, 90, or 110 - 130 of this chapter shall at the option of the
2 commissioner reimburse that portion of the interest and charges in
3 excess of that provided in those sections, or, in the case of repeated
4 violations of those sections by the lender, the lender shall adjust the
5 contract, loan, or premium finance agreement interest and other charges
6 down to the contract interest limitation specified in AS 45.45.010(a).

7 (b) Any person, copartnership, association, or corporation, and
8 its members, officers, directors, agents, and employees, who violates or
9 participates in a violation of the provisions of sec. 10 of this chap-
10 ter, is guilty of a misdemeanor and upon conviction is punishable by a
11 fine of not more than \$5,000, or by imprisonment for not more than one
12 year, or by both. In case of conviction of a corporation for violation
13 of this chapter, the corporation is punishable by a fine of not more
14 than \$20,000.

15 Sec. 06.40.170. FILING NOT REQUIRED TO PERFECT VALIDITY OF AGREE-
16 MENT. No filing under AS 45.05 of the premium finance agreement is
17 necessary to perfect the validity of the agreement as a secured trans-
18 action against creditors, subsequent purchasers, pledgees, encum-
19 brancers, successors or assigns.

20 Sec. 06.40.180. REGULATIONS, ORDERS. The commissioner shall adopt
21 regulations necessary to carry out this chapter, and the commissioner
22 may order any person to cease violation of this chapter or a regulation
23 adopted under it.

24 Sec. 06.40.190. DEFINITIONS. As used in this chapter, unless the
25 context otherwise requires,

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

28 (2) "department" means the Department of Commerce and Eco-
29 nomic Development;

1 (3) "premium finance agreement" means an agreement by which a
2 borrower or prospective borrower promises to pay to a licensee or to its
3 assignee the amount advanced or to be advanced under the agreement to an
4 insurer or to an insurance agent or broker in payment of premiums on an
5 insurance policy sold in this state or covering risks located in this
6 state together with a service charge, and as a security for it the
7 premium finance company receives an assignment of the unearned premium;
8 however, no mortgage, conditional sale contract, or other security
9 agreement covering property which authorizes the lien holder to pay or
10 advance premiums for insurance under the mortgage, contract, or other
11 security agreement is considered to be a premium finance agreement;

12 (4) "premium finance company" means a person engaged in the
13 business of entering into premium finance agreements with borrowers or
14 of acquiring premium finance agreements from insurance agents, brokers
15 or other premium finance companies.

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

17 Sec. 21.36.122. PREMIUM FINANCING. No person licensed under ch.
18 27 of this title may

19 (1) enter into any insurance transaction in which the premium
20 is financed by other than the licensee unless the person providing the
21 financing is licensed under and in compliance with AS 06.40 or is ex-
22 empted from licensure under AS 06.40.020; or

23 (2) finance premiums or extend credit to persons purchasing
24 insurance except as provided in regulations adopted by the director; the
25 director shall adopt regulations establishing the conditions under which
26 licensees may extend credit or finance premiums except that in no event
27 may the regulations permit a rate of interest on amounts lent or credit
28 extended greater than that provided in AS 06.40.120.

29 * Sec. 3. The provisions of this Act do not void a lawful contract

1 entered into before the effective date of this Act.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29