Introduced: 2/23/78
Referred: Commerce

IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL (for the Interim Committee on Insurance)

HOUSE BILL NO. 858

IN THE LEGISLATURE OF THE STATE OF ALASKA

TENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to insurance rate regulation; and providing for an effective date."

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

* Section 1. AS 21 is amended by adding a new chapter to read:

CHAPTER 38. COMPETITIVE RATE REGULATION.

Sec. 21.38.010. PURPOSE; APPLICABILITY. (a) The purpose of this chapter is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate or unfairly discriminatory, to prohibit price fixing agreements and other anti-competitive behavior by insurers, to promote price competition among insurers, to provide rates that are responsive to competitive market conditions and to improve the availability and reliability of insurance.

(b) This chapter only applies to dwelling fire and homeowner insurance.

(c) All applicable sections of ch. 39 of this title not inconsistent with this chapter shall apply to rate regulation in accordance with this chapter.

Sec. 21.38.020. STANDARDS FOR RATES; COMPETITION; PROCEDURE. (a) Rates may not be excessive, inadequate, unfairly discriminatory, destructive of competition, or detrimental to the solvency of insurers. In determining whether rates comply with this section, the director shall include all income earned by an insurer and any insurer controlling or controlled by that insurer or under common control by or with that insurer on all its investments of any kind and wherever located.

(b) Except as otherwise provided in this section or sec. 40 of this chapter, prior filing with or prior approval by the director of rates, schedules of rates, rating plans, rating rules and rate manuals is not required.

(1) No insurer or rating organization may use a rating classification or territory unless it has been filed with the director and he has either approved it, or 90 days have elapsed and he has not disapproved it as unfairly discriminatory or contrary to public policy.

(2) If the director determines, after a hearing at which representatives of consumers and other interested parties may participate, on the basis of findings of fact and conclusions of law, that, with respect to any territory or to any kind of subdivision or class of insurance, competition is either insufficient to assure that rates will not be excessive or so conducted as to be destructive of competition or detrimental to the solvency of insurers, he shall order that rates for insurance shall be regulated in accordance with ch. 39 of this title. Such an order shall have a specified duration of not more than one year but may be renewed by the director. Within 30 days after the close of the hearing, the director shall make his determination in a report which shall be made public.

(3) The director, by regulation adopted after a public hearing, shall, where appropriate, establish objective standards, including industry-wide profitability standards and market concentration standards, for determining when a hearing under (2) of this subsection shall be called.

(c) No policy form shall be delivered or issued for delivery unless it has been filed with the director and he has approved it or 30 days have elapsed from the date of filing and he has not disapproved it

as misleading or violative of public policy.

(d) Rating classifications, territories, and policy forms lawfully in use immediately before the effective date of this Act may continue to be used thereafter, notwithstanding provisions of this section.

Sec. 21.38.030. PROHIBITION OF ANTI-COMPETITIVE BEHAVIOR. (a) No insurer or rating organization

(1) may monopolize or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, in any territory, the business of insurance or any kind, subdivision or class of insurance;

(2) may agree with any other insurer or rating organization to charge or adhere to any rate, although insurers and rating organizations may continue to exchange statistical information;

(3) may make any agreement with any other insurer, rating organization or other person to restrain trade;

(4) may make any agreement with any other insurer, rating organization or other person the effect of which may be substantially to lessen competition in any territory or in any type, subdivision or class of insurance;

(5) may make any agreement with any other insurer or rating organization to refuse to deal with any person in connection with the sale of insurance;

(6) or member of or subscriber to the insurer or rating organization may interfere with the right of any insurer to make its rates independently of the rating organization or to charge rates that are different from the rates made by the rating organization;

(7) may refuse to do business with, or prohibit or prevent the payment of commissions to, any licensed agent or broker on the ground that the agent or broker does business with an insurer which

makes its rates, or any portion of them, independently of the rating organization.

(b) No provision of this chapter

(1) may be construed as requiring any insurer to become a member of or a subscriber to any rating organization, or as preventing any insurer, while a member of or subscriber to a rating organization, from making its own rates for which it does not elect to authorize the rating organization to act on its behalf;

(2) grants a rating organization authority to act on behalf of any insurer which is a member of or subscriber to a rating organization, except as authorized in writing by the member or subscriber, which authority may be supplemented, modified or revoked, in whole or in part, at any time by the member or subscriber at its option; an insurer which is a member of or subscriber to a rating organization may make its own rates for any kind, subdivision or class of insurance;

(3) grants a rating organization authority to adopt any rule or exact any agreement, or formulate or engage in any program the effect of which would be to require any member, subscriber or other insurer to utilize some or all of its services, or to adhere to its rates, rating plans, rating systems, underwriting rules, or policy forms, or to prevent any insurer from acting independently.

(c) Any rate made in violation of this section shall be disapproved by the director under the procedures prescribed in sec. 50 of this chapter, and each violator shall be subject to the penalties provided for in sec. 50 of this chapter. The director or any person injured in his business or property by a violation of this section may maintain an action in a superior court of this state to enjoin the violation. Any person injured in his business or property by a violation of this section may maintain an action in a superior court of this

state to recover treble damages.

Sec. 21.38.040. PUBLIC DISCLOSURE. (a) All policy forms and rating classifications and territories filed with the director shall be available for public inspection.

(b) Every insurer and rating organization shall furnish to the director, on or before the date of their use, all changes in the rating rules and schedules or rates the insurer or rating organization will be using in the state and the statistical, rating and other information in support of changes in rating rules, schedules of rates, and rating classifications and territories. These rules, schedules, and information shall be available for public inspection.

Sec. 21.38.050. ENFORCEMENT. (a) The director may examine any insurer or rating organization to ascertain whether its rating and underwriting practices are in accordance with the applicable law. Filed reports on examination shall be available for public inspection.

(b) If the director determines after a hearing that any rate used by an insurer does not comply with this chapter he shall order that the rate be disapproved, and the order may include provision for premium adjustment. The order may also require that, for a period of time as the director determines, subsequent rate filings of the insurer shall not become effective unless the filings are made in accordance with this chapter and ch. 39 of this title.

(c) Pending a hearing, the director may order the suspension, prospectively, of a rate used by an insurer and reimpose the last previous rate in effect, in which event he must, unless the requirement is waived by the insurer, hold a hearing within 15 days after the order. Within 15 days after the close of the hearing, the director shall make his determination as to whether the rate is disapproved.

(d) The insurer has the burden of justifying the rate in question,

at any hearing. All such determinations of the director shall be on the basis of findings of fact and conclusions of law. If the director disapproves a rate, the disapproval order shall take effect not less than 15 days after its issuance and the last previous rate in effect for the insurer shall be reimposed for a period of six months unless the director earlier approves a different rate.

(e) If the director, after notice and hearings, finds that any insurer, rating organization or other person has violated this chapter, he shall order the payment of a penalty. The issuance, procurement or negotiation of each single policy of insurance shall be considered a separate offense. A penalty not to exceed $1,000 may be imposed for each such offense. A further penalty not to exceed $2,500 may be imposed for each offense in which the director finds that this chapter was knowingly violated; however, a minimum penalty of at least $2,500 shall be imposed regardless of the number of such violations that were committed.

Sec. 21.38.060. EVALUATION. (a) The director shall continuously monitor the operation of this chapter and shall annually report to the governor and the legislature evaluating its operation. A final report shall be submitted by March 1, 1980.

(b) The director shall appoint a consumer's advisory council to advise and assist him in evaluating the operation of this chapter in accordance with (a) of this section and to consider such other matters as the director may submit to the council.

* Sec. 2. This Act takes effect July 1, 1978.