

Introduced: 1/10/84
Referred: Labor & Commerce,
Judiciary and Finance

1 IN THE HOUSE

BY MARTIN

2

HOUSE BILL NO. 505

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

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

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

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* Section 1. AS 21.09.200 is amended by adding new subsections to read:

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(e) The director shall fine an insurer \$100 for each day the insurer fails to file the annual statement in the form required and within the time established in (a) of this section. The authority of the insurer to do business in this state is suspended on March 2 if the annual statement has not been filed by March 1.

(f) An insurer that fails to pay its tax liability when due under this section commits a class C felony.

* Sec. 2. AS 21.09.260 is amended to read:

Sec. 21.09.260. VIOLATIONS - PENALTIES. An insurer that the director determines has violated [VIOLATING] the provisions of AS 21.-09.220 - 21.09.250 is subject to a civil penalty of [GUILTY OF A MISDEMEANOR AND UPON CONVICTION IS PUNISHABLE BY A FINE] not more than \$2,500 [\$500] for each violation. The [IN THE EVENT OF CONVICTION THE INSURANCE] director may suspend or revoke the license of the insurer for a violation of AS 21.09.220 - 21.09.250, but violation does [SHALL] not invalidate the insurance contract.

* Sec. 3. AS 21.22.170 is amended to read:

Sec. 21.22.170. VIOLATIONS [CRIMINAL PENALTY]. An insurer that the director determines is guilty of a wilful violation of AS 21.22.-010 - 21.22.200 is subject to a civil penalty [, UPON CONVICTION,

1 PUNISHABLE BY A FINE] of not more than \$25,000 [\$10,000]. A person
2 who is not an insurer and who the director determines to be [IS]
3 guilty of a wilful violation of AS 21.22.010 - 21.22.200 is subject to
4 a civil penalty [, UPON CONVICTION, PUNISHABLE BY A FINE] of not more
5 than \$15,000 [\$5,000 OR, IF THE WILFUL VIOLATION INVOLVES THE DELIBER-
6 ATE PERPETRATION OF A FRAUD UPON THE DIRECTOR, BY IMPRISONMENT FOR NOT
7 MORE THAN TWO YEARS, OR BY BOTH FINE AND IMPRISONMENT].

8 * Sec. 4. AS 21.27.010(d) is amended to read:

9 (d) A person that the director determines has violated [VIOLA-
10 TING] this section is subject to a civil penalty [PUNISHABLE BY A
11 FINE] of not more than \$2,500 [\$500 AND IMPRISONMENT FOR NOT MORE THAN
12 SIX MONTHS] for each [INSTANCE OF A] violation.

13 * Sec. 5. AS 21.27.360(a) is amended to read:

14 (a) An agent or other representative of an insurer involved in
15 the procuring or issuance of an insurance contract shall report to the
16 insurer the exact amount of consideration charged as premium for the
17 contract. The amount charged shall be shown in the contract and in
18 the records of the agent. [EACH WILFUL VIOLATION OF THIS PROVISION
19 SHALL CONSTITUTE A MISDEMEANOR.]

20 * Sec. 6. AS 21.27.360(c) is amended to read:

21 (c) An agent, solicitor, or broker who, not being lawfully
22 entitled to [THE] funds, is determined by the director to have di-
23 verted or appropriated [DIVERTS OR APPROPRIATES] them or any portion
24 of them to personal [HIS OWN] use is subject to a civil penalty not to
25 exceed \$25,000 for each violation [, SHALL BE GUILTY OF EMBEZZLEMENT,
26 AND SHALL BE PUNISHED AS PROVIDED IN THE CRIMINAL STATUTES OF ALASKA
27 FOR THE CRIME OF EMBEZZLEMENT].

28 * Sec. 7. AS 21.27.440 is amended to read:

29 Sec. 21.27.440. CIVIL PENALTIES [FINES] MAY BE IMPOSED. After

1 hearing and in addition to or in lieu of the suspension, revocation,
2 or refusal to renew a license, the director may levy a civil penalty
3 [FINE] upon the licensee not to exceed \$2,500 [OF NOT LESS THAN \$25
4 AND NOT MORE THAN \$250]. The order levying the civil penalty [FINE]
5 shall specify the period within which the civil penalty [FINE] shall
6 be fully paid, which period may not be less than 15 or more than 30
7 days from the date of the order. Upon failure to pay the civil pen-
8 alty [FINE] when due, the director shall revoke the licenses of the
9 licensee if not already revoked. The civil penalty [FINE] shall be
10 paid by the director to the commissioner of revenue for deposit in the
11 general fund.

12 * Sec. 8. AS 21.27.450 is amended to read:

13 Sec. 21.27.450. FINE IN LIEU OF ACTION AGAINST THE LICENSE
14 [SUSPENSION, REVOCATION, OR REFUSAL]. Upon the hearing of an appeal
15 from an order suspending, revoking, or refusing to renew a license
16 issued under this chapter, the court, if it finds that the licensee is
17 guilty of violation of the law and if it considers the suspension,
18 revocation, or refusal to renew the license too severe a penalty under
19 the facts as found, may instead impose a fine of not more than \$2,500
20 [\$500]. Payment of the fine within 10 days after its imposition shall
21 reinstate, restore, or renew the license.

22 * Sec. 9. AS 21.33.320 is amended to read:

23 Sec. 21.33.320. RECORDS OF INSUREDS. In order that the director
24 may effectively administer this chapter, each person who has placed
25 insurance with an unauthorized insurer shall, upon the director's
26 order, produce for the [HIS] examination of the director all policies
27 and other documents evidencing the insurance [,] and shall disclose to
28 the director the amount of premiums paid or agreed to be paid for the
29 insurance. For each refusal to obey the order the person is subject

1 to a civil penalty [, UPON CONVICTION, IS GUILTY OF A MISDEMEANOR
2 PUNISHABLE BY A FINE] of not more than \$2,500 [\$500].

3 * Sec. 10. AS 21.36 is amended by adding new sections to read:

4 Sec. 21.36.360. FRAUDULENT INSURANCE ACTS. (a) A person may
5 not commit a fraudulent insurance act involving an insurance trans-
6 action that is subject to the provisions of this title. The penalty
7 for a fraudulent insurance act described in this section is in addi-
8 tion to a civil penalty levied under this title.

9 (b) A fraudulent insurance act is committed by a person who,
10 with intent to injure, defraud, or deceive

11 (1) collects a sum as premium or charge for insurance if
12 the insurance has not been provided or is not in due course to be
13 provided, subject to acceptance of the risk by the insurer, by an
14 insurance policy authorized under this title;

15 (2) presents to an insurer a written or oral statement in
16 support of a claim for payment or other benefit under an insurance
17 policy, knowing that the statement contains false, incomplete, or
18 misleading information concerning a matter material to the claim;

19 (3) assists or conspires with another to prepare or make a
20 written or oral statement that is presented to an insurer in support
21 of a claim for a benefit under an insurance policy, knowing that the
22 statement contains false, incomplete, or misleading information con-
23 cerning a matter material to the claim;

24 (4) wilfully collects as premium or charge for insurance a
25 sum in excess of the premium or charge applicable to the insurance as
26 specified in the policy by the insurer in accordance with the applic-
27 able classifications and rates approved by the director, or in cases
28 where classifications and rates are not subject to approval, the
29 premiums and charges applicable to the insurance as specified in the

1 policy and fixed by the insurer; or

2 (5) fails to make disposition of funds received or held or
3 misappropriates funds received or held representing premiums or return
4 premium.

5 (c) A fraudulent insurance act is committed by a person forming
6 or proposing to form an insurer, an insurance holding corporation, a
7 stock corporation to finance an insurer or insurance production, a
8 corporation to manage an insurer, a corporation to be attorney in fact
9 for a reciprocal insurer, or a syndicate for any of these purposes
10 that advertises, or solicits or receives funds, agreement, stock
11 subscription, or membership on account unless the person has applied
12 for and has received from the director a solicitation permit as re-
13 quired by AS 21.69.

14 (d) A fraudulent insurance act is committed by a person who
15 makes a false sworn statement which the person does not believe to be
16 true as to matter material to an examination, investigation or hearing
17 of the division.

18 (e) A fraudulent insurance act is committed by a person if

19 (1) as to a matter material to an examination, investiga-
20 tion, or hearing by the division, the person makes two or more sworn
21 statements that are irreconcilably inconsistent to the degree that one
22 of them is necessarily false; and

23 (2) the person does not believe one of the statements to be
24 true at the time the statement is made.

25 (f) A fraudulent insurance act is committed by a person who with
26 intent to deceive, knowingly exhibits a false account, document, or
27 advertisement, relative to the affairs of an insurer, a corporation,
28 or syndicate of the kind described in AS 21.69.060, formed or proposed
29 to be formed.

1 (g) A fraudulent insurance act is committed by a person who
2 wrongfully removes or attempts to remove records from the place where
3 they are required to be kept under AS 21.69.390(a) or who conceals or
4 attempts to conceal records from the director.

5 (h) A fraudulent insurance act is committed by a person who
6 deliberately perpetrates a fraud upon the director under AS 21.22.

7 (i) A fraudulent insurance act is committed by an insurer doing
8 business in this state who

9 (1) writes, places, or causes to be written or placed in
10 this state a policy, duplicate policy or contract of insurance of any
11 kind or character, or general or floating policy upon persons or
12 property resident, situated or located in this state, from or through
13 a broker, agent, surplus line broker or person who has not secured a
14 license in this state; or

15 (2) pays a commission or form of remuneration to a person,
16 firm or organization for the writing or placing of insurance coverage
17 in this state unless that person, firm or organization holds a license
18 issued by the director for the kind of insurance written or placed.

19 (j) A fraudulent insurance act is committed by a person in this
20 state who acts as an insurance agent, broker, solicitor, or adjuster
21 without being licensed by the director. A fraudulent insurance act is
22 committed by an agent, broker, or solicitor who solicits or takes
23 application for, procures, or places for others any insurance for
24 which the person is not licensed or for which the license of the
25 person has been suspended or revoked. This subsection does not apply
26 to a person securing and forwarding information required for the
27 purposes of group insurance covering the unpaid balance or remaining
28 payments proposed to be made in connection with the purchase of mer-
29 chandise or services if no commission or other compensation is payable

1 on account of the insurance to the person.

2 (k) A fraudulent insurance act is committed by an agent, general
3 agent, broker, or solicitor who compensates or offers to compensate in
4 any manner a person other than an agent, general agent, broker, or
5 solicitor licensed in this or another state or province, for procuring
6 or in any manner helping to procure applications for or to place
7 insurance in this state. This subsection does not apply to the pay-
8 ment of compensation that is not contingent upon volume of business
9 transacted in the form of salaries to the regular employees of the
10 agent, general agent, broker, or solicitor.

11 (l) A fraudulent insurance act is committed by a person who has
12 placed insurance with an unauthorized insurer and refuses to obey an
13 order by the director to produce for examination all policies and
14 other documents evidencing the insurance and the amount of premiums
15 paid or agreed to be paid for the insurance.

16 (m) A fraudulent insurance act is committed by a director of a
17 domestic stock or mutual insurer who votes for or concurs in a decla-
18 ration or payment of a dividend to stockholders or members other than
19 as authorized under AS 21.69.490 - 21.69.500.

20 (n) A fraudulent insurance act is committed by an agent or other
21 representative of an insurer involved in the procuring or issuance of
22 an insurance contract who fails to report to the insurer the exact
23 amount of consideration charged as premium for the contract and to
24 maintain records showing that information.

25 (o) A fraudulent insurance act is committed by a person who,
26 with intent to injure, defraud, or deceive, knowingly makes a false or
27 fraudulent statement or representation in or with reference to an
28 application for insurance.

29 (p) A fraudulent insurance act is committed by a person who

1 violates a provision of this title or a regulation issued under it.

2 (q) A fraudulent insurance act described in

3 (1) (b) of this section that is committed to obtain \$10,000
4 or more is a class B felony;

5 (2) (c) or (d) of this section is a class B felony;

6 (3) (b) of this section that is committed to obtain \$500 or
7 more but less than \$10,000 is a class C felony;

8 (4) (e), (f), (g), or (h) of this section is a class C
9 felony;

10 (5) (b) of this section that is committed to obtain less
11 than \$500 is a class A misdemeanor;

12 (6) (i), (j), (k), (l), or (m) of this section is a class A
13 misdemeanor; and

14 (7) (o) of this section is a class B misdemeanor;

15 (8) (p) of this section is a class B misdemeanor unless
16 another specific penalty is provided for the violation of the provision.

17 Sec. 21.36.370. EXCEPTIONS. For the purpose of AS 21.36.360,
18 the following actions are not considered a premium or charge for
19 insurance:

20 (1) the charging and collection by surplus line brokers
21 licensed under AS 21.33 of the amount of applicable state and federal
22 taxes and filing fees under AS 21.33.220 - 21.33.230;

23 (2) the charging and collection by a life insurer of
24 amounts actually to be expended for medical examination of an appli-
25 cant for life insurance or for reinstatement of a life insurance
26 policy.

27 Sec. 21.36.380. NOTICE ON CLAIM FORM. A claim form shall con-
28 tain a statement that states in substance the following: "A person
29 who knowingly and with intent to injure, defraud, or deceive an

1 insurance company files a claim containing false, incomplete, or
2 misleading information is guilty of a felony." A lack of the state-
3 ment on a claim form does not constitute a defense to prosecution
4 under this title.

5 Sec. 21.36.390. NOTICE TO DIRECTOR. (a) An insurer that has
6 reason to believe that a fraudulent claim has been made against it
7 shall send the director a report disclosing information that the
8 director may require.

9 (b) An insurer, employee or agent of an insurer or another
10 person acting without malice is not subject to civil liability for the
11 filing of the report or furnishing other information required by this
12 section or by the director.

13 (c) The director shall investigate facts reported under this
14 section and shall refer facts indicating a violation of law to the
15 appropriate prosecutor.

16 Sec. 21.36.400. CONFIDENTIALITY. (a) The papers, reports,
17 documents, and evidence received under AS 21.36.390 or an investiga-
18 tion arising out of information received under AS 21.36.390 are not
19 subject to public inspection for so long as the director considers
20 confidentiality to be in the public interest or reasonably necessary
21 to complete an investigation or protect the person investigated from
22 unwarranted injury. Papers, reports, documents, and evidence relative
23 to an investigation under this section are confidential and not sub-
24 ject to subpoena unless, after notice to the director and a hearing, a
25 court determines the director would not be unduly hindered by public
26 inspection.

27 (b) An investigator of the director is not subject to subpoena
28 in a civil action by a court of this state to testify concerning a
29 matter that the investigator has knowledge of under a pending

1 insurance fraud investigation by the director.

2 Sec. 21.36.410. OUT-OF-STATE INVESTIGATIONS. (a) If material
3 the director seeks to obtain is located outside the state, the mater-
4 ial may be made available to the director to examine at the place
5 where the material is located. The director may designate representa-
6 tives, including officials of the state in which the material is
7 located, to inspect the material on behalf of the director.

8 (b) The director may respond to a request from an official of
9 another state under procedures established in (a) of this section.

10 * Sec. 11. AS 21.39.160(a) is amended to read:

11 (a) If the [THE] director [MAY, IF HE] finds that a person or
12 organization has violated a provision of this chapter, the director
13 may impose a civil penalty not to exceed \$200 or the actual amount of
14 gain, whichever is greater, [OF NOT MORE THAN \$50] for each violation,
15 but if the director [HE] finds the violation to be wilful the director
16 shall [HE MAY] impose a penalty of \$2,000 or three times the actual
17 amount of gain, whichever is greater, [OF NOT MORE THAN \$500] for each
18 violation. The penalties may be in addition to any other penalty
19 provided by law. As used in this section, "gain" is the difference
20 between the amount actually charged and the amount that should have
21 been charged under applicable filings of the person or organization.

22 * Sec. 12. AS 21.66.160 is amended to read:

23 Sec. 21.66.160. PENALTIES. An officer, director, agent or
24 employee of a company determined by the director to have [WHO], before
25 obtaining a certificate of authority from the director or after a
26 revocation of a certificate of authority [THEREOF] by the director,
27 issued [AND WHILE IN DEFAULT UNDER THIS CHAPTER ISSUES] a policy of
28 title insurance or certificate of title on property in this state [.]
29 or engaged [WHO ENGAGES] in title insurance business in this state,

1 [IS GUILTY OF A MISDEMEANOR AND] is subject to a civil penalty [A FINE
2 OF] not to exceed \$2,500 [\$500 OR IMPRISONMENT NOT TO EXCEED SIX
3 MONTHS OR BOTH].

4 * Sec. 13. AS 21.66.430(a) is amended to read:

5 (a) If the director finds that a title insurance rating organi-
6 zation, a title insurance company, or title insurance agent has vio-
7 lated a provision of this chapter, the director may impose a civil
8 penalty of not more than \$200 or the actual amount of gain resulting
9 from the violation, whichever is greater, [\$100] for each violation.
10 If [HOWEVER, IF] the violation described in this section is wilful,
11 the director shall impose a civil penalty of \$2,000 or three times the
12 actual amount of gain resulting from the violation, whichever is
13 greater, [NOT MORE THAN \$1,000] for each violation. A penalty [PENAL-
14 TIES] imposed under this section is [ARE] in addition to any other
15 penalty [PENALTIES] provided by law. As used in this section, "gain"
16 includes the total premium acquired through actions in violation of
17 this chapter.

18 * Sec. 14. AS 21.69.060(b) is amended to read:

19 (b) A person determined by the director to have violated [VIO-
20 LATING] this section is subject to a civil penalty [PUNISHABLE BY A
21 FINE] of not more than \$25,000 [\$10,000, OR BY IMPRISONMENT FOR NOT
22 MORE THAN 10 YEARS, OR BY BOTH].

23 * Sec. 15. AS 21.69.210 is amended to read:

24 Sec. 21.69.210. PENALTY FOR EXHIBITING FALSE ACCOUNTS, ETC. A
25 [EVERY] person determined by the director to have knowingly exhibited
26 [WHO], with intent to deceive, [KNOWINGLY EXHIBITS] a false account,
27 [OR] document, or advertisement, relative to the affairs of an insur-
28 er, or of a corporation or syndicate of the kind enumerated in AS 21.-
29 69.060, formed or proposed to be formed, is subject to a civil penalty

1 [SHALL BE PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN FIVE YEARS, OR
2 BY A FINE] of not more than \$25,000 [\$10,000, OR BY BOTH].

3 * Sec. 16. AS 21.69.390(b) is amended to read:

4 (b) A person determined by the director to have removed or
5 attempted [WHO REMOVES OR ATTEMPTS] to remove any records from the
6 place where they are required to be kept under (a) of this section
7 with the intent to wrongfully remove them, or to have concealed or
8 attempted [WHO CONCEALS OR ATTEMPTS] to conceal them from the direc-
9 tor, is subject to a civil penalty [PUNISHABLE BY A FINE] of not more
10 than \$25,000 [\$10,000, OR BY IMPRISONMENT FOR NOT MORE THAN FIVE
11 YEARS, OR BY BOTH]. If a domestic insurer violates a provision of
12 this section the director may institute delinquency proceedings
13 against the insurer under the provisions of AS 21.78.

14 * Sec. 17. AS 21.69.510(a) is amended to read:

15 (a) A director of a domestic stock or mutual insurer determined
16 by the director to have voted [WHO VOTES] for or concurred [CONCURS]
17 in a declaration or payment of a dividend to stockholders or members
18 other than as authorized under AS 21.69.490 or 21.69.500 is subject to
19 a civil penalty of not more than \$2,500 [, UPON CONVICTION, GUILTY OF
20 A MISDEMEANOR] and is jointly and severally liable, together with
21 other directors likewise voting for or concurring, for any loss sus-
22 tained by the insurer.

23 * Sec. 18. AS 21.84.420(a) is amended to read:

24 (a) A person determined by the director to have acted [WHO IN
25 THIS STATE ACTS] as insurance agent for a society without having
26 authority so to do by virtue of a license issued and in force under
27 this chapter, except as provided in AS 21.84.410(b), is subject to a
28 civil penalty of not to exceed \$2,500 [SHALL BE PUNISHABLE BY IMPRI-
29 SONMENT FOR NOT MORE THAN SIX MONTHS, OR BY A FINE OF NOT MORE THAN

1 \$500, OR BY BOTH].

2 * Sec. 19. AS 21.84.470(b) is amended to read:

3 (b) A person determined by the director to have violated [WHO
4 VIOLATES] a provision of this section or to have knowingly received
5 [RECEIVES] compensation or a commission by or in consequence of the
6 violation, is subject to a civil penalty of [, UPON CONVICTION, PUN-
7 ISHABLE BY A FINE] not [LESS THAN \$100 OR] more than \$2,500 [\$1,000,
8 OR BY IMPRISONMENT IN JAIL NOT LESS THAN 30 DAYS OR MORE THAN 90 DAYS,
9 OR BY BOTH FINE AND IMPRISONMENT], and shall in addition be liable for
10 civil penalty in the amount of three times the sum received by the
11 violator as compensation or commission, which penalty may be sued for
12 and recovered by a person or society aggrieved for the person's or so-
13 ciety's [HIS OR ITS] own use and benefit [IN ACCORDANCE WITH THE
14 PROVISIONS OF CIVIL PRACTICE].

15 * Sec. 20. AS 21.90.020 is amended to read:

16 Sec. 21.90.020. GENERAL PENALTY. A person determined by the
17 director to have violated [WHO VIOLATES] a provision of this title [,]
18 or a regulation adopted [ISSUED] under it, for which violation a
19 greater penalty is not provided in this title [BY OTHER APPLICABLE
20 LAWS OF THIS STATE, UPON CONVICTION], is subject to a civil [, IN
21 ADDITION TO ANY ADMINISTRATIVE] penalty [OTHERWISE APPLICABLE, PUNISH-
22 ABLE BY A FINE] of not [LESS THAN \$50 OR] more than \$2,500 [\$1,000, OR
23 BY IMPRISONMENT FOR NOT LESS THAN 30 DAYS OR MORE THAN 90 DAYS, OR BY
24 BOTH].

25 * Sec. 21. AS 21.06.170(e); AS 21.36.180, 21.36.200; and AS 21.51.340
26 are repealed.

27 * Sec. 22. This Act takes effect July 1, 1984.