

HP

505

SB 505 TITLE & SPONSOR SUMMARY

ENDED TITLE: CS02 505(JUD)

ACT RELATING TO INSURANCE, AND PROVIDING FOR AN EFFECTIVE DATE

PRIME SPONSOR: MARTIN.

CO-SPONSORS:

CURRENT STATUS: 6/02/84 PASSED (S)

SB 505 HOUSE ACTION

DATE SEQ PAGE

LEGISLATIVE ACTION

4/10/84	01	2222	FIRST READING -- COMMITTEE REPORTS
4/03/84	02	3177	L&C -- CS02, NR04
4/03/84	05	3179	L&C F/NOTE EQUALS ZERO
4/30/84	04	3512	JUD -- CS02, NR02
4/30/84	05	3536	MOVED FROM FIN TO RLS BY UNAN CONSENT
5/06/84	06	3701	SECOND READING
5/06/84	07	3701	JUD CS ADOPTED BY UNAN CONSENT
5/06/84	08	3701	FAILED TO ADV 3RD READING BY DIV 26 12-02
5/07/84	09	3727	THIRD READING
5/07/84	10	3727	PASSED BY DIV 37-00-84
5/07/84	11	3726	EFFECTIVE DATE VOTE SAME AS PASSAGE
XXXX	XX	XXX	XXX XXX XXX

SB 505 SENATE ACTION

DATE SEQ PAGE

LEGISLATIVE ACTION

5/08/84	12	3187	FIRST READING -- COMMITTEE REPORTS
5/25/84	13	3261	JUD -- CS02, NR03
5/29/84	14	3349	L&C -- DP02, NR01
5/02/84	15	3590	RLS -- OTHER05
			TAKEN UP IMMEDIATELY
5/02/84	16	3513	SECOND READING
5/02/84	17	3514	ADVANCED TO 3RD READING BY UNAN CONSENT
5/02/84	18	3514	THIRD READING
5/02/84	19	3514	PASSED BY DIV 18-01-93
5/02/84	20	3514	EFFECTIVE DATE VOTE SAME AS PASSAGE
XXXX	XX	XXX	XXX XXX XXX



# COMMITTEE REPORT

## SENATE

5/23/64

FURTHER:

Date 5/23/64

Mr. President

The Committee on LABOR AND PENSION considered CS 505 (703)  
Insurance, et al.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for \_\_\_\_\_
- new title \_\_\_\_\_
- same title and recommends \_\_\_\_\_
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Chairman

Chairman recommendation

CSHB 505(JUD)

COMMITTEE SUBSTITUTE FOR HB 505(JUD), WHILE LENGTHY, IS A RELATIVELY STRAIGHTFORWARD CLEANUP AND UPDATE OF THE PENALTY PROVISIONS IN THE INSURANCE CODE. THE FIRST FUNCTION OF THIS BILL IS TO CONSOLIDATE THE CRIMINAL PENALTIES OF THE INSURANCE CODE IN A SINGLE SECTION, SEC.21,36,360. THERE ARE NO NEW CRIMINAL PENALTIES CREATED, BUT THERE ARE SOME UPGRADES.

THE SECOND FUNCTION OF THIS BILL IS TO ESTABLISH AN ADMINISTRATIVE PENALTY FOR ANY VIOLATION OF THE INSURANCE CODE. IN MANY CASES THERE IS NO ADMINISTRATIVE OR CIVIL PENALTY FOR A VIOLATION OF THE CODE. AS A DISTRICT ATTORNEY IS OFTEN TIMES INVOLVED IN MORE PRESSING MATTERS, VIOLATIONS OF THE INSURANCE CODE GO UNPUNISHED.

THE THIRD ELEMENT OF THIS BILL DEALS WITH A GROWING CONCERN AMONGST INSURANCE REGULATORS CONCERNING INFORMATION SOUGHT DURING INVESTIGATIONS OF CRIMINAL ACTIVITIES. THIS NEW PROVISION WOULD GRANT IMMUNITY TO INDIVIDUALS PARTICIPATING IN AN INVESTIGATION.

CSHB 505(JUD) IS SUPPORTED BY THE DIVISION OF INSURANCE. I RECOMMEND PASSAGE OF THIS LEGISLATION.

ADDITIONAL INFORMATION

SENATOR PETTYJOHN HAS BEEN REVIEWING THIS TOPIC AND WOULD BE HAPPY TO ANSWER ANY PERTINENT QUESTIONS.

This proposal, while lengthy, is a relatively straightforward cleanup and update of the penalty provisions in the insurance code. The first function of this bill is to consolidate the criminal penalties of the insurance code in a single section, Sec. 21.36.360. There are no NEW criminal penalties created, but there are some upgrades. Currently, any violation of Title 21 (the insurance code), is a misdemeanor unless otherwise specifically labeled.

The second function of this bill is to establish an administrative penalty for any violation of the insurance code. In many cases there is no administrative or civil penalty for a violation of the code. This means that the violator gets away with the act, since a district attorney is going to be less than enamored with prosecuting as a misdemeanor some of the technical violations we see in the administration of the code. This bill sets up a dual course, where an administrative remedy and a criminal remedy will be available for any violation of the code. This is accomplished by changing all the present criminal language to civil penalty language. In doing this, the penalty levels, which have not been changed since 1966, have been reviewed and upgraded. Language to clarify that a hearing must be held before imposition of penalties was added in House Judiciary

The third element of this bill deals with a growing concern amongst insurance regulators concerning information sought during investigations of criminal activities. In recent months a number of fraud investigations have commenced in the west, some in which our division is participating. The challenge we currently face is that there is no immunity available for persons sharing or providing information. This fact has impeded a number of investigations across the country. In some cases other insurance regulators are willing to act as our agent in securing information but have no protection if they do so. Presently two states have adopted legislation that deals with this issue. We have used a model that tracks a National Association of Insurance Commissioners model.

Section 1. Page 1, lines 9-16.

This is a new civil penalty section that fines an insurer who fails to submit its annual financial statement when due. It also gives the director the authority to suspend the activities of an insurer who fails to submit the statement when due. The concern here is that the statement is the director's principal tool in determining the financial health of an insurer and its absence leaves that health in question.

Section 2. Page 1, lines 17-26.

This section establishes a new civil penalty. The section deals with violations of AS 21.09.220-250, which is the section on the countersignature law which is in the process of repeal, and with writing through unlicensed agents. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(1)].

Section 3. Page 1, lines 27-29 & page 2, lines 1-11.

This section establishes a new civil penalty. AS 21.22 is the insurance holding company act which is concerned with the acquisition of, control of, or merger with a domestic insurance company. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(h)].

Section 4. Page 2, lines 12-17.

This section establishes a new civil penalty. AS 21.27 is the insurance agents, brokers, solicitors, and adjusters licensing act. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(j)].

Section 5. Page 2, lines 18-24.

This section establishes a new civil penalty. It deals with reporting of premiums to an insurer by a licensee. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(n)].

Section 6. Page 2, lines 25-29 & page 3, lines 1-4.

This section establishes a new civil penalty. It is concerned with the monies a licensee receives as premium from an insured or as return premium from an insurer. These are trust funds and their misuse or misappropriation is a matter of particular concern to the division. The current criminal provision is transferred to Section 10 [see Sec. 21.36.360(b)(5)].

Section 7. Page 3, lines 5-17.

This section deals with the penalties for violation of the licensing law. The principal change here is an upgrading of the amount of penalty.

Section 8. Page 3, lines 18-27.

This section upgrades the fine applied in lieu of suspension, revocation, of refusal to renew a license from \$500 to \$2500.

Section 9. Page 3, lines 28-29 & page 4, lines 1-9.

This section establishes a new civil penalty. It deals with persons refusing examination by the director of their activities in the surplus lines market. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(l)].

Section 10. Page 4, lines 10-29, all of pages 5-9 & page 10, lines 1-21.

This section centralizes the criminal provisions of the insurance code. The chapter into which this has been inserted is the trade practices and frauds chapter, a logical place to look for these provisions. The new section also deals with investigation information confidentiality and immunity.

Sec 21.36.360(a). Page 4, lines 10-16.

This subsection prohibits fraudulent and criminal acts and provides that

the criminal penalties are in addition to civil penalties. We have made a distinction between fraudulent and criminal because of the connotation associated with the term "fraudulent". The word as used in this section generally means to intentionally injure, defraud, or deceive.

Sec 21.36.360(b)(1). Page 4, lines 17-22.

This section is drawn from the current AS 21.36.180(a), which is repealed in Section 22. No substantive change.

Sec 21.36.360(b)(2)-(3). Page 4, lines 23-29 & page 5, lines 1-2.

These sections are drawn from the current AS 21.36.200, which is repealed in Section 22. No substantive change.

Sec 21.36.360(b)(4). Page 5, lines 3-9.

This section is drawn from the current AS 21.36.180(b), which is repealed in Section 22. No substantive change.

Sec 21.36.360(b)(5). Page 5, lines 10-12.

This section is drawn from the current AS 21.27.360(c) which is amended in Section 6. No substantive change.

Sec 21.36.360(b)(6). Page 5, lines 13-14.

This section effectively upgrades the criminal offense of failing to pay a tax liability under this title, depending on the amount the person has failed to pay. It is currently a misdemeanor under the general penalty section of the insurance code, AS 21.90.020.

Sec 21.36.360(c). Page 5, lines 15-23.

This section is drawn from the current AS 21.69.060 which is amended in Section 14. It deals with solicitation to form an insurer without a solicitation permit. No substantive change.

Sec 21.36.360(d)-(e). Page 5, lines 24-29 & page 6, lines 1-5.

These sections are drawn from the current AS 21.06.170(e) which is repealed in Section 22, and deals with perjury in an examination, investigation or hearing of the division. No substantive change.

Sec 21.36.360(f). Page 6, lines 6-10.

This section is drawn from the current AS 21.69.210 and deals with false accounts, documents, or advertisements in forming an insurer. See Section 15. No substantive change.

Sec 21.36.360(g). Page 6, lines 11-14.

This section is drawn from the current AS 21.69.390 and deals with the removal or concealment of records of a domestic insurer. See Section 16. No substantive change.

Sec 21.36.360(h). Page 6, lines 15-16.

This section is drawn from the current AS 21.22.170 and deals with insurance holding companies. See Section 3. No substantive change.

Sec 21.36.360(i). Page 6, lines 17-28.

This section is drawn from the current AS 21.09.250-260 and deals with the writing of business by insurance companies through persons not licensed by this state. See Section 2. No substantive change.

Sec 21.36.360(j). Page 6, line 29 & page 7, lines 1-12.

This section is drawn from the current AS 21.27.010(d), AS 21.66.160, and AS 21.84.420(a) and deals with agents, brokers, solicitors, and adjusters licensing. See Sections 4, 12, and 18. No substantive change.

Sec 21.36.360(k). Page 7, lines 13-21.

This section is drawn from the current AS 21.27.370 in the licensing chapter which requires all parties to the insurance transaction have the appropriate license. The penalty is drawn from the general penalty section, AS 21.90.020. No substantive change.

Sec 21.36.360(l). Page 7, lines 22-26.

This section is drawn from the current AS 21.33.320 dealing with examination of surplus lines transactions. See Section 9. No substantive change.

Sec 21.36.360(m). Page 7, lines 27-29 & page 8, line 1.

This section is drawn from the current AS 21.69.510(a) dealing with unauthorized dividends of a domestic insurer. See Section 17. No substantive change.

Sec 21.36.360(n). Page 8, lines 2-6.

This section is drawn from the current AS 21.27.360 dealing with agents and brokers trust accounts. See Section 5. No substantive change.

Sec 21.36.360(o). Page 8, lines 7-10.

This section is drawn from the current AS 21.36.200 which is repealed in Section 21. It deals with false applications for insurance. No substantive change.

Sec 21.36.360(p). Page 8, lines 11-12.

This section is drawn from the current AS 21.90.020, the general penalty section of the insurance code. See Section 20. No substantive change.

Sec 21.36.360(q). Page 8, lines 13-28.

This subsection establishes the level of criminal violation in each of

the activities described in the section. i.e., whether it is a class B felony, class C felony, class A misdemeanor, or a class B misdemeanor.

Sec 21.36.370. Page 8, line 29 & page 9, lines 1-9.

This section is drawn from the current AS 21.36.180(b) which is repealed in Section 22. No substantive change.

Sec 21.36.380. Page 9, lines 10-16.

This is a new provision which requires that claims forms contain a warning that falsification is a felony.

Sec 21.36.390. Page 9, lines 17-27.

This is a new requirement requiring insurers to advise the director when they have knowledge of a fraudulent claim. It also provides immunity from civil liability for persons providing such information without malice.

Sec 21.36.400. Page 9, lines 28-29 & page 10, lines 1-13.

This is a new section. It provides confidentiality for data received under Sec.21.36.390. Presently investigations are considered examination of the insurer and are confidential while necessary, but this is not true when an insurer is not involved thus impeding investigation.

Sec 21.36.410. Page 10, lines 14-21.

This is an important new provision that enables the director to effectively share investigative functions with other states. It allows the director to designate another state to act on his behalf and vice-versa. The information would be in the participating state as well as the principle state. This would be a valuable tool in investigating violations of the insurance code by non residents. Further, the sharing of the data will better enable us to head off problems before they are sufficiently entrenched and cause loss to the insureds in this state and the insurer.

Section 11. Page 10, lines 22-29 & page 11, lines 1-5.

This section upgrades the rate law penalty provisions to make them more meaningful. Presently the gain from a violation of that law may well exceed the loss from a penalty application. With this new provision, that would no longer be the case.

Section 12. Page 11, lines 6-17.

This section establishes a new civil penalty. It deals with doing a title insurance business without an effective certificate of authority. The current criminal provision is transferred to Section 10 [see Sec. 21.36.350(j)].

Section 13. Page 11, lines 18-29 & page 12, lines 1-3.

This section substantially upgrades the title insurance rate law

penalties. The gain from writing a title insurance policy at an inappropriate rate is far more profound than in a property/casualty situation. It is also more likely to occur.

Section 14. Page 12, lines 4-9.

This section establishes a new civil penalty. AS 21.69 deals with the organization and corporate procedures of domestic insurers. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(c)].

Section 15. Page 12, lines 10-19.

This section establishes a new civil penalty. This section deals with deliberate falsification of company records. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(f)].

Section 16. Page 12, lines 20-29 & page 13, lines 1-2.

This section establishes a new civil penalty. This section deals with the removal or concealment of the records of a domestic insurer. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(g)].

Section 17. Page 13, lines 3-12.

This section establishes a new civil penalty. It deals with the unauthorized payment of dividends. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(m)].

Section 18. Page 13, lines 13-21.

This section establishes a new civil penalty. It deals with the unlicensed agent of a fraternal benefit society. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(j)].

Section 19. Page 13, lines 22-29 & page 14, lines 1-6.

This section establishes a new civil penalty. It deals with misrepresentations under the fraternal benefit society chapter. The current criminal penalty is transferred to Section 10 [see Sec. 21.36.360(p)].

Section 20. Page 14, lines 7-24.

This section is needed in view of the transfer of the criminal penalty in Section 19. AS 21.84 is an exclusive chapter that incorporates the other provisions of AS 21 only by specific reference within that chapter. No substantive change.

Section 21. Page 14, lines 25-29 & page 15, lines 1-6.

This section establishes a new general civil penalty for violations of the insurance code not specifically carrying a stated civil penalty. The current criminal general penalty is transferred to Section 10 [see Sec. 21.36.360(p)]. The effect of this change is to have a civil penalty and a criminal penalty for any violation of the insurance code. This fact will

provide options that do not now exist for dealing with the bad actors in the insurance industry.

Section 22. Page 15, lines 7-8.

AS 21.06.170(e) is repealed and has been transferred to Section 10 [see Sec. 21.36.360(d) and 21.36.360(e)].

AS 21.36.180 is repealed and has been transferred to Section 10 [see Sec. 21.36.360(b)(1) and 21.36.360(b)(4)].

AS 21.36.200 is repealed and has been transferred to Section 10 [see Sec. 21.36.360(b)(2), 21.36.360(b)(3), and 21.36.360(o)].

AS 21.51.340 is repealed because it is redundant and is covered in Section 10 in the general penalty section [see Sec. 21.36.360(p)].

Section 23. Page 15, line 9.

Effective date clause.