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AS21.27.200 DOCUMENT

CHAPTER = 21.27

SECTION = 21.27.200

TITLE = 21

HEADINGS TITLE 21.

Insurance.

CHAPTER 27.

Agents, Brokers, Solicitors, and Adjusters.

CITATION Sec. 21.27.200.

CATCH LINE

BROKER'S AUTHORITY AND COMMISSIONS.

TEXT

(a) A broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract. Nothing in this section is intended to alter the common law of agency as applied to transactions under this title.

(b) An insurer or agent has the right to pay to a broker licensed under this title, or under the laws of another state or a province, and the broker has the right to receive from the insurer or agent, the customary commissions upon insurances placed in the insurer by the broker.

HISTORY (Sec. 1 ch 120 SLA 1966)

R0601 * END OF DOCUMENTS IN LIST - ENTER RETURN OR ANOTHER COMMAND.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date : _____

REQUEST

Bill/Resolution No. : 377-022-86 SB 365
 Title : Broker is the Agent of Insurer
for payment of premium.

Sponsor : _____
 Requestor : _____
 Date of Request : _____

FISCAL DETAIL

Agency Affected : Comm. & Economic Dev
 BRU : Insurance

Components : _____

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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FUNDING : (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS :

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

Prepared by : John L. George  Phone : 465-2515
 Divisor : Insurance Date : 11/27/85

Approved by Commissioner : Robert S. Lounsbury Date : _____
 Agency : Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor

Introduced: 1/27/86
Referred: Labor and Commerce

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2

SENATE BILL NO. 365

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FOURTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act providing that a broker is the agent of an
7 insurer for payment of premium; and providing for an
8 effective date."

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

10 * Section 1. AS 21.27.200(a) is amended read:

11 (a) Except as provided in (c) of this section, a [A] broker, as
12 such, is not an agent or other representative of an insurer, and does
13 not have power as a broker to bind the insurer upon any risk or with
14 reference to any insurance contract. Nothing in this section is
15 intended to alter the common law of agency as applied to transactions
16 under this title.

17 * Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

18 (c) Notwithstanding a statute, or a provision in the policy or
19 contract, to the contrary, a payment of premium to a broker is con-
20 sidered to be payment to the insurer.

21 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
22 10.070(c).

Ford
3/26/86

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 365 (L & C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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12 such, is not an agent or other representative of an insurer, and does
13 not have power as a broker to bind the insurer upon any risk or with
14 reference to any insurance contract. ^② Nothing in this section is
15 intended to alter the common law of agency as applied to transactions
16 under this title.

17 * Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

18 (c) Notwithstanding a statute, or a provision in the policy or
19 contract to the contrary, payment of a premium to the broker is con-
20 sidered to be payment to the insurer, if the payment to the broker is
21 supported by competent evidence.

22 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-

23 10.070(c). *nothing in this subsection is intended to limit*
24 *the right of the insurer to recover premium*
25 *from the broker which the insurer has not*
26 *received.*

WORK DRAFT

WORK DRAFT

WORK DRAFT

Ford
4/2/86

Original sponsor: Rules/Governor

1 IN THE SENATE

BY THE LABOR AND
COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 365 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

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10 * Section 1. AS 21.27.200(a) is amended read:

11 (a) Except as provided in (c) of this section,

12 (1) a [A] broker, as such, is not an agent or other
13 representative of an insurer, and does not have power as a broker to
14 bind the insurer upon any risk or with reference to any insurance
15 contract; and

16 (2) nothing [. NOTHING] in this section is intended to
17 alter the common law of agency as applied to transactions under this
18 title.

19 * Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

20 (c) For purposes of determining an insured's entitlement to
21 coverage, a premium paid to the broker is considered to be received by
22 the insurer, if the payment to the broker is designated for specific
23 coverage from a specifically named insurer and is supported by compe-
24 tent evidence.

25 * Sec. 3. This Act takes effect immediately in accordance with AS 01.-
26 10.070(c).
27
28

BILL SHEFFIELD
GOVERNOR



5B365

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

January 27, 1986

The Honorable Don Bennett
President of the Senate
Alaska State Legislature
P. O. Box V
Juneau, AK 99811

Dear Senator Bennett:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the authority of insurance brokers.

This bill will add a new AS 21.27.200(c), to provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. Upon payment, the person who made the payment to the broker is immediately covered by the policy. This will be true even if the broker fails to forward the premium to the insurance company.

This bill will offer insureds greater protection against disreputable brokers who collect premiums and then fail to place the actual insurance coverage.

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor


SB 365: "An Act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date."

This is a Governor's bill and the department supports the bill. It would provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. This legislation does not give the broker the ability to bind coverage with an insurance company that has not given him that authority.

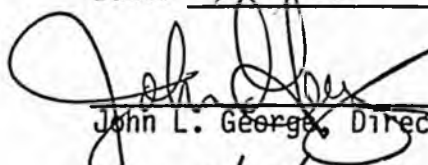
Alaska insurance law currently recognizes and licenses several types of insurance producer. These are agent, broker, solicitor, general agent, and surplus lines broker. Three of these, the agent, the solicitor of an agent, and the general agent, have a direct contractual relationship with the insurance company in which it places business. The effect of this is that when an agent, solicitor under an agent, or general agent receives premium from an insured, it is the same as though the insurance company had received the funds, even if the insurance company never receives the money.

The situation with a broker is not as clear. The broker by definition represents the insured, not the insurance company. It is possible that a legal argument could be made to attempt to treat the broker as an agent of the insurer, but it would not be a strong argument and not uniformly applicable. This was recognized when the surplus lines model law was drafted by the National Association of Insurance Commissioners in 1983 and adopted in Alaska law in 1984. Alaska Statute 21.34.130 provides that collection of premium by a surplus lines broker is considered collection by the insurance company writing the coverage.

During the past two years, it has become clear that a similar law is needed for brokers. Two large broker insolvencies have occurred where insureds have paid the broker who in turn has failed to remit those funds to the insurer resulting in cancellation of coverage for nonpayment of premium. The insured then suffers a loss of coverage and monies. In most cases, the insured person did not know in which capacity the producer was acting, let alone understand and appreciate the distinction.


Loren H. Lounsbury, Commissioner
Department of Commerce & Economic
Development

Date: 2/28/86

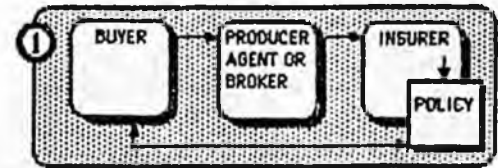

John L. George, Director of Insurance

Date: 2/28/86

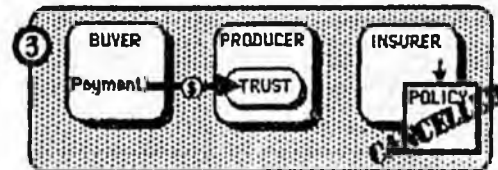
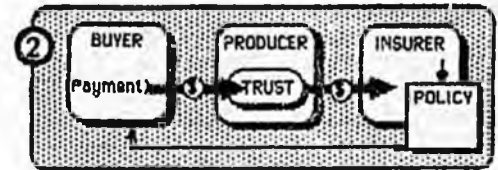
INSURANCE PURCHASE TRANSACTIONS

COMMENTS FOR SB 365

In the typical insurance purchase transaction, the buyer (insured) places an order with a producer (agent or broker), who in turn places the order with an insurance company who issues the policy. See Figure 1.



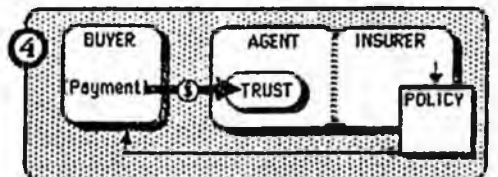
As part of the transaction, the prospective insured and the producer arrive at an agreement concerning the terms of payment for the insurance policy, usually paying in full within 30 days of effecting coverage. These funds, when paid to the producer, are received in a trust account, accounted for and paid to the appropriate party when due. This requirement is found in AS 21.27.360. The producer is responsible for payment of those monies to the insurer by 30 to 45 days following the end of the month in which the transaction was effective. That means that the money is not due to the insurance company from the producer until 31 to 75 days after the effective date of coverage and sometimes more. See Figure 2. Most transactions, except direct bill, occur in this manner.



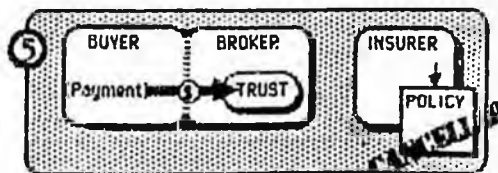
In some cases, the producer violates the law and misappropriates the premium monies to his own use and does not forward them to the insurance company. Normally, the insurance company will send a notice of cancellation for nonpayment of premium when that occurs. See Figure 3.

The buyer of insurance will usually not know whether his insurance person has a license as an insurance agent, insurance broker, or both. The buyer will rarely know which license of a producer is being used on a particular transaction. Further, the distinction between the two is unlikely to be understood by most buyers of insurance. Yet, this distinction may be and has been a critical point when a misappropriation occurs, because the public protection is different with the two types of license.

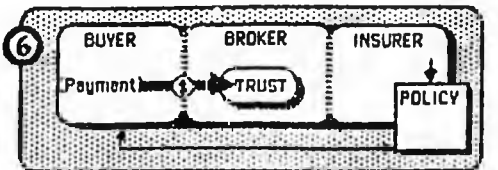
If the buyer conducts his transaction with a producer acting under his agents license, the buyer has protection from the misappropriation of the agent. Since the insurer has appointed the producer to act as its agent, any collection of premium is collection by the insurer. Any misappropriation by the agent of an insurer will have no impact on the insurance policy. Thus any cancellation by the insurer would be rescinded as soon as the insured had made payment to the agent. See Figure 4.



When the buyer conducts his transaction with a producer acting under his brokers license, the buyer has no protection from the misappropriation of the broker. The broker is the representative of the buyer, not the insurer. A misappropriation by the broker results in cancellation of any coverage. See Figure 5. During the past two years, there have been several massive misappropriations resulting in loss to buyers in excess of \$500,000. Currently, several more similar situations are under investigation.



SB 365 proposes to provide protection to the buyer by establishing a special relationship between the broker and the insurer. The broker would be the agent of the insurer for the purpose of the collection of premium only. When the broker collects premium from the buyer for a policy he has placed, it would be the same as though the buyer had paid the insurer directly. The logic behind this proposal, is that the insurer is in a position to control the monetary actions of the broker or certainly influence them more readily than is possible for the buyer. See Figure 6. We urge passage of this legislation.



* Need to move the
"2nd" L&C CS.

THIS MEASURE WILL OFFER CONSUMERS (INSUREDS) GREATER PROTECTION AGAINST BROKERS WHO COLLECT MONEY FOR PREMIUMS AND THEN FAIL TO PLACE INSURANCE COVERAGE. RECENT BROKER INSOLVENCIES HAVE RESULTED IN SITUATIONS WHERE THE INSURED HAS PAID MONEY TO THE BROKER, AND THE BROKER HAS FAILED TO PAY THE PREMIUM TO THE INSURANCE COMPANY. THIS IN TURN HAS RESULTED IN THE CANCELLATION OF POLICIES, (FOR NONPAYMENT OF PREMIUM), AND THE CONSUMER HAS LOST BOTH THE INSURANCE COVERAGE AND HIS MONEY.

IF THERE ARE TECHNICAL QUESTIONS ABOUT THE L&C CS:

THE L&C CS MADE TECHNICAL CHANGES IN SECTION 1 TO CLARIFY THE EXEMPTION WHICH OCCURS IN SECTION 2 OF THE MEASURE. SECTION 2 OF THE MEASURE HAS BEEN REPHRASED TO CLARIFY THE RELATIONSHIP BETWEEN THE BROKER AND INSURER, I.E. COMPETENT EVIDENCE OF PAYMENT FOR SPECIFIC COVERAGE FROM A SPECIFICALLY NAMED INSURER.



Official Business

Alaska State Legislature

Senate

Committee on Labor & Commerce

Pouch V
State Capitol
Juneau, Alaska 99811

SB 365: Summary

This bill will offer consumers (insureds) greater protection against brokers who collect money for premiums and then fail to place insurance coverage. Recent broker insolvencies have resulted in situations where the insured has paid money to the broker, and the broker has failed to pay the premium to the insurance company. This in turn has resulted in the cancellation of policies (for nonpayment of premium) and the insured has lost both the insurance coverage and his money.

The L&C CS separated the sentences in section 1 to clarify that the exemption referenced in (c) pertains to both (1) and (2).

Section 2) of the CS was also rephrased to make clear the relationship between the broker and the insurer. i.e. competent evidence of payment for specific coverage from a specifically named insurer.

CHAIRMAN'S INFORMATION: CSSB 365 (L&C)

1) BILL TITLE: "An act providing that a broker is the agent of an insurer for payment of premium; and providing for an effective date"

a) Introduced: Governor

b) Co-sponsors:

2) INTENT: This measure will offer consumers (insureds) greater protection against brokers who collect money for premiums and then fail to place insurance coverage.

The L&C CS separated the sentences in section 1 to clarify that the exemption referenced in (c) pertained to both (1) and (2).

Section 2) of the CS was also rephrased to make clear the relationship between the broker and the insurer. i.e. competent evidence of payment for specific coverage from a specifically named insurer.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Sen Rules

4) PUBLIC HEARINGS: Both L&C and Rules

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from committee?

d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?

b) CS adoption? Need to adopt the L&C CS