

**SB**

**177**

**HFIN**

**FILE**

HOUSE COMMITTEE REPORT

(11)

Date Referred to Committee: April 19, 2000

FURTHER REFERRALS:

Date of Committee Action: 4/24/00

The FINANCE Committee considered:

CSSB 177(L&C)

CS FOR SENATE BILL NO. 177(L&C)

INSURANCE TRADE PRACTICES & ACTS

"An Act relating to insurance trade practices; and providing for an effective date."

recommends it be replaced with the following committee substitute

HCS CS SB 177 (FIN)

the same title  
 a new title

additional referral to \_\_\_\_\_ Committee

attached amendment(s)

ADOPTS: \_\_\_\_\_ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept)

APPROVES PREVIOUS: (Dept/Date)

fiscal note(s) \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

zero fiscal note(s) Senate  
DCED 3-1-00

SIGNING WITH RECOMMENDATIONS		DP	DNP	NR	AM
<i>Gene Thernault</i>	Thernault	X			
<i>Ed Mulder</i>	Mulder	X			
<i>Alan Austerman</i>	Austerman			X	
<i>J. Davis</i>	J. DAVIS			X	
<i>Ben Grussendorf</i>	Grussendorf			X	
<i>Don Bunde</i>	Bunde			✓	
<i>Kerit Davis</i>	G. DAVIS			✓	
<i>Ed K. Williams</i>	Williams			X	
<i>Gail Phillips</i>	Phillips			✓	
<i>FOSTER</i>	FOSTER			X	

CO CHAIR'S SIGNATURE

*Gene Thernault*  
Thernault

*Ed Mulder*  
Mulder

# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

No. 1  
BILL NO. Bill Version: CS6B 177.2a  
(S) Publish Date: 3-1-00

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Community & Economic Development:  
Title An Act relating to insurance trade practices; BRU Insurance  
and providing for an effective date. Component Insurance  
Sponsor Senator Donley  
Requester S (L&C) Component No. 354

## Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ( )						
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## FUND SOURCE (Thousands of Dollars)

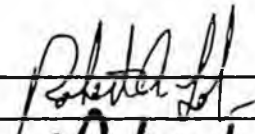
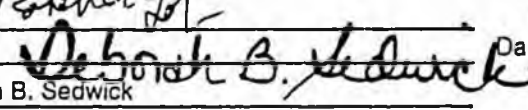
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2000) cost: \_\_\_\_\_

### POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)  
This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr  Phone 269-7900  
Division Insurance Date/Time 1/18/00 8:58 AM  
Approved by Commissioner Deborah B. Sedwick  Date \_\_\_\_\_  
Agency Community & Economic Development

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# FISCAL NOTE

STATE OF ALASKA  
2000 LEGISLATIVE SESSION

No. 1  
BILL NO. Bill Version: CSB 177.40  
(S) Publish Date: 3-1-00

Revision Date/Time (Note if correction) \_\_\_\_\_ Dept. Affected Community & Economic Development: \_\_\_\_\_  
Title An Act relating to insurance trade practices; BRU Insurance  
and providing for an effective date. Component Insurance  
Sponsor Senator Donley  
Requester S (L&C) Component No. 354

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

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# SENATOR DAVE DONLEY

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## ALASKA STATE LEGISLATURE

**Sponsor Statement  
for  
CS for SB 177 (L&C)  
"The Alaska Insurance Consumers  
Protection Act"**

Senate Bill 177 "The Alaska Insurance Consumers Protection Act" will give injured Alaskans and insurance consumers a fairer playing field when dealing with insurance companies. The Alaska Division of Insurance supports SB 177.

Section #3 of SB 177 makes a major step toward better consumer protection by allowing the Division of Insurance to take corrective action on individual acts of unfair or deceptive insurance trade practices. Amazingly, under existing law, the division does not have the jurisdiction to take action on individual acts of unfair insurance claims practices. The division is powerless to take action on an individual insurer until a pattern of deceptive trade practices has developed. Such a pattern is often very difficult to prove and can require staffing the division currently does not have. This lack of jurisdiction promotes bad claims practices by insurance companies since they know that there is little enforcement to protect individual injured victims and consumers.

Section #4 of Senate Bill 177 also protects consumers by protecting those who blow the whistle on illegal insurance acts. Many consumers and even insurance agents are sometimes intimidated from pursuing a fair settlement because of fear of retaliation from the insurer. This discourages claimants from pursuing a fair settlement and hinders the consumer protection ability of the Division of Insurance, as they are unable to gain access to information needed to effectively protect consumers. SB 177 provides immunity from liability for defamation for those persons who provide the division with information regarding an unfair act or practice. This provision will better protect both agents and insurance consumers.

Section #5 of SB 177 increases protections against unfair claims practices against injured Alaskans. Under existing law, injured third party claimants are not entitled to the same statutory protections as first party claimants. Insurers know this and often will require an injured third party to pay the costs of arbitration or mediation before the process even begins. If the amount at issue is less than the cost of arbitration the insurer can unfairly "low ball" the injured party. Additionally, insurers often use the high cost of litigation, which also may exceed the value of the claim, as leverage in coercing legitimate third party claimants to accept settlements that do not adequately compensate them for their injuries. Under current law such practices are prohibited as to first party claims but not as to third party claims. SB 177 expands the

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Vice-Chair, Senate Finance Committee • Chair, Capital Budget Subcommittee • Co-Chair, Anchorage Caucus  
Member: Senate Judiciary Committee • Senate Labor & Commerce Committee • Legislative Council

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[www.akrepublicans.org/Donley.htm](http://www.akrepublicans.org/Donley.htm) • [www.lawis.state.ak.us/senate/donley.htm](http://www.lawis.state.ak.us/senate/donley.htm)

Sec. 21.36.320. Hearings and order on violation.

(a) On the complaint of a person or on the motion of the director, the director may conduct an investigation to determine whether a person is engaged in an unfair method of competition or unfair or deceptive act or practice prohibited by this chapter.

(b) If there are grounds for believing that a person is engaged in an act or practice prohibited by this chapter, the director may institute proceedings under AS 21.06.170 - 21.06.240.

(c) If the director determines that a person violated this chapter, the director shall serve upon the person charged an order requiring that person to cease and desist from engaging in the act or practice.

(d) In addition to an order issued under (c) of this section, the director may, after a hearing, order restitution, assess a penalty of not more than \$2,500 for each violation or \$25,000 for engaging in a general business practice in violation of this chapter.

(e) If the director determines after a hearing that the person charged knew or should have known that the person was in violation of this chapter, in addition to the penalty prescribed in (d) of this section, a suspension or revocation of the person's license and a penalty of not more than \$25,000 for each violation or \$250,000 for engaging in the general business practice in violation of this chapter may also be ordered by the director.

(f) If the director believes that a person has violated a cease and desist order issued under (c) of this section, the director may certify the relevant facts to the superior court in the appropriate district, for proceedings under AS 44.62.590. In addition to the penalties and remedies provided for in AS 44.62.590, the superior court, upon finding that the cease and desist order has been violated, may order the violator to comply with the order, pay an additional penalty of not more than \$1,000,000 for each violation, may revoke or suspend the violator's license, and may bar the violator from transacting the business of insurance in the future.

(g) In determining the penalty imposed under (d) and (e) of this section, the director shall consider the amount of loss caused by the violation and the amount of benefit derived by the person by reason of the violation and may consider other factors, including the seriousness of the violation, and deterrence of the violator or others.

History -

(Sec. 8 ch 163 SLA 1976; am Sec. 146 - 151 ch 67 SLA 1992)

Amendment Notes -

The 1992 amendment, effective July 1, 1992, deleted "in this state" preceding "is engaged in" in subsection (a); substituted "cease and desist" for "stop" in subsections (c) and (f); increased the penalty amounts throughout subsections (d)-(f); added the provision for restitution in subsection (d) and the references to a hearing in subsections (d) and (e); inserted "comply with the order" and "additional" and added the clause beginning "and may bar" in subsection (f); added subsection (g); and made several stylistic changes.

Decisions -

Cited in *O.K. Lumber Co. v. Providence Wash. Ins. Co.*, 759 P.2d 523 (Alaska 1988);  
*State Farm Fire & Cas. Co. v. Nicholson*, 777 P.2d 1152 (Alaska 1989).

Offered By

DAVIS

Amendment # ~~0000~~ 2

VOTE 3-7

4/24/00

SB 177

Sec. 9. AS 21.36.320 is amended by adding a new subsection to read:

- (h) If the violation is a single act prohibited under AS 21.36.125 which results in loss or harm, the director may impose restitution or issue a cease or desist order but may not impose a penalty that includes a fine or require other remedial action **unless the person can show that the violation is unintentional.**

(The bolded language shows burden on the person accused of a single act violation.)

Adopted

AMENDMENT

# 1

OFFERED IN THE HOUSE

TO: HCS CSSB 177(FIN), Draft Version "T"

- 1 Page 4, line <sup>16</sup>17, following "intentional.":
- 2       Insert "This subsection does not affect the director's authority to impose a penalty for
- 3 multiple acts prohibited under AS 21.36.125 or a penalty for an act prohibited under a
- 4 provision of law other than AS 21.36.125."

1-LS0902VZ

Ford

4/24/00

Adopted 4/24/00

HOUSE CS FOR CS FOR SENATE BILL NO. 177( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR DONLEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to insurance trade practices; and providing for an effective  
2 date."

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

4 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new  
5 section to read:

6 SHORT TITLE. This Act may be known as the Alaska Insurance Consumers  
7 Protection Act.

8 \* Sec. 2. AS-21.36.010 is amended to read:

9 Sec. 21.36.010. Purpose. The purpose of this chapter is to regulate an act or  
10 a trade practice [PRACTICES] in the business of insurance in accordance with the  
11 intent of Congress as expressed in 15 U.S.C. 1011 - 1015 (McCarran-Ferguson Act)  
12 [THE ACT OF CONGRESS OF MARCH 9, 1945 (P.L. 79-15; CH. 20, 59 STAT.  
13 33),] by defining or providing for determination of all the practices in this state that  
14 constitute an unfair method [METHODS] of competition or an unfair or deceptive act

1 or practice [ACTS OR PRACTICES] and by prohibiting them.

2 \* Sec. 3. AS 21.36.020 is amended to read:

3 Sec. 21.36.020. **Unfair methods, deceptive acts prohibited.** A person may  
4 not engage in an act or a trade practice in this state or relative to a subject resident,  
5 located, or to be performed in this state that is defined in this chapter as, or determined  
6 under this chapter to be, an unfair method of competition or an unfair or deceptive act  
7 or practice in the business of insurance.

8 \* Sec. 4. AS 21.36.070(b) is amended to read:

9 (b) A person providing the director with information concerning the financial  
10 condition or an act or a practice [PRACTICES] of a licensee of the division is  
11 immune from liability for defamation.

12 \* Sec. 5. AS 21.36.125 is amended to read:

13 Sec. 21.36.125. **Unfair claim settlement practices.** A person may not commit  
14 [OR ENGAGE IN WITH SUCH FREQUENCY AS TO INDICATE A PRACTICE]  
15 any of the following acts or practices:

16 (1) misrepresent facts or policy provisions relating to coverage of an  
17 insurance policy;

18 (2) fail to acknowledge and act promptly upon communications  
19 regarding a claim arising under an insurance policy;

20 (3) fail to adopt and implement reasonable standards for prompt  
21 investigation of claims;

22 (4) refuse to pay a claim without a reasonable investigation of all of  
23 the available information and an explanation of the basis for denial of the claim or for  
24 an offer of compromise settlement;

25 (5) fail to affirm or deny coverage of claims within a reasonable time  
26 of the completion of proof-of-loss statements;

27 (6) fail to attempt in good faith to make prompt and equitable  
28 settlement of claims in which liability is reasonably clear;

29 (7) engage in a pattern or practice of compelling [COMPEL]  
30 insureds to litigate for recovery of amounts due under insurance policies by offering  
31 substantially less than the amounts ultimately recovered in actions brought by those

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insureds;

(8) compel an insured or third-party claimant in a case in which liability is clear to litigate for recovery of an amount due under an insurance policy by offering an amount that does not have an objectively reasonable basis in law and fact and that has not been documented in the insurer's file;

(9) attempt to make an unreasonably low settlement by reference to printed advertising matter accompanying or included in an application;

(10) [(9)] attempt to settle a claim on the basis of an application that has been altered without the consent of the insured;

(11) [(10)] make a claims payment without including a statement of the coverage under which the payment is made;

(12) [(11)] make known to an insured or third-party claimant [INSUREDS OR CLAIMANTS] a policy of appealing from an arbitration award [AWARDS] in favor of an insured or third-party claimant [INSUREDS OR CLAIMANTS] for the purpose of compelling the insured or third-party claimant [THEM] to accept a settlement or compromise [SETTLEMENTS OR COMPROMISES] less than the amount awarded in arbitration;

(13) [(12)] delay investigation or payment of claims by requiring submission of unnecessary or substantially repetitive claims reports and proof-of-loss forms;

(14) [(13)] fail to promptly settle claims under one portion of a policy for the purpose of influencing settlements under other portions of the policy;

(15) [(14)] fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement; or

(16) [(15)] offer a form of settlement or pay a judgment in any manner prohibited by AS 21.89.030.

\* Sec. 6. AS 21.36.125 is amended by adding a new subsection to read:

(b) The provisions of this section do not create or imply a private cause of action for a violation of this section.

\* Sec. 7. AS 21.36 is amended by adding a new section to read:

1           **Sec. 21.36.212. Prohibited denial of claim for causation.** An insurer may  
2 not deny a claim if a risk, hazard, or contingency insured against is the dominant cause  
3 of a loss and the denial occurs because an excluded risk, hazard, or contingency is also  
4 in a chain of causes but operates on a secondary basis.

5 \* **Sec. 8.** AS 21.36.320(g) is amended to read:

6           (g) In determining the penalty imposed under (d) and (e) of this section, the  
7 director shall consider the amount of loss or harm caused by the violation and the  
8 amount of benefit derived by the person by reason of the violation and may consider  
9 other factors, including the seriousness of the violation, the promptness and  
10 completeness of remedial action, whether the violation was a single act or a trade  
11 practice, and deterrence of the violator or others.

12 \* **Sec. 9.** AS 21.36.320 is amended by adding a new subsection to read:

13           (h) If the violation is a single act prohibited under AS 21.36.125 that results  
14 in loss or harm, the director may require restitution or issue a cease and desist order  
15 but may not impose a penalty that includes a fine or require other remedial action,  
16 unless the violation results in loss or harm and is intentional.

17 \* **Sec. 10.** This Act takes effect January 1, 2001.

1-LS0902VT  
Ford  
4/24/00

*Discussed  
NOT moved  
4/24/00*

HOUSE CS FOR CS FOR SENATE BILL NO. 177( )  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY

Offered:  
Referred:

Sponsor(s): SENATOR DONLEY

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to insurance trade practices; and providing for an effective  
2 date."

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

4 \* Section 1. The uncodified law of the State of Alaska is amended by adding a new  
5 section to read:

6 SHORT TITLE. This Act may be known as the Alaska Insurance Consumers  
7 Protection Act.

8 \* Sec. 2. AS-21.36.010 is amended to read:

9 Sec. 21.36.010. Purpose. The purpose of this chapter is to regulate an act or  
10 a trade practice [PRACTICES] in the business of insurance in accordance with the  
11 intent of Congress as expressed in 15 U.S.C. 1011 - 1015 (McCarran-Ferguson Act)  
12 [THE ACT OF CONGRESS OF MARCH 9, 1945 (P.L. 79-15; CH. 20, 59 STAT.  
13 33),] by defining or providing for determination of all the practices in this state that  
14 constitute an unfair method [METHODS] of competition or an unfair or deceptive act

1        or practice [ACTS OR PRACTICES] and by prohibiting them.

2        \* **Sec. 3.** AS 21.36.020 is amended to read:

3                **Sec. 21.36.020. Unfair methods, deceptive acts prohibited.** A person may  
4                not engage in an act or a trade practice in this state or relative to a subject resident,  
5                located, or to be performed in this state that is defined in this chapter as, or determined  
6                under this chapter to be, an unfair method of competition or an unfair or deceptive act  
7                or practice in the business of insurance.

8        \* **Sec. 4.** AS 21.36.070(b) is amended to read:

9                (b) A person providing the director with information concerning the financial  
10                condition or an act or a practice [PRACTICES] of a licensee of the division is  
11                immune from liability for defamation.

12        \* **Sec. 5.** AS 21.36.125 is amended to read:

13                **Sec. 21.36.125. Unfair claim settlement practices.** A person may not commit  
14                [OR ENGAGE IN WITH SUCH FREQUENCY AS TO INDICATE A PRACTICE]  
15                any of the following acts or practices:

16                        (1) misrepresent facts or policy provisions relating to coverage of an  
17                        insurance policy;

18                        (2) fail to acknowledge and act promptly upon communications  
19                        regarding a claim arising under an insurance policy;

20                        (3) fail to adopt and implement reasonable standards for prompt  
21                        investigation of claims:

22                        (4) refuse to pay a claim without a reasonable investigation of all of  
23                        the available information and an explanation of the basis for denial of the claim or for  
24                        an offer of compromise settlement;

25                        (5) fail to affirm or deny coverage of claims within a reasonable time  
26                        of the completion of proof-of-loss statements;

27                        (6) fail to attempt in good faith to make prompt and equitable  
28                        settlement of claims in which liability is reasonably clear;

29                        (7) engage in a pattern or practice of compelling [COMPEL]  
30                        insureds to litigate for recovery of amounts due under insurance policies by offering  
31                        substantially less than the amounts ultimately recovered in actions brought by those

1 insureds;

2 (8) compel an insured or third-party claimant in a case in which  
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4 policy by offering an amount that does not have an objectively reasonable basis  
5 in law and fact and that has not been documented in the insurer's file;

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7 printed advertising matter accompanying or included in an application;

8 (10) [(9)] attempt to settle a claim on the basis of an application that  
9 has been altered without the consent of the insured;

10 (11) [(10)] make a claims payment without including a statement of the  
11 coverage under which the payment is made;

12 (12) [(11)] make known to an insured or third-party claimant  
13 [INSUREDS OR CLAIMANTS] a policy of appealing from an arbitration award  
14 [AWARDS] in favor of an insured or third-party claimant [INSUREDS OR  
15 CLAIMANTS] for the purpose of compelling the insured or third-party claimant  
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29 (b) The provisions of this section do not create or imply a private cause of  
30 action for a violation of this section.

31 \* Sec. 7. AS 21.36 is amended by adding a new section to read:

1           **Sec. 21.36.212. Prohibited denial of claim for causation.** An insurer may  
2 not deny a claim if a risk, hazard, or contingency insured against is the dominant cause  
3 of a loss and the denial occurs because an excluded risk, hazard, or contingency is also  
4 in a chain of causes but operates on a secondary basis.

5 \* **Sec. 8.** AS 21.36.320(g) is amended to read:

6           (g) In determining the penalty imposed under (d) and (e) of this section, the  
7 director shall consider the amount of loss or harm caused by the violation and the  
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11 practice, and deterrence of the violator or others.

12 \* **Sec. 9.** AS 21.36.320 is amended by adding a new subsection to read:

13           (h) If the violation is a single act prohibited under AS 21.36.125, the director  
14 may not impose a penalty unless the violation results in loss or harm and may not  
15 impose a penalty that includes a fine or require other remedial action, except for  
16 remedial action involving restitution or a cease and desist order, unless the violation  
17 results in loss or harm and is intentional.

18 \* **Sec. 10.** This Act takes effect January 1, 2001.

Discussed

1-LS0902\W

not

Moved

4/21/00

HOUSE CS FOR CS FOR SENATE BILL NO. 177(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

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Referred:

Sponsor(s): SENATOR DONLEY

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1 or practice [ACTS OR PRACTICES] and by prohibiting them.

2 \* Sec. 3. AS 21.36.020 is amended to read:

3 Sec. 21.36.020. **Unfair methods, deceptive acts prohibited.** A person may  
4 not engage in an act or a trade practice in this state or relative to a subject resident,  
5 located, or to be performed in this state that is defined in this chapter as, or determined  
6 under this chapter to be, an unfair method of competition or an unfair or deceptive act  
7 or practice in the business of insurance.

8 \* Sec. 4. AS 21.36.070(b) is amended to read:

9 (b) A person providing the director with information concerning the financial  
10 condition or an act or a practice [PRACTICES] of a licensee of the division is  
11 immune from liability for defamation.

12 \* Sec. 5. AS 21.36.125 is amended to read:

13 Sec. 21.36.125. **Unfair claim settlement practices.** A person may not commit  
14 [OR ENGAGE IN WITH SUCH FREQUENCY AS TO INDICATE A PRACTICE]  
15 any of the following acts or practices:

16 (1) misrepresent facts or policy provisions relating to coverage of an  
17 insurance policy;

18 (2) fail to acknowledge and act promptly upon communications  
19 regarding a claim arising under an insurance policy;

20 (3) fail to adopt and implement reasonable standards for prompt  
21 investigation of claims;

22 (4) refuse to pay a claim without a reasonable investigation of all of  
23 the available information and an explanation of the basis for denial of the claim or for  
24 an offer of compromise settlement;

25 (5) fail to affirm or deny coverage of claims within a reasonable time  
26 of the completion of proof-of-loss statements;

27 (6) fail to attempt in good faith to make prompt and equitable  
28 settlement of claims in which liability is reasonably clear;

29 (7) engage in a pattern or practice of compelling [COMPEL]  
30 insureds to litigate for recovery of amounts due under insurance policies by offering  
31 substantially less than the amounts ultimately recovered in actions brought by those

1 insureds;

2 (8) compel an insured or third-party claimant in a case in which  
 3 liability is clear to litigate for recovery of an amount due under an insurance  
 4 policy by offering an amount that does not have an objectively reasonable basis  
 5 in law and fact and that has not been documented in the insurer's file;

6 (9) attempt to make an unreasonably low settlement by reference to  
 7 printed advertising matter accompanying or included in an application;

8 (10) [(9)] attempt to settle a claim on the basis of an application that  
 9 has been altered without the consent of the insured;

10 (11) [(10)] make a claims payment without including a statement .he  
 11 coverage under which the payment is made;

12 (12) [(11)] make known to an insured or third-party claimant  
 13 [INSUREDS OR CLAIMANTS] a policy of appealing from an arbitration award  
 14 [AWARDS] in favor of an insured or third-party claimant [INSUREDS OR  
 15 CLAIMANTS] for the purpose of compelling the insured or third-party claimant  
 16 [THEM] to accept a settlement or compromise [SETTLEMENTS OR  
 17 COMPROMISES] less than the amount awarded in arbitration;

18 (13) [(12)] delay investigation or payment of claims by requiring  
 19 submission of unnecessary or substantially repetitive claims reports and proof-of-loss  
 20 forms;

21 (14) [(13)] fail to promptly settle claims under one portion of a policy  
 22 for the purpose of influencing settlements under other portions of the policy;

23 (15) [(14)] fail to promptly provide a reasonable explanation of the  
 24 basis in the insurance policy in relation to the facts or applicable law for denial of a  
 25 claim or for the offer of a compromise settlement; or

26 (16) [(15)] offer a form of settlement or pay a judgment in any manner  
 27 prohibited by AS 21.89.030.

28 \* Sec. 6. AS 21.36.125 is amended by adding a new subsection to read:

29 (b) The provisions of this section do not create or imply a private cause of  
 30 action for a violation of this section.

31 \* Sec. 7. AS 21.36 is amended by adding a new section to read:

1           **Sec. 21.36.212. Prohibited denial of claim for causation.** An insurer may  
2 not deny a claim if a risk, hazard, or contingency insured against is the dominant cause  
3 of a loss and the denial occurs because an excluded risk, hazard, or contingency is also  
4 in a chain of causes but operates on a secondary basis.

5 \* **Sec. 8.** AS 21.36.320(g) is amended to read:

6           (g) In determining the penalty imposed under (d) and (e) of this section, the  
7 director shall consider the amount of loss or harm caused by the violation and the  
8 amount of benefit derived by the person by reason of the violation and may consider  
9 other factors, including the seriousness of the violation, the promptness and  
10 completeness of remedial action, whether the violation was a single act or a trade  
11 practice, and deterrence of the violator or others.

12 \* **Sec. 9.** AS 21.36.320 is amended by adding a new subsection to read:

13           (h) If the violation of this chapter is a single act, the director may not impose  
14 a penalty unless the violation results in loss or harm and is intentional.

15 \* **Sec. 10.** This Act takes effect January 1, 2001.

Sponsor Statement  
Senate Bill 177  
Page 2

prohibition against such bad faith actions to third party claimants and affords them a fair arbitration claims process while also curtailing unnecessary litigation. Affording and expanding insurance claims protections to both first and third party claimants is fair, equitable and good public policy.

Section #6 of SB 177 clearly states that the provisions of AS 21.36.125, which define unfair claims practices, do not create a private cause of action which is the current status quo.

Section #7 of SB 177, at the specific request of the Division of Insurance, prohibits insurers from denying a claim in which multiple causes caused the loss to occur and there is a secondary cause that is not covered by the policy. SB 177 ensures that a claim is covered when a loss has more than one cause and the dominant cause is covered by the policy.

Section #8 of SB 177 makes it clear that the Division of Insurance can take into account the fact that a potential violation was a single act or trade practice.

Injured Alaskans and insurance consumers deserve better protection from insurance company unfair claims practices. Senate Bill 177 will help provide the Division of Insurance with the necessary authority it needs to protect injured Alaskans and insurance consumers.

DD/jja



**Department of Community  
and Economic Development**

**Division of Insurance**

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March 20, 2000

The Honorable Dave Donley  
Alaska State Senate  
State Capitol, Room 508  
Juneau, AK 99801-1182

Dear Senator Donley:

The Alaska Division of Insurance (ADOI) supports SB 177, the Alaska Insurance Consumer Protection Act, sponsored by Senator Dave Donley. The bill is now in the Senate Rules Committee.

Currently under AS 21.36.125 the ADOI cannot penalize a single unfair action of an insurance company in its handling of consumer claims, no matter how serious. Alaska Statute 21.36.125 gives authority to the director to take action against an insurance company only if a pattern of unfair trade practices acts amounting to a general business practice or multiple violations of the same claims standard is found. Individual consumers can be seriously harmed by a single unfair action of an insurance company. For example, in a recent complaint received at the division, a consumer was pre-certified for hospitalization by a health insurance company, but the insurance company unfairly delayed payment of the hospital's \$186,000 bill for six months, threatening the consumer's credit rating. Had the provisions of SB 177 been in place, the division would have been able to take action against the insurance company to deter such actions in the future.

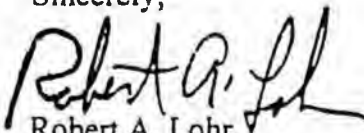
The Alaska Supreme Court stated in State Farm v. Nicholson, 777 P. 2d 1152 (Alaska 1989):

Under AS 21.36.125, entitled "Unfair claims settlement practices," an insurance company only violates the chapter if it engages in certain proscribed acts "with such frequency as to indicate a practice. [emphasis added]."

The bill confirms that AS 21.36.125 does not create a private cause for legal action.

The bill also clarifies the meaning of causation for insurance policies in Alaska. This clarification will make sure that policy benefits are consistent with the reasonable expectations consumers have regarding their insurance coverage. Consumers should not have to make complex legal arguments relating to the cause of a loss in order for insurance companies to pay benefits for their losses under the insurance policy.

Sincerely,

  
Robert A. Lohr  
Director

# MEMORANDUM

State of Alaska

Department of Law

TO: Robert A. Lohr  
Director  
Division of Insurance  
Department of Community &  
Economic Development

DATE: January 25, 2000

FILE NO.:

TEL. NO.: 269-5229

FROM: Virginia A. Rusch  
Assistant Attorney General  
Fair Business Practices Section  
Anchorage

SUBJECT: AS 21.36.150

In connection with a pending bill that would modify AS 21.36.010, AS 21.36.020 and AS 21.36.125 to prohibit a single unfair and deceptive act (as well as repetitive acts constituting an unfair and deceptive practice), you have asked for an interpretation of AS 21.36.150.<sup>1</sup> Specifically, you asked

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<sup>1</sup> This statute provides:

**Sec. 21.36.150. Procedures as to undefined practices.**

(a) If the director believes that a person engaged in the insurance business is engaging in this state in an unfair method of competition or in an unfair or deceptive act or practice in the conduct of the business that is not defined as being unfair or deceptive under this chapter, the director shall hold a hearing on the matter, if the director believes it would be in the public interest to do so after giving notice of the hearing and of the charges. Upon conclusion of the hearing the director shall make a written report of the findings of fact relative to the charges and serve a copy upon the person and any intervenor at the hearing.

(b) If the report charges a violation of this chapter and if the method of competition, act, or practice has not been discontinued, the director may, through the attorney general of this state, at any time after the service of the report, cause an action to be instituted to enjoin and restrain the person from engaging in the method, act, or practice. In the action the court may grant a restraining order or injunction upon just terms, but the state may not be required to give security before the issuance of the order or injunction. If a record of the proceedings in the hearing before the director was made, a certified transcript, including all evidence taken and the report and findings, shall be received in evidence in the action.

(c) If the director's report made under (a) of this section, or order on hearing made under AS 21.36.320 does not charge a violation of this chapter, an intervenor in the

whether this statute authorizes the director of the Alaska Division of Insurance to determine that a single act, rather than a pattern of repetitive acts, constitutes a violation of these provisions of the trade practices and frauds chapter of the Alaska Insurance Code.

Briefly, the answer to your question is that AS 21.36.150 authorizes and establishes a procedure for the state insurance regulator to examine whether an activity that is not otherwise prohibited in the trade practices and frauds chapter, AS 21.36, or by regulations adopted under it, is unfair and deceptive, and should therefore be forbidden. Nothing in the language of this statute suggests that it is intended to authorize the director to determine that a single act is a violation of statutory provisions that forbid a practice of, or repetitive acts of, a defined unfair or deceptive activity. Even if AS 21.36.150 can be interpreted to give the director this authority, the process described in AS 21.36.150 would be a cumbersome way to enforce the prohibitions against unfair or deceptive acts.

The discussion below explains this answer by reviewing commentary on the source from which this section was derived and some examples of past orders issued under it.

AS 21.36.150 was adopted in 1966 as part of a major revision of the Alaska Insurance Code. It is derived from the National Association of Insurance Commissioners (NAIC) Model Unfair Trade Practices Act initially approved in 1946. According to the legislative history (See NAIC Model Regulation Service, p.880-19), this model act was the result of one of the first efforts to develop state laws regulating insurance after Congress passed the McCarran-Ferguson Act of 1945 (P.L. 79-15) that provided for continued state regulation of insurance. P.L. 79-15 contained a moratorium from the application of federal law to permit the states time to develop laws, but provided for federal regulation if the states did not take on the responsibility.

Five years after the Alaska legislature adopted AS 21.36.150 in 1966, the NAIC substantially revised the model act provisions on which this statute was based. The historical commentary for sections 7 and 8 of this model act reports that the commissioners concluded that the procedure for dealing with "undefined" unfair trade practices was too cumbersome. (NAIC Model Regulation Service, p. 880-30). The NAIC revised these sections of the model act to authorize a state insurance commissioner to hold hearings, issue cease and desist orders and impose penalties. In 1976, the Alaska legislature added AS 21.36.320, which gave the director of the Alaska division of insurance authority similar to the NAIC's revised sections 7 and 8. But the Alaska legislature left AS 21.36.150 in place, making only slight changes in 1985 (substituting a reference in subsection (c) to AS 21.36.320 for AS 21.36.140, which was repealed), and in 1992 (adding subsection (d) with other stylistic changes). The addition of subsection (d) in 1992 made clear that the director can also use the regulation adoption process to define unfair and deceptive trade practices.

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proceedings may appeal from the order or report within the time and in the manner provided for appeals from the director generally.

(d) In addition to the unfair methods and unfair or deceptive acts or practices expressly defined in this title, the director may adopt regulations to define other methods of competition and other acts and practices related to the business of insurance that are unfair or deceptive.

This history, as well as the language of AS 21.36.150, therefore shows the statute was intended to deal with "undefined" practices. It is a procedure to determine whether questioned practices are unfair and deceptive, rather than a procedure to determine whether a person is guilty of conduct that has previously been defined as unfair and deceptive. The statute incorporates due process protections, including requirements for notice of the issue to the person who is carrying on the activity, a hearing, and a written report with findings of fact. But this section gives the director no authority to order a cease and desist order or impose penalties for a violation. The director is required to apply to a court for enforcement orders. In contrast, under AS 21.36.320, the director is authorized to issue cease and desist orders and impose penalties for violations of the trade practice and frauds chapter, AS 21.36.

Among orders of the director of the division of insurance compiled in the National Insurance Law Service (NLS Publishing Company, Chatsworth, CA) are two examples issued under this statute in 1970. In Order R70-1, Truckmen's Compensation Deposit Insurance Premium Unfair Practice (Dec 14, 1970), the director concluded that a practice of billing a voluntary expiration or termination payroll report and continuing to hold the deposit premium until a physical audit of the payroll records often resulted in substantial excess worker's compensation premiums being held by insurers. The director declared this an unfair practice and defined a practice to be used instead.

In Order R70-2, Trans-Alaska Pipeline Wrap-Up (April 17, 1970), the director held a hearing on a complaint from the Alaska Association of Insurance Agents that the proposed insurance program of the Trans-Alaska Pipeline System was an unfair practice in the insurance business. The director rejected the complaint finding that there was no evidence that the pipeline consortium "is or was at any time engaged in the insurance business or contemplates engaging the insurance business."

Conclusion. Based on the language of the statute, the historical commentary on the NAIC model on which it is based, and examples of how AS 21.36.150 has been used in the past, we conclude that its purpose is to establish a procedure for determining whether a particular activity in the insurance business should be prohibited as unfair or deceptive. More recent legislative enactments give the director other means to both define unfair and deceptive trade practices in the insurance business and enforce the prohibition against them. But we find nothing in AS 21.36.150 that authorizes the director to determine that a single act is a violation of a statute that prohibits a practice of certain defined conduct in the business of insurance.

VAR:jem

## SUMMARY OF SURVEY RESULTS

The Division of Insurance recently polled all the states on the following questions. The following states responded. This is a very brief paraphrase and summary of the results. Most state laws have some variations and unique features not mentioned here. The relevant statutes and regulations should be consulted.

	<b>“Regarding unfair trade practices, unfair methods and deceptive acts, does your statute prohibit single incidents, or only ongoing patterns and practices?”</b>	<b>Regarding unfair claim settlement practices, does your statute protect insureds only, or does it also protect third-party claimants? Does your statute specifically mention insured and/or third party claimants, or simply refer to any person or any claimant?</b>	<b>Cite:</b>
California	Knowingly on one occasion or frequently enough to indicate a practice.	Some regulations protect insureds, others protect all claimants.	California Insurance Code section 790.03; 10 CCR 2695.1
Connecticut	Single acts, except claim settlement practices which must be committed or performed with such frequency to indicate a general business practice.	All claimants, except that “insureds” cannot be compelled to litigate claims.	CT. Gen. Stat. 38a-816(6), as amended 10/1/99 by Public Act 99-284 §30.
Florida	Isolated events and business practices, but some claim settlement practices must be done with such frequency to indicate a general practice.	Insureds and “other persons.”	FS §626.9541(1)
Idaho	Single incident.	No reference to either 1 <sup>st</sup> or 3 <sup>rd</sup> party; insurer must perform reasonably and fairly.	
Indiana	Single incidents prohibited.	Different sections protect insureds, insureds and beneficiaries, and claimants. Insureds cannot be compelled to litigate.	Ind. Code §27-4-1-4.5, 6
Kentucky	Not specified. Commissioner has authority and discretion for all issues.	Commissioner authority and discretion	KRS 304.1, 304.12
Maryland	Single incidents and general business practices.		MD Code Ann., Ins. §§27.301-305; COMAR 31.15.07, 08.

Nebraska	Flagrantly and in conscious disregard, or a general business practice, with a statutory exception elsewhere in statutes for "victims of abuse" protection.	Claimants and insureds. May not compel "insureds and beneficiaries" to litigate.	Neb. Stat. 44-1539-1544.
Oregon	Single incidents prohibited. Unfair practices specified by administrative rule.	Acts are simply prohibited.. Any reference is to a "claimant."	ORS 746.075, 100, 110, 160, 240; OAR 836-080-0205 et seq
Pennsylvania	Commissioner has some discretion in isolated incidents, but by precedent an ongoing practice is generally required for enforcement action. Claims practice must be frequent enough to indicate business practice.	Some generically without reference to "claimant" or "insured," others specifically reference claimants, insureds, and beneficiaries.	40 PS §1171.1-15.
Rhode Island	Flagrant disregard of law or committed with such frequency. Enforcement action usually taken for patterns.	All claimants, first and third party.	RI §27-9.1
Tennessee	Statute does not specify, except unfair settlement practices which must be a general business practice.	Various sections refer to insured, claimant, or both, or are silent.	TCA 56-8-101 et seq.
Wisconsin	Single incidents prohibited.	The rule specifically promotes fair and equitable treatment of policyholders, claimants, and insurers. Compelling "insureds and claimants" to litigate prohibited.	§628.34 Wis.Stat.; Ins 6.11, Wis. Adm. Code