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- HB 559

• HB 559

Russell E. Van Hooser, Michigan; Hon. Samuel Van Pelt, Nebraska; Hon. Robert L. Clifford, New Jersey; Hon. Benjamin R. Schenck, New York; Hon. Kenneth E. DeShetler, Ohio; Hon. Herbert S. Drenenberg, Pennsylvania; Hon. John W. Lindsay, South Carolina.

AN ACT
RELATING TO UNFAIR METHODS OF COMPETITION AND
UNFAIR AND DECEPTIVE ACTS AND PRACTICES IN THE
BUSINESS OF INSURANCE*

SECTION 1 - DECLARATION OF PURPOSE.

The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress), by defining or providing for the determination of, all such practices in this state which constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined.

SECTION 2 - DEFINITIONS.

When used in this Act:

(a) "Person" shall mean any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyds insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers and adjusters. Person shall also mean medical service plans and hospital service plans as defined in Section . . . For purposes of this Act, medical and hospital service plans shall be deemed to be engaged in the business of insurance.

Drafting Note: This definition could also include dental, optometric, and other service plans. The enabling statutes of all service plans should also be amended to make them subject to this Act.

(b) ("Commissioner") shall mean the (Commissioner) of Insurance of this state.

(c) "Insurance policy" or "insurance contract" shall mean any contract of insurance, indemnity, medical or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any person

Drafting Note: Each state may wish to consider the advisability of defining "insurance" for purposes of this Act if its present insurance code is not satisfactory in this regard. In some cases a cross reference will be sufficient. "Service contract" is intended to cover the product issued by medical and hospital service plans and should be changed to conform to the laws of each state.

SECTION 3 - UNFAIR METHODS OF COMPETITION OR AND UNFAIR AND OR DECEPTIVE ACTS OR PRACTICES PROHIBITED.

No person shall engage in this state in any trade practice which is defined in this Act as, or determined pursuant to Section 7 of this Act to be, an unfair method of competition or an unfair or deceptive act or practice in the business of insurance.

SECTION 4 - UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES DEFINED.

The following are hereby defined as unfair methods of competition and unfair ~~and~~ or deceptive acts or practices in the business of insurance:

(1) MISREPRESENTATIONS AND FALSE ADVERTISING OF POLICY CONTRACTS INSURANCE POLICIES. Making, issuing, circulating, or causing to be made, issued or circulated, any estimate, illustrations, circular or statement, misrepresenting the terms of any policy issued or to be issued or the sales presentation, omission, or comparison which

*As adopted by the (B6) Subcommittee.

(a) misrepresents the benefits or, advantages promised, thereby, conditions, or terms of any insurance policy; or

(b) misrepresents the dividends or share of the surplus to be received thereon, on any insurance policy; or making

(c) makes any false or misleading statements as to the dividends or share of surplus previously paid on similar policies, any insurance policy; or making any

(d) is misleading representation or any is a misrepresentation as to the financial condition of any insurer person, or as to the legal reserve system upon which any life insurer operates; or using

(e) uses any name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof; or making any

(f) is a misrepresentation to any policyholder insured in any company for the purpose of inducing or tending to induce such policyholder to the lapse, forfeiture, exchange, conversion, or surrender his of any insurance policy; or

(g) is a misrepresentation for the purpose of effecting a pledge or assignment of or effecting a loan against any insurance policy; or

(h) misrepresents any insurance policy as being shares of stock.

(2) FALSE INFORMATION AND ADVERTISING GENERALLY. Making, publishing, disseminating, circulating or placing before the public, or causing directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in a newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter or poster or over any radio or television station, or in any other way, an advertisement, announcement or statement containing any assertion, representation or statement with respect to the business of insurance or with respect to any person in the conduct of his insurance business, which is untrue, deceptive or misleading.

(3) DEFAMATION. Making, publishing, disseminating, or circulating, directly or indirectly, or aiding, abetting or encouraging the making, publishing, disseminating or circulating of any oral or written statement or any pamphlet, circular, article or literature which is false or maliciously critical of or derogatory to the financial condition of an insurer any person and which is calculated to injure any such person engaged in the business of insurance.

(4) BOYCOTT, COERCION AND INTIMIDATION. Entering into any agreement to commit, or by any concerted action committing any act of boycott, coercion or intimidation resulting in or tending to result in reasonable restraint of, or monopoly in, the business of insurance.

(5) FALSE FINANCIAL STATEMENTS AND ENTRIES.

(a) Knowingly filing with any supervisory or other public official, or knowingly making, publishing, disseminating, circulating or delivering to any person, or placing before the public, or knowingly causing directly or indirectly, to be made, published, disseminated, circulated, delivered to any person, or placed before the public, any false material statement of fact as to the financial condition of an insurer a person with intent to deceive.

(b) Knowingly making any false entry of a material fact in any book, report or statement of any insurer with intent to deceive any agent or examiner lawfully appointed to examine into its condition or into any of its affairs, or any public official to whom such insurer is required by law to report, or who has authority by law to examine into its condition or into any of its affairs; or, with like intent, willfully person or knowingly omitting to make a true entry of any material fact pertaining to the business of such insurer person in any book, report or statement of such insurer person.

(6) STOCK OPERATIONS AND ADVISORY BOARD CONTRACTS. Issuing or delivering or permitting agents, officers or employees to issue or deliver, agency company stock or other capital stock, or benefit certificates or shares in any common law corporation, or securities or any special or advisory board contracts or other contracts of any kind

promising returns and profits as an inducement to insurance.

(7) UNFAIR DISCRIMINATION.

(a) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any contract of life insurance or of life annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such contract.

(b) Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees, or rates charged for any policy or contract of accident or health insurance or in the benefits payable thereunder, or in any of the terms or conditions of such contract, or in any other manner whatever.

Drafting Note: In the event that unfair discrimination in connection with accident and health coverage is treated in other statutes ~~the above section~~, this paragraph should be omitted.

(8) REBATES.

(a) Except as otherwise expressly provided by law, knowingly permitting or offering to make or making any contract of life insurance, life annuity or accident and health insurance, or agreement as to such contract other than as plainly expressed in the insurance contract issued thereon, or paying or allowing, or giving or offering to pay, allow, or give, directly or indirectly, as inducement to such insurance or annuity, any rebate of premiums payable on the contract, or any special favor or advantage in the dividends or other benefits thereon, or any valuable consideration or inducement whatever not specified in the contract, or giving, or selling, or purchasing or offering to give, sell, or purchase as inducement to such insurance contract or annuity or in connection therewith, any stocks, bonds, or other securities of any insurance company or other corporation, association, or partnership, or any dividends or profits accrued thereon, or anything of value whatsoever not specified in the contract.

(b) Nothing in clause (7) or paragraph (a) of clause (8) of this subsection shall be construed as including within the definition of discrimination or rebates any of the following practices:

(i) in the case of any contract of life insurance or life annuity, paying bonuses to policyholders or otherwise abating their premiums in whole or in part out of surplus accumulated from nonparticipating insurance, provided that any such bonuses or abatement of premiums shall be fair and equitable to policyholders and for the best interests of the company and its policyholders.

(ii) in the case of life insurance policies issued on the industrial debt plan, making allowance to policyholders who have continuously for a specified period made premium payments directly to an office of the insurer in an amount which fairly represents the saving in collection expenses.

(iii) refunding a portion of the rate of premium for a group insurance policy based on the loss or expense thereunder, or a portion of the first or any subsequent policy year of insurance thereunder, which may be made retroactive to the beginning of such policy year.

Drafting Note: Each state may wish to examine its rating laws to assure that they contain sufficient provision against rebating. If they do not, this section might be expanded to cover all lines of insurance.

(9) UNFAIR CLAIM SETTLEMENT PRACTICES

Committing or performing with such frequency as to indicate a general business practice any of the following:

(a) misrepresenting pertinent facts or insurance policy provisions relating to coverages at issue;

(b) failing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(c) failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(d) refusing to pay claims without conducting a reasonable investigation based upon all available information;

(e) failing to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(f) not attempting in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear;

(g) compelling insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(h) attempting to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

(i) attempting to settle claims on the basis of an application which was altered without notice to, or knowledge or consent of the insured;

(j) making claims payments to insureds or beneficiaries not accompanied by statement setting forth the coverage under which the payments are being made;

(k) making known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(l) delaying the investigation or payment of claims by requiring an insured, claimant, or the physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(m) failing to promptly settle claims, where liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage;

(n) failing 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.

(10) FAILURE TO MAINTAIN COMPLAINT HANDLING PROCEDURES. Failure of any person to maintain a complete record of all the complaints which it has received since the date of its last examination under S. . . This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of these complaints, and the time it took to process each complaint. For purposes of this Subsection, "complaint" shall mean any written communication primarily expressing a grievance.

Drafting Note: Each state may wish to consider exempting agents and brokers from this Subsection.

(11) MISREPRESENTATION IN INSURANCE APPLICATIONS. Making false or fraudulent statements or representations on or relative to an application for an insurance policy, for the purpose of obtaining a fee, commission, money, or other benefit from any insurers, agent, broker, or individual.

(9) (12) Any violation of any one of Section . . .

Drafting Note: Insert section numbers of any other sections of the Insurance Law which it is deemed desirable or necessary to include as an unfair trade practice

SECTION 5. FAVORED AGENT OR INSURER; COERCION OF DEBTORS.

(a) No person may (i) require, as a condition precedent to the lending of money or extension of credit, or any renewal thereof, that the person to whom such money or credit is extended or whose obligation the creditor is to acquire or finance, negotiate any policy or contract of insurance through a particular insurer or group of insurers or agent or broker or group of agents or brokers;

(ii) unreasonably disapprove the insurance policy provided by a borrower for the protection of the property securing the credit or lien; or

(iii) require directly or indirectly that any borrower, mortgagor, purchaser, insurer, broker, or agent pay a separate charge, in connection with the handling of any insurance policy required as security for a loan on real estate, or pay a separate charge to substitute the insurance policy of one insurer for that of another.

(iv) use or disclose information resulting from a requirement that a borrower, mortgagor or purchaser furnish insurance of any kind on real property being conveyed or used as collateral security to a loan, when such information is to the advantage of the mortgagee, vendor or lender, or is to the detriment of the borrower, mortgagor, purchaser, insurer, or the agent or broker complying with such a requirement.

(b) (i) Paragraph (a)(i) does not include the interest which may be charged on premium loans or premium advancements in accordance with the security instrument;

(ii) For purposes of par. (a)(ii), such disapproval shall be deemed unreasonable if it is not based solely on reasonable standards uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards shall not discriminate against any particular type of insurer, nor shall such standards call for the disapproval of an insurance policy because such policy contains coverage in addition to that required.

(iii) The (Commissioner) may investigate the affairs of any person to whom this subsection applies to determine whether such person has violated this subsection. If a violation of this subsection is found, the person in violation shall be subject to the same procedures and penalties as are applicable to other provisions of this Act.

(iv) For purposes of this section, "person" includes any individual, corporation, association, partnership, or other legal entity.

SECTION 5-6 - POWER OF COMMISSIONER.

The (Commissioner) shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by Section 3 of this Act.

SECTION 6-7 - DEFINED AND UNDEFINED PRACTICES HEARINGS, WITNESSES, APPEARANCES, PRODUCTION OF BOOKS AND SERVICE OF PROCESS.

(a) Whenever the (Commissioner) shall have reason to believe that any such person has been engaged or is engaging in this state in any unfair method of competition or any unfair or deceptive act or practice whether or not defined in Section 4 or 5, and that a proceeding by him in respect thereto would be to the interest of the public, he shall issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than ----- days after the date of the service thereof.

(b) At the time and place fixed for such hearing, such person shall have an opportunity to be heard and to show cause why an order should not be made by the (Commissioner) requiring such person to cease and desist from the acts, methods or practices so complained of. Upon good cause shown, the (Commissioner) shall permit any person to intervene, appear and be heard at such hearing by counsel or in person.

(c) Nothing contained in this Act shall require the observance at any such hearing of formal rules of pleading or evidence.

(d) The (Commissioner), upon such hearing, may administer oaths, examine and cross examine witnesses, receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance, and require the production of books, papers, records, correspondence, or other documents which he deems relevant to the inquiry. The (Commissioner), upon such hearing, may, and upon the request of any party shall, cause to be made a stenographic record of all the evidence and all the proceedings had at such hearing. If no stenographic record is made and if a judicial review is sought, the (Commissioner) shall prepare a statement of the evidence and proceeding for use on review. In case of a refusal of any person to comply with any subpoena issued hereunder or to testify with respect to any matter concerning which he may be lawfully interrogated, the court of county or the county where such party resides, on application of the (Commissioner), may issue an order requiring such person to comply with such subpoena and to testify; and any failure to obey any such order of the court may be punished by the court as a contempt thereof.

(e) Statements of charges, notices, orders, and other processes of the (Commissioner) under this Act may be served by anyone duly authorized by the (Commissioner), either in the manner provided by law for service of process in civil actions, or by registering and mailing a copy thereof to the person affected by such statement, notice, order, or other process at his or its residence or principal office or place of business. The verified return by the person so serving such statement, notice, order, or other process, setting forth the manner of such service, shall be proof of the same, and the return postcard receipt for such statement, notice, order or other process, registered and mailed as aforesaid, shall be proof of the service of the same.

SECTION 7-8 CEASE AND DESIST AND PENALTY ORDERS AND MODIFICATIONS THEREOF.

(a) If, after such hearing, the (Commissioner) shall determine that the person charged has engaged in an unfair method of competition ~~or the act or practice in question is defined in section 4 and that the person complained of has engaged in such method of competition, act or practice in violation of this act, or on unfair or deceptive act or practice~~ he shall reduce his findings to writing and shall issue and cause to be served upon the person charged with the violation a copy of such findings and an order requiring such person to cease and desist from engaging in such method of competition, act or practice and if the act or practice is a violation of Sections 4 or 5, the (Commissioner) may at his discretion order any one or more of the following:

(A) payment of a monetary penalty of not more than \$1000 for each and every act or violation but not to exceed an aggregate penalty of \$10,000* unless the person knew or reasonably should have known he was in violation of this Act, in which case the penalty shall be not more than \$5000 for each and every act or violation but not to exceed an aggregate penalty of \$50,000 in any six month period.*

(B) suspension or revocation of the person's license if he knew or reasonably should have known he was in violation of this Act, or

(C) such other relief as is reasonable and appropriate.**

(b) Until the expiration of the time allowed under section 9 of this Act for filing a petition for review (by appeal or writ of certiorari) if no petition has been duly filed within such time or, if a petition for review has been filed within such time, then until the transcript of the record in the proceeding has been filed in the court, as hereinafter provided, the (Commissioner) may at any time, upon such notice and in such manner as he shall deem proper, modify or set aside in whole or in part any order issued by him under this section.

(c) After the expiration of the time allowed for filing such a petition for review if no such petition has been duly filed within such time, the (Commissioner) may at any time, after notice and opportunity for hearing, reopen and alter, modify or set aside, in whole or in part, any order issued by him under this section, whenever in his opinion conditions of fact or of law have so changed as to require such action or if the public interest shall so require.

SECTION 8-9 JUDICIAL REVIEW OF CEASE AND DESIST ORDERS.

* Material in italics added by the Laws, Legislation and Regulation (B) Committee.

** This paragraph was deleted by the Law, Legislation and Regulation (B) Committee.

Any person ~~required by~~ subject to an order of the (Commissioner) under section 8 ~~to cease and desist from engaging in any unfair method of competition or any unfair or deceptive act or practice defined in section 4 or Section 11~~ may obtain a review of such order by filing in the _____ court of _____ county, within _____ days from the date of the service of such order, a written petition praying that the order of the (Commissioner) be set aside. A copy of such petition shall be forthwith served upon the (Commissioner), and thereupon the (Commissioner) forthwith shall verify and file in such court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order of the (Commissioner). Upon such filing of the petition and transcript such court shall have jurisdiction of the proceeding and of the question determined therein, shall determine whether the filing of such petition shall operate as a stay of such order of the (Commissioner), and shall have power to make and enter upon the pleadings, evidence, and proceedings set forth in such transcript a decree modifying, affirming or reversing the order of the (Commissioner), in whole or in part. The findings of the (Commissioner) as to the facts, if supported by _____ evidence, shall be conclusive.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the Commissioner's determination

(b) To the extent that the order of the (Commissioner) is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of such order of the (Commissioner). If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the (Commissioner), the court may order such additional evidence to be taken before the (Commissioner) and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The (Commissioner), may modify his findings of fact, or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings which if supported by _____ evidence shall be conclusive, and his recommendation if any, for the modification or setting aside of his original order, with the return of such additional evidence.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the Commissioner's determination. In a state where the final judgment, order or decree would not be subject to review by an appellate court provision therefor should be here inserted.

(c) A cease and desist an order issued by the (Commissioner) under section 8 shall become final

- (1) Upon the expiration of the time allowed for filing a petition for review if no such petition has been duly filed within such time, except that the (Commissioner) may thereafter modify or set aside his order to the extent provided in section 8 (b); or
- (2) Upon the final decision of the court if the court directs that the order of the (Commissioner) be affirmed or the petition for review dismissed.

(d) No order of the (Commissioner) under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order from any liability under any other laws of this state.

SECTION 9 - PROCEDURES AS TO UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS OR PRACTICES WHICH ARE NOT DENIED.

(a) Whenever the (Commissioner) shall have reason to believe that any person engaged in the business of insurance is engaging in this state in any method of competition or in any act or practice in the conduct of such business which is not defined in section 4, that such method of competition is unfair or that such act or practice is unfair or deceptive and that a proceeding by him in respect thereto would be in the interest of the public; he may issue and serve upon such person a statement of the charges in that respect and a notice of a hearing thereon to be held at a time and place fixed in the notice, which shall not be less than _____ days after the date of service thereof. Each such hearing shall be conducted in the same manner as the hearings provided for in section 6. The (Commissioner) shall, after such hearing, make a report in writing in which he shall state his findings as to the facts; and he shall serve a copy thereof upon such person:

(b) If such report charges a violation of this Act and if such method of competition, act or practice has not been discontinued, the (Commissioner) may, through the Attorney General of this state, at any time after _____ days after the service of such report cause a petition to be filed in the _____ court of this state within the district wherein the person resides or has his principal place of business, to enjoin and restrain such persons from engaging in such method, act or practice. The court shall have jurisdiction of the proceeding and shall have power to make and enter appropriate orders in

connection therewith and to issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public pending litigation.

~~(c) A transcript of the proceedings before the (Commissioner) including all evidence taken and the report and findings shall be filed with such petition. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and there were reasonable grounds for the failure to adduce such evidence in the proceedings before the (Commissioner) the court may order such additional evidence to be taken before the (Commissioner) and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The (Commissioner) may modify his findings of fact or make new findings by reason of the additional evidence so taken, and he shall file such modified or new findings with the return of such additional evidence.~~

~~(d) If the court finds that the method of competition complained of is unfair or that the act or practice complained of is unfair or deceptive, that the proceeding by the (Commissioner) with respect thereto is to the interest of the public and that the findings of the (Commissioner) are supported by the weight of the evidence, it shall issue its order enjoining and restraining the continuance of such method of competition, act or practice.~~

SECTION 10- JUDICIAL REVIEW BY INTERVENOR.

If after any hearing under Section 7 or Section 11, the report of the (Commissioner) does not charge a violation of this Act, then any intervenor in the proceedings may within _____ days after the service of such report, cause a petition (notice of appeal) (petition for writ of certiorari) to be filed in the _____ court of _____ county for a review of such report. Upon such review, the court shall have authority to issue appropriate orders and decrees in connection therewith, including, if the court finds that it is to the interest of the public, orders enjoining and restraining the continuance of any method of competition, act or practice which it finds, notwithstanding such report of the (Commissioner), constitutes a violation of this Act and containing penalties pursuant to Section 8.

Drafting Note: The type of procedure should conform to state procedure. See also note to Section 9 concerning review by appellate courts.

SECTION 11- PENALTY FOR VIOLATION OF CEASE AND DESIST ORDERS.

Any person who violates a cease and desist order of the (Commissioner) under section 8, ~~after it has become final, and while such order is in effect, shall, upon proof thereof to the satisfaction of the court, forfeit and pay to the State of _____ a sum not to exceed \$50, which may be recovered in a civil action, except that, if such violation is found to be willful, the amount of such penalty shall be a sum not to exceed \$500; may after notice and hearing and upon order of the (Commissioner) be subject at the discretion of the (Commissioner) to any one or more of the following:~~

- (a) a monetary penalty of not more than \$10,000 for each and every act or violation; or
- (b) suspension or revocation of such person's license; or
- (c) such other relief as is reasonable and appropriate.*

SECTION 12- REGULATIONS.

The (Commissioner) may, after notice and hearing, promulgate reasonable rules and regulations, as are necessary or proper to identify specific methods of competition or acts or practices which are prohibited by Sections 4 or 5, but the regulations shall not enlarge upon or extend the provisions of Sections 4 and 5. Such regulations shall be subject to review in accordance with Section _____.

Drafting Note: Insert section number providing for review of administrative orders.

*This paragraph was deleted by the Laws, Legislation and Regulation (B) Committee.

**SECTION 12 13- PROVISIONS OF ACT ADDITIONAL TO EXISTING
LAW.**

The powers vested in the (Commissioner) by this Act, shall be additional to any other powers to enforce any penalties, fines or forfeitures authorized by law with respect to the methods, acts and practices hereby declared to be unfair or deceptive.

SECTION 14- IMMUNITY FROM PROSECUTION.

If any person shall ask to be excused from attending and testifying or from producing any books, papers, records, correspondence or other documents at any hearing on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture, and shall notwithstanding be directed to give such testimony or produce such evidence, he must none the less comply with such direction, but he shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter or thing concerning which he may testify or produce evidence thereto, and no testimony so given or evidence produced shall be received against him upon any criminal action, investigation or proceeding, provided, however, that no such individual so testifying shall be exempt from prosecution or punishment for any perjury committed by him while so testifying and the testimony or evidence so given or produced shall be admissible against him upon any criminal action, investigation or proceeding concerning such perjury, nor shall he be exempt from the refusal, revocation or suspension of any license, permission or authority conferred, or to be conferred, pursuant to the Insurance Law of this state. Any such individual may execute, acknowledge and file in the office of the (Commissioner) a statement expressly waiving such immunity or privilege in respect to any transaction, matter or thing specified in such statement and thereupon the testimony of such person or such evidence in relation to such transaction, matter or thing may be received or produced before any judge or justice, court, tribunal, grand jury or otherwise, and if so received or produced such individual shall not be entitled to any immunity or privilege on account of any testimony he may so give or evidence so produced.

SECTION 15- SEPARABILITY PROVISION.

If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of such provision to person or circumstances other than those as to which it is held invalid, shall not be affected thereby.

**REPORT OF THE INDUSTRY ADVISORY COMMITTEE
TO THE NAIC B-6 SUBCOMMITTEE TO REVIEW
THE MODEL UNFAIR TRADE PRACTICES ACT
NOVEMBER 29, 1971**

I. Report of Activities Since June NAIC Meeting.

At the June, 1971 meeting, the B-6 Subcommittee received the First Report of the Industry Advisory Committee and directed that Committee to prepare a draft of a revised Model Unfair Trade Practices Act incorporating a number of the recommendations of the Industry Advisory Committee and a number of items recommended by the B-6 Subcommittee. In addition, the report stated that a task force of the B-6 Subcommittee would be appointed "whose activities will be parallel to and in conjunction with the Industry Advisory Committee."

Pursuant to the directions it received, task forces of the Industry Advisory Committee worked through the summer months on these revisions. The first draft of a revised Model Bill was submitted to the B-6 Subcommittee under date of September 3rd. At subsequent meetings the Industry Advisory Committee made further refinements to its draft. On September 23, 1971 the Industry Advisory Committee met with the B-6 Subcommittee in Detroit. A draft bill prepared by the Task Force of the B-6 Subcommittee was submitted at that meeting. That draft went considerably beyond the directions given to the Industry Advisory Committee. Since the Industry Advisory Committee had insufficient opportunity to review and comment on that draft, the B-6 Subcommittee determined that the better course of procedure would be to meet again in November at which time the Industry Advisory Committee was to present its comments on the Task Force draft.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

POUCH D - JUNEAU 99801

JAY S. HAMMOND, Governor

February 27, 1976

Alaska State House of Representatives
Judiciary Committee
In Session
Juneau, Alaska

Attention: The Honorable Terry Gardner, Chairman

Dear Representatives:

Re: House Bill 558

I am in receipt of a copy of a letter from the American Mutual Insurance Alliance requesting an amendment to House Bill 558, the effect of which is to disable the Division of Insurance from acting effectively with respect to reported or detected unfair trade activities, particularly with respect to claim handling unless the Unfair Acts are "committed with such frequency as to indicate a general business practice."

Indeed, as their attorney, Mr. Van Dort, points out, the language that he recommends is the language adopted by the N.A.I.C. after much compromising with industry representatives at the N.A.I.C. meetings at which the model bill was considered.

As a matter of fact, in the State of Alaska, I am led to believe there is wide-spread claim abuse and yet an unusually small representative sampling of these claims are reported to the Division of Insurance. The Division should have authority to act even with respect to an individual case of unfair trade practice.

It is true that the occasional mistake by a claim adjustor should not submit a carrier to unusually large penalties. I do submit that the unusually large penalties provided for in proposed section 21.36.320 were intended for deterrence of the general practice of unfair claims handling. I would therefore propose the following amendment which I believe will satisfy the problem of the carriers without disabling the the ability of the Division of Insurance from acting effectively when a single case is reported.

21.36.320 (d) "In addition to an order issued under (c) of this section, the Director may also order a penalty of not more than ~~[\$10,000.00]~~ \$1,000.00 for each act or \$10,000.00 for engaging in a general business practice in violation of this chapter."

(e) "If the person charged knew or should have known he was in violation of this chapter, a penalty in addition to that prescribed in (d) of this section, of not more than ~~[\$5,000.00]~~ \$1,000.00 for each act or \$25,000.00 for engaging in the general business practice in violation of this chapter, or suspension or revocation of the person's license, or both, may also be ordered by the Director."

Yours cordially,

A handwritten signature in cursive script, appearing to read "Richard L. Block", with a horizontal line extending to the right.

Richard L. Block
Director

file with members



State Farm Mutual Automobile Insurance Company

JOHN S. GLASCOCK
Northwest Office
4600 25th Avenue
Salem, Oregon
97313

February 6, 1976

Representative Terry Gardiner
Chairman, House Judiciary Committee
Room 124, Capitol
Juneau, Alaska

Dear Mr. Gardiner:

Re: House Bill 558

"An Act relating to the Regulation of Insurance Practices"

This bill is an attempt to introduce the model N.A.I.C. Act relating to unfair methods of competition and unfair and deceptive acts and practices in the business of insurance. For your information, I am attaching a copy of the Model Act.

State Farm Insurance Companies have been actively serving on the industry advisory committee developing the language of the model act. In the form of the attached model act, we feel such a statute has considerable merit.

We have some question about the language in section 21.36.125, lines 6 and 7 of HB 558. The model act was clearly intended to be a regulation of insureds who are engaging in these specified acts as a matter of business practice. There was no intent to deal with these acts in the singular, i.e., refusing to pay "a" claim without a reasonable investigation. This section is not limited to automobile claims but to all claims.

We recommend that section 21.36.125 lines 6 and 7 be amended as follows:

"No person shall commit or perform with such frequency as to indicate a business practices any of the following."

Without this language a company or an agent or a claim adjuster could be fined up to \$10,000.00 for a single act or practice in violation of the chapter. The problems with this are immediately apparent since the Act would mandate perfection in every single act or practice as opposed to properly controlling acts or practices performed with such frequency as to indicate a general business practice. The ultimate price of such mandated perfection could well be to significantly increase the administrative cost of doing business and thereby increase rates for policyowners in Alaska.

I will be happy to discuss this with you in more detail if you wish. My Salem, Oregon phone number is 1-503-393-0101, ext. 250.

Very truly yours,

John S. Glascock HOME OFFICE: BLOOMINGTON, ILLINOIS 61701
JSG:mea

file with members

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY
ATTORNEYS AT LAW

R. E. ROBERTSON (1885-1961)
F. O. EASTAUGH
J. B. BRADLEY
W. G. RUDDY
L. B. JACOBSON
R. B. BAKER (ANCHORAGE)
M. T. THOMAS
L. J. BARKER (ANCHORAGE)
J. F. CLARK
P. M. HOFFMAN
J. P. TANGEN
A. G. DODGE (ANCHORAGE)

200 NATIONAL BANK OF ALASKA BUILDING

PHONE (907) 586-3340

CABLE: ROMEA

TELEX: 099-45-376

P. O. BOX 1211

JUNEAU, ALASKA 99802

ANCHORAGE OFFICE

SUITE 310, ALASKA MUTUAL SAVINGS
BANK BUILDING
P. O. BOX 679
ANCHORAGE, ALASKA 99510
PHONE (907) 277-6693
TELEX: 090-26-486

PLEASE REPLY TO

JUNEAU OFFICE

ANCHORAGE OFFICE

OF COUNSEL
M. E. MONAGLE

A PROFESSIONAL CORPORATION

January 28, 1976

Honorable Terry Gardiner
Chairman
House Judiciary Committee
Room 124, State Capitol Building
Juneau, Alaska

Re: House Bill 558

Dear Representative Gardiner:

On behalf of the American Life Insurance Association, I am writing to advise you of the Association's position regarding the above legislation. The following amended language is suggested in order to bring the appropriate sections of the bill into conformity with the 1971 Commissioners' Model Fair Trade Practices, found in the 1972 NAIC Proceedings at pages 444, 495, 498, A513 and 515.

Sec. 21.36.125, page 4, introductory language to be amended as follows:

Sec. 21.36.125. UNFAIR CLAIM SETTLEMENT PRACTICES. No person may commit or perform with such frequency as to indicate a general business practice any of the following acts or practices:

The reasoning behind the suggested rewording being that it is felt some allowance should be made for innocent violations.

Representative Terry Gardiner
Re: House Bill 558
January 28, 1976
Page 2

Sec. 21.36.320(d), page 7, to be amended as follows:

Reduction of proposed penalty to \$1,000 and addition of "but not to exceed an aggregate penalty of \$10,000."

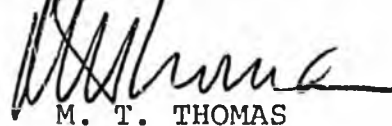
Sec. 21.36.320(e), page 7, to be amended as follows:

Reduction of proposed additional penalty to \$4,000 and addition of "but not to exceed an aggregate penalty of \$50,000, in any six month period."

The basis for the proposed penalty changes is that a fine of an astronomical amount for one advertisement could literally put a small company out of business.

We would appreciate your careful consideration of the suggested amending language. If you should need additional information or I could be of further assistance regarding the subject legislation, please contact me.

Very truly yours,



M. T. THOMAS

MTT:kh

LAW OFFICES OF
FAULKNER, BANFIELD, DOOGAN & HOLMES
SUITE 201, 311 FRANKLIN STREET
JUNEAU, ALASKA 99801

HERBERT L. FAULKNER (1882-1972)
NORMAN C. BANFIELD
FRANK M. DOOGAN
MICHAEL M. HOLMES
RANDALL J. WEDDLE
WILLIAM E. ROZELL

JAN VAN DORT
LAWRENCE T. FEENEY
CHARLES N. DRENNAN
PATRICK E. MURPHY
TOM BATCHELOR

TEL. 586-2210
AREA CODE 907

February 23, 1976

The Honorable Terry Gardiner
Chairman, House Judiciary Committee
State Capitol
Pouch V
Juneau, Alaska 99811

Re: House Bill No. 558

Dear Chairman Gardiner:

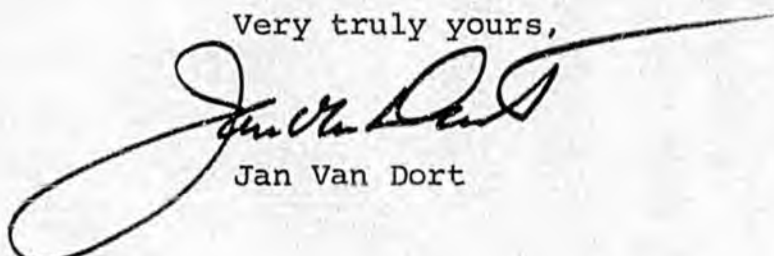
The American Mutual Insurance Alliance has asked me to write to you to request that proposed Section 21.36.125 be amended to read as follows:

A person shall be guilty of an unfair claims settlement practice if any of the following are committed with such frequency as to indicate a general business practice. . . .

This amendment incorporates the approach taken in the NAIC model bill.

I am taking the liberty of sending a copy of this letter to Mr. Richard Block, the Director of the Division of Insurance.

Very truly yours,



Jan Van Dort

JVD/amz

cc: Richard Block
Thomas F. Conneely
Paul A. Green

file with members

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

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200 NATIONAL BANK OF ALASKA BUILDING

PHONE (907) 586-3340

CABLE:ROMEAL

TELEX:099-45-376

P. O. BOX 1211

JUNEAU, ALASKA 99802

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M. E. MONAGLE

A PROFESSIONAL CORPORATION

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House Judiciary Committee
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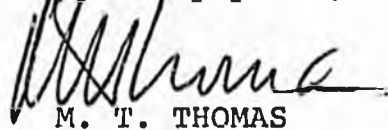
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Very truly yours,



M. T. THOMAS

MTT:kh

H B

559

559

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE POUCH D -- JUNEAU 99811

January 23, 1976

The House of Representatives
Commerce Committee
In Session
Juneau, Alaska

Dear Ladies and Gentlemen:

Re: House Bill 559

I will be pleased to discuss with you, on Monday, January 26th, an act relating to insurance filing review periods and insurance deviations.

Under current law we have fifteen days to approve or disapprove a rate filing made by a carrier and we may, by writing a letter containing certain specific language, obtain an additional fifteen days in which to approve or disapprove that rate.

The amendment proposed in House Bill 559 would extend both the primary period and the extended period from fifteen days to thirty days. The amendment will also permit the Division to approve for use a rate filing without waiting for the expiration of an approval period. The amendment also eliminates the necessity of putting unnecessary language in the notice of the Division that the time for approval is being extended.

150-200
a day week

Finally there is a more substantive change which will allow the Division to approve deviation and rate filings in a manner other than a uniform percentage deviation.

Under current law a carrier may deviate from a bureau filing in a flat percentage upwards or downwards. Suppose the Insurance Service Office, the rating bureau for automobile insurance rates for the majority of carriers in this state, made a rate filing for all the various locations in the state, class codes, automobile descriptions, and driver ages, and that rate filing is approved by the Division. A carrier desires to market a program in this state and charge rates other than those approved for the I.S.O.

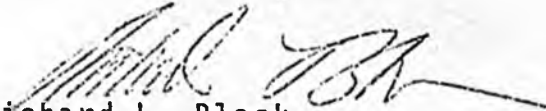
People who don't belong to bureau can
do this - this make rate bureau insurers
equal

January 23, 1976

Under current law we have authority to approve only a flat percentage increase or decrease in the total rate scale promulgated by the I.S.O.. Under the proposed amendment we would be authorized to do that but also to approve an entirely different rating scheme or a rating scheme where some rates are higher than bureau and some rates are lower than bureau.

It is believed by the Division that this will enable the carriers to market more strongly in this state and thus improve the market for insurance in a variety of lines.

Yours Cordially,



Richard L. Block
Director

The Honorable Mike Bradner
Speaker of the House
Alaska State Legislature
Juneau, Alaska 99811

Dear Mr. Speaker:

In accordance with AS 24.30.060(b) and the Uniform Rules of the Alaska State Legislature, I am transmitting a bill to accomplish two goals: (1) change the period for evaluation of insurance rate filings, and (2) modify the restrictions on deviations in insurance rate structures.

Section 1 of the bill revises the rate filing review period. Under the present Alaska insurance rate law, AS 21.39.040(d) the Division of Insurance has 15 days to review a rate filing; this period may be extended for an additional 15 days. This procedure presents a hardship when the Division is faced with a complex rate filing, especially if other equally important matters are concurrently pressing. If, for example, the rate analyst is absent from the office for more than a week, the additional 15 days must be invoked to allow analysis of the filing. We propose that this period be revised to 30 days which may be extended for an additional 30 days.

The present law also requires that if the Director of the Division extends the review time for an additional period, he must not only give notice of the extension but must also make a statement that he needs the extension. This latter is duplicative and unnecessary, and we propose its deletion.

Finally, the statute presently permits the Director of the Division of Insurance to approve a filing before expiration of the waiting period upon written application of the insurer or rating organization. A number of rate filings are simple ones, requiring little time to review and arrive at a decision as to its use in Alaska. The statute now requires that all filings be held for the full waiting period. In section 1, we also propose that the Director, upon his own initiative, be empowered to waive that period. This change will avoid the need to maintain a pending file for filings that have been reviewed and are merely awaiting expiration of the waiting period so they can be approved.

Section 2 of the bill provides for the introduction of some flexibility into the insurance rate structure. The State of Alaska is presently operating under an insurance rate law based upon a model adopted by the National Association of Insurance Commissioners in 1946.

Our review of this rate law indicates that the primary deterrent to a competitive rate situation is the adherence provision found in AS 21.39.070(a). This provision is unduly restrictive in allowing only uniform percentage deviations from rating bureau filed rates. For example, an insurer writing automobile insurance under a bureau filing could not deviate for a particular kind of vehicle, such as a vehicle used for hauling fuel, without similarly deviating for all commercial vehicles. This restriction results in either non-acceptance of the deviation for vehicles used for hauling fuel or a rate that is disproportionate to the actual risk exposure. A competitive atmosphere is best served by allowing greater latitude in this area. By removing the portion of the adherence provision allowing only uniform percentage deviations, we can substantially modify the current situation in a way which will enable greater competition in rating.

This bill would encourage a greater divergence of rates; that should result in more and better options for the purchaser of insurance in Alaska.

Sincerely,

Jay S. Hammond
Governor

Introduced: 1/14/76
Referred: Commerce

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2 HOUSE BILL NO. 559

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 NINTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurance filing review periods;
7 insurance rate deviations."

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

9 * Section 1. AS 21.39.040(d) is amended to read:

10 (d) Subject to the exception specified in (e) of this section,
11 each filing shall be on file for a waiting period of 30 [15] days
12 before it becomes effective, which period may be extended by the
13 director for an additional period not to exceed 30 [15] days if he
14 gives written notice within the waiting period to the insurer or
15 rating organization which made the filing [STATING THAT HE NEEDS
16 ADDITIONAL TIME FOR THE CONSIDERATION OF THE FILING]. Upon written
17 application by the insurer or rating organization, or upon his own
18 initiative, the director may authorize a filing which he has reviewed
19 to become effective before the expiration of the waiting period. A
20 filing shall be considered to meet the requirements of this chapter
21 unless disapproved by the director within the waiting period.

22 * Sec. 2. AS 21.39.070(a) is amended to read:

23 (a) Each member of or subscriber to a rating organization shall
24 adhere to the filings made on its behalf by the organization except
25 that an insurer may make written application to the director to file
26 a deviation [, WHICH IN THE CASE OF CASUALTY INSURANCE MAY ONLY BE A
27 UNIFORM PERCENTAGE DEVIATION,] from the class rates, schedules,
28 rating plans or rules respecting a kind of insurance, or class
29 of risk within a kind of insurance, or combination thereof. The

*more
time*

*no waiting
period
after
approval*

1 application shall specify the basis for the modification and a copy
2 shall also be sent simultaneously to the rating organization. In
3 considering the application to file the deviation the director shall
4 give consideration to the available statistics and the principles for
5 rate making as provided in sec. 30 of this chapter. The director
6 shall issue an order permitting the deviation for the insurer to be
7 filed if he finds that it is justified and it shall become effective.
8 He shall issue an order denying the application if he finds that the
9 deviation applied for does not meet the requirements of this chapter.

STATE OF ALASKA

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE POUCH D — JUNEAU 99811

January 23, 1976

The House of Representatives
Commerce Committee
In Session
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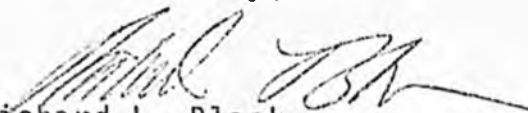
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Richard L. Block
Director