



LAWS OF ALASKA

1978

Source

CSHB 667 am S

Chapter No.

170

AN ACT

Relating to insurance premium financing.

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

* Section 1. AS 06 is amended by adding a new chapter to read:

CHAPTER 40. PREMIUM FINANCING ACT.

Sec. 06.40.010. LICENSE REQUIRED. Except as provided in sec. 20 of this chapter, no person may engage in the business of entering into premium finance agreements on insurance sold in this state or risks located in this state, either directly or indirectly, or otherwise act as a premium finance company in this state without being licensed by the department.

Sec. 06.40.020. APPLICABILITY. This chapter does not apply to

(1) any insurer authorized to transact business in this state with respect to premiums on policies which the insurer issues;

(2) any bank, trust company, savings association, or other financial institution subject to the other chapters of this title and authorized to transact business in this state that does not possess or acquire any right, title or interest with respect to the insurance policy for which the premiums are financed other than in the proceeds of it in the event of loss;

(3) the inclusion of a charge for insurance in connection with an installment sale in accordance with AS 45.10; and

(4) persons licensed under AS 21.27 financing only their own accounts if they are in compliance with AS 21.36.122.

Sec. 06.40.030. BOND. (a) The applicant shall file with the application a bond to be approved by the department in which the applicant shall be the obligor, in the sum of \$5,000 with one or more sureties. The bond shall be for the use of the state and any person who may have a cause of action against the obligor under this chapter. The bond shall state that the obligor will faithfully conform to and abide by the provisions of this chapter and of all regulations lawfully made by the department, and will pay to the state and to any person all money that may become due or owing to the state or to the person from the applicant under this chapter. The aggregate liability of the surety for all breaches of the bond condition may not exceed the penal sum of the bond, and the bond may be cancelled by the surety on 30 days notice to the commissioner.

(b) If at any time the commissioner finds that the bond is unsatisfactory for any reason, he may require the licensee to file, within 10 days after the receipt of a written demand for it, an additional bond complying with the provisions of (a) of this section.

Sec. 06.40.040. ANNUAL LICENSE FEE. On or before December 20 of each year, each licensee shall pay a fee of \$200 to the department as an annual license fee for the next succeeding calendar year. At that same time the licensee shall file with the department a new bond which complies with sec. 30 of this chapter.

Sec. 06.40.050. APPLICATION FOR LICENSE; FEE. (a) Application for a license under this chapter shall be in writing and in the form prescribed by the department.

(b) All reasonable investigation expenses incurred by the department in processing an application for approval of a proposed premium finance company shall be charged to and paid by the applicant in accordance with this title. At the time of submitting the application to the department, the applicant shall pay to the department \$500 in partial payment of the investigation expenses incurred by the department. If the investigation expenses incurred by the department do not exceed \$500, the remainder shall be promptly refunded to the applicant.

(c) The person to whom the license may be or is issued shall file sworn answers to interrogatories required by the commissioner. The commissioner shall have authority, at any time, to require the licensee fully to disclose the identity of all directors, partners, officers and managerial employees, and he may, in his discretion, refuse to issue or continue a license in the name of any firm or corporation if he determines that any officer, employee, stockholder or partner of the firm or corporation who may materially influence the licensee's conduct does not meet the requirements of this chapter.

(d) All premium finance licenses shall continue in force until suspended or revoked, subject to the payment by

the licensee of the annual license fee and to the licensee being in compliance with other provisions of this chapter.

Sec. 06.40.060. PLACE OF BUSINESS. (a) A licensee may maintain only one place of business under his license. The department may issue more than one license to the same licensee upon application and compliance by the licensee with the provisions of this chapter governing the original issuance of a license.

(b) Whenever a licensee changes his place of business to another location, he shall give written notice to the department. The department shall attach the written notice of the change to the license together with the date. Thereafter, the licensee may operate the business under the license at the new location.

Sec. 06.40.070. INVESTIGATION: QUALIFICATIONS FOR LICENSE. (a) Upon the filing of an application and payment of the investigation fee specified in sec. 50(b) of this chapter, the commissioner shall conduct an investigation of an applicant and shall issue a premium finance company license if the applicant meets the requirements of this chapter. If the commissioner does not so find, he shall, within 30 days after he has received the application, at the request of the applicant, give the applicant a full hearing.

(b) The commissioner shall issue a license to an applicant when he is satisfied that the applicant

(1) is competent and trustworthy and intends to act in good faith in the capacity involved by the license applied for;

(2) has a good business reputation and has had experience, training, or education so as to be qualified in the business for which the license is applied; and

(3) if a corporation, is a corporation incorporated under the laws of this state or a foreign corporation authorized to transact business in this state.

Sec. 06.40.080. REVOCATION AND SUSPENSION OF LICENSE. The commissioner may revoke or suspend the license of any licensee when, upon completion of an investigation, the commissioner determines that

(1) the license issued to the company was obtained by fraud;

(2) there was misrepresentation in the application for the license;

(3) the holder of the license has otherwise shown himself untrustworthy or incompetent to act as a premium finance company; or

(4) the licensee has violated any of the provisions of this chapter.

Sec. 06.40.090. ADVERTISING OF MISLEADING STATEMENTS PROHIBITED; DISCLOSURE OF INTEREST. (a) No person may

advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed, or broadcast, in any manner, any statement or representation with regard to the rates, terms, or conditions for the lending of money, credit, goods, or things in action which is false, misleading, or deceptive.

(b) The licensee or lender shall state the interest rate charged in a premium finance agreement fully and clearly as an annual percentage rate.

Sec. 06.40.100. RECORD KEEPING; EXAMINATION OF RECORDS. (a) Every licensee shall maintain records of its premium finance transactions, including the insurance agents through which the licensee provides loans to residents of this state and the records shall be open to examination and investigation by the commissioner at the office of the licensee. All records pertaining to insurance contracts financed by Alaska residents shall be maintained or readily available in the licensee's office. The commissioner may, at any reasonable time, require the licensee to bring records pertaining to premium finance agreements to his office for examination. The expenses incurred by the department in conducting an examination shall be charged to and paid by the licensee in accordance with this title.

(b) Every licensee shall preserve its records of premium finance transactions, including cards used in a card system, for at least three years after making the final entry relating to any premium finance agreement. The preservation of records in photographic form constitutes compliance with this requirement.

(c) Each licensee shall, on or before March 15 of each year, file a report with the department containing information as the department may reasonably require concerning the business and operations during the preceding calendar year of each licensed place of business conducted by the licensee. The report shall be made under oath, shall be in the form prescribed by the department, and shall be kept available as a public record.

Sec. 06.40.110. CONTENTS OF PREMIUM FINANCE AGREEMENT.

(a) A premium finance agreement shall

(1) be dated, signed by the borrower, and the printed portion of it shall be in at least eight-point type;

(2) contain the name and place of business of the insurance agent negotiating the related insurance policy, the name and residence or the place of business of the borrower as specified by him, the name and place of business of the licensee to which payments are to be made, an identification of the insurance policy involved and the amount of the premium charged for it; and

(3) set out the following items where applicable:

(A) the total amount of the premiums;

(B) the amount of the down payment;

(C) the principal balance (the difference between (A) and (B) of this paragraph);

(D) the annual percentage rate of interest; and

(E) the number of payments required, the amount of each payment expressed in dollars, and the due date or period of it.

(b) The items set out in (a)(3) of this section need not be stated in the sequence or order in which they appear in (a) of this section, and additional items may be included to explain the computations made in determining the amount to be paid by the insured.

(c) The repayment schedule relating to dwelling fire, homeowner, private passenger automobile, boats not used for commercial purposes, owner-occupied mobile homes, and fire insurance policies covering owner-occupied multiple unit dwellings for four families or less shall be such that the total amount due the licensee at any time does not exceed the unearned premium on the policy being financed at that time. No deficiency balance may be established or collected from the borrower. This section does not preclude the licensee from establishing or collecting a deficiency balance to the extent the insurer offsets unearned premiums on the policy financed by premiums earned by reason of endorsements to that same policy not paid for by the insured or financed by the licensee.

(d) The licensee or the insurance agent shall deliver to the borrower, or mail to him at his address shown in the agreement, a complete copy of the agreement.

Sec. 06.40.120. MAXIMUM INTEREST PERMITTED: PREPAYMENT, REFUND. (a) A premium finance company may not charge, contract for, receive, or collect a service charge other than as permitted by this chapter.

(b) The service charge is to be computed on the balance of the premiums due, after subtracting the down payment made by the borrower in accordance with the premium finance agreement, from the effective date of the insurance coverage, for which the premiums are being advanced, to and including the date when the final payment of the premium finance agreement is payable.

(c) The service charge may not exceed interest at the nominal annual rate of 15 per cent plus an additional charge of \$10 per premium finance agreement which need not be refunded upon cancellation or prepayment. However, any borrower may prepay his premium finance agreement in full at any time before the due date of the final payment and in that event the unearned service charge shall be refunded. The amount of any refund shall be calculated in accordance with regulations adopted by the commissioner.

Sec. 06.40.130. DELINQUENCY CHARGE. (a) A premium finance agreement may provide for the payment by the borrower of a delinquency charge for any payment that is in default for a period of 10 days or more. The charge may be made for each month or fraction of a month that the payment

is in default. The amount of the charge may be a minimum of \$1 and as a maximum shall be subject to the following limits:

(1) for delinquent payments of less than \$250, five per cent of the payment or \$5, whichever is less; or

(2) for delinquent payments of \$250 or more, two per cent of the payment.

(b) A borrower may at his option separate the financing of the premiums for one insurance policy from a premium finance agreement by requesting in writing that the premium finance company provide that service and by paying a \$10 separate charge.

Sec. 06.40.140. CANCELLATION OF POLICY; REQUIREMENTS.

(a) When a premium finance agreement contains a power of attorney enabling the licensee to cancel the insurance policy listed in the agreement, the insurance policy may not be cancelled by the licensee unless the cancellation is effectuated in accordance with this section.

(b) The licensee shall give not less than 10 days written notice to the borrower, by mailing by certified mail or documented by an affidavit of mailing, of the licensee's intent to cancel the insurance policy unless the default is cured within that 10-day period. A copy of the notice shall also be mailed by certified mail or documented by an affidavit of mailing to the insurance agent indicated on the premium finance agreement.

(c) After expiration of the 10-day period specified in (b) of this section, the licensee may, in the name of the borrower, cancel the insurance policy by mailing by certified mail or documented by an affidavit of mailing to the insurer a notice of cancellation. The insurance policy shall be cancelled as if the notice of cancellation had been submitted by the borrower himself, but without requiring the return of the insurance policy. The licensee shall also mail by certified mail or documented by an affidavit of mailing a notice of cancellation to the borrower at his last-known address and to the insurance agent indicated on the premium finance agreement.

(d) All statutory, regulatory and contractual restrictions providing that the insurance policy may not be cancelled unless notice is given to a governmental agency, mortgagee, or other third party shall apply where cancellation is effected under the provisions of this section. The insurer shall give the prescribed notice on behalf of itself or the borrower to any governmental agency, mortgagee, or other third party on or before the fifth business day after the day it receives the notice of cancellation from the licensee and shall determine the effective date of cancellation taking into consideration the number of days' notice required to complete the cancellation.

Sec. 06.40.150. RETURN OF UNEARNED PREMIUMS. (a) Whenever a financed insurance policy is cancelled and provided the insurer has been notified of the assignment of interest of the insured to the licensee, the insurer within 60 days of the effective date of cancellation shall take

such steps as are necessary to have any gross unearned premiums that are due under the insurance policy returned to the licensee for the account of the borrower if the licensee has complied with the notice provisions of sec. 140(b) of this chapter.

(b) If the crediting of return premiums to the account of the borrower results in a surplus over the amount due from the borrower, the licensee shall refund the excess to the borrower; however, no refund is required if it amounts to less than \$1.

Sec. 06.40.160. CIVIL AND CRIMINAL PENALTIES. (a) A lender who, in the making of any contract, loan or premium finance agreement or the collection of interest or charges, does any act which violates secs. 10 - 20, 90, or 110 - 130 of this chapter shall at the option of the commissioner reimburse that portion of the interest and charges in excess of that provided in those sections, or, in the case of repeated violations of those sections by the lender, the lender shall adjust the contract, loan, or premium finance agreement interest and other charges down to the contract interest limitation specified in AS 45.45.010(a).

(b) Any person, copartnership, association, or corporation, and its members, officers, directors, agents, and employees, who violates or participates in a violation of the provisions of sec. 10 of this chapter, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$5,000, or by imprisonment for not more than one year, or by both. In case of conviction of a corporation for violation of this chapter, the corporation is punishable by a fine of not more than \$20,000.

Sec. 06.40.170. FILING NOT REQUIRED TO PERFECT VALIDITY OF AGREEMENT. No filing under AS 45.05 of the premium finance agreement is necessary to perfect the validity of the agreement as a secured transaction against creditors, subsequent purchasers, pledgees, encumbrancers, successors or assigns.

Sec. 06.40.180. REGULATIONS, ORDERS. The commissioner shall adopt regulations necessary to carry out this chapter, and the commissioner may order any person to cease violation of this chapter or a regulation adopted under it.

Sec. 06.40.190. DEFINITIONS. As used in this chapter, unless the context otherwise requires,

(1) "commissioner" means the commissioner of commerce and economic development or his designee;

(2) "department" means the Department of Commerce and Economic Development;

(3) "premium finance agreement" means an agreement by which a borrower or prospective borrower promises to pay to a licensee or to its assignee the amount advanced or to be advanced under the agreement to an insurer or to an insurance agent or broker in payment of premiums on an insurance policy sold in this state or covering risks located in this state together with a service charge, and as

a security for it the premium finance company receives an assignment of the unearned premium; however, no mortgage, conditional sale contract, or other security agreement covering property which authorizes the lienholder to pay or advance premiums for insurance under the mortgage, contract, or other security agreement is considered to be a premium finance agreement;

(4) "premium finance company" means a person engaged in the business of entering into premium finance agreements with borrowers or of acquiring premium finance agreements from insurance agents, brokers or other premium finance companies.

* Sec. 2. AS 21.36 is amended by adding a new section to read:

Sec. 21.36.122. PREMIUM FINANCING. No person licensed under ch. 27 of this title may

(1) enter into any insurance transaction in which the premium is financed by other than the licensee unless the person providing the financing is licensed under and in compliance with AS 06.40 or is exempted from licensure under AS 06.40.020; or

(2) finance premiums or extend credit to persons purchasing insurance except as provided in regulations adopted by the director; the director shall adopt regulations establishing the conditions under which licensees may extend credit or finance premiums except that in no event may the regulations permit a rate of interest on amounts lent or credit extended greater than that provided in AS 06.40.120.

* Sec. 3. The provisions of this Act do not void a lawful contract entered into before the effective date of this Act.