

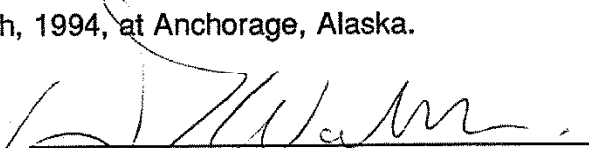
ORDER R 94-04 AMENDING
REGULATIONS OF THE DIVISION OF INSURANCE

The attached 15 pages of regulations, dealing with insurance producer premium financing and trust accounting, to implement and interpret AS 21.27.010, 21.27.020, 21.27.140, 21.27.350, 21.27.360, 21.27.410; AS 21.36.100, 21.36.122, and 21.36.220, are hereby adopted and certified to be a correct copy of the regulations that the Division of Insurance amends (3 AAC 23.250, 3 AAC 23.520, 3 AAC 23.550, 3 AAC 23.580, 3 AAC 23.590, 3 AAC 23.600, 3 AAC 23.620, 3 AAC 23.650, 3 AAC 23.680, and 3 AAC 23.710) under the authority of AS 21.06.090 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect on the 30th day after it has been filed by the lieutenant governor, as provided in AS 44.62.180.

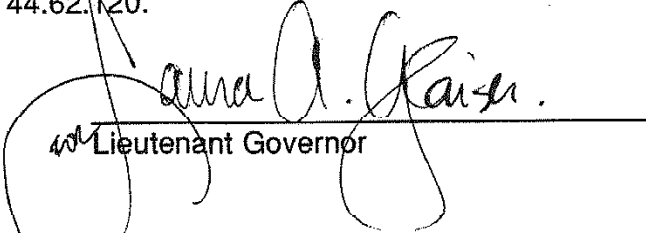
DATED this 15th day of March, 1994, at Anchorage, Alaska.



David J. Walsh, Director
Division of Insurance
Department of Commerce and
Economic Development

FILING CERTIFICATION

Laura A. Glaiser
I, John B. Coghill, Lieutenant Governor for the State of Alaska, certify that on July 5, 1994, at 4:21 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 -- 44.62.120.



Lieutenant Governor

Effective August 4, 1994

Register 131, October, 1994

TITLE 3. COMMERCE AND ECONOMIC DEVELOPMENT

PART 2. DIVISION OF INSURANCE

CHAPTER 23. PRODUCERS, MANAGING GENERAL AGENTS,
SURPLUS LINES BROKERS, REINSURANCE INTERMEDIARY MANAGERS,
REINSURANCE INTERMEDIARY BROKERS, THIRD PARTY ADMINISTRATORS,
AND INDEPENDENT ADJUSTERS

ARTICLE 2. PREMIUM FINANCING

3 AAC 23.250 is amended to read:

3 AAC 23.250. CREDIT AND LOANS CONSIDERED PREMIUM FINANCING. (a) When a licensee extends credit beyond the date premiums are required to be remitted to the insurer, or loans funds to a person whose coverage has been placed [PERSONS WHO ARE INSURED] through the licensee, the extension of credit or making a loan is premium financing and the terms of the financing must comply with 3 AAC 23.210 - 3 AAC 23.390 [THIS CHAPTER].

(b) A licensee is not required to comply with 3 AAC 23.210 - 3 AAC 23.390 if

(1) the extension of credit or loan of funds to pay a premium is at no interest cost or service charge expense to an insured, but a late fee in keeping with the standard late fee charged by the licensee is permitted; and

(2) within 30 days after the extension of credit by the licensee, the insured is notified in writing by regular monthly statement or separate notice of the amount of credit or loan and for what purpose the credit or loan has been extended.

(c) A licensee who completes a transaction through an extension of credit or loan of funds in compliance with (b) of this section must

(1) take the risk of extending credit or loaning funds; and

(2) if notified by the insured that the extension of credit for the payment of premium is not desired, reverse the extension of credit from the insured's records effective to the date the credit was extended. (Eff.

4/22/79, Register 70; am / / , Register)

Authority: AS 21.06.090 [(a)]
AS 21.36.122

ARTICLE 4. TRUST ACCOUNTING FOR LICENSEES.

Section

- 520. Control accounts

550. Premium finance accounting and records

580. Identification of trust money as trust account assets
590. Receipt of trust money
600. Timely disbursement of return premiums

620. Earnings of commissions

650. Premium financing money flow

680. Offsets

710. Responsible persons [PERSON] in firm

3 AAC 23.520(b)(c) and (f) are amended to read:

(b) In maintaining a control account, a licensee's accounting system must [SHALL] include an accounting method of sufficient detail to allow, (1) on a periodic basis, [(1)] the ready identification of the dollar amount, by category, of the money comprising the balance of a control account, and (2) compliance with 3 AAC 23.520(c)(2).

(c) The "specific item method"

(1) is a method of accounting that, if applied diligently, creates a presumption that the licensee is accomplishing the purpose of (b) of this section, and is complying with 3 AAC 23.510 and [THE FIRST SENTENCE OF] AS 21.27.350 [(c)] (d); and

(2) is not required for a licensee's entire accounting cycle, but is required for the initial entry of premium or return premium under 3 AAC 23.590 (b)

(f) Failure to comply with (a), (b), or (c)(2) of this section is a violation of AS 21.27.350 and 21.27.360. (Eff. 8/29/90, Register 115; am / / , Register)

Authority: AS 21.06.090
AS 21.27.350
AS 21.27.360

3 AAC 23.550(b) is amended to read:

(b) If under AS 21.27.360(d), a licensee commingles, with premium money, additional money for the purpose of advancing premiums, [AND HAS HAD SIGNED A PREMIUM FINANCE AGREEMENT TO ADVANCE THE ADDITIONAL COMMINGLED MONEY,] an accounting entry to reclassify the money between the various elements of the control account is not a violation of AS 21.27.350(c) or [AS] 21.27.360(b) or (d).

(Eff. 8/29/90, Register 115; am / / , Register)

Authority: AS 21.06.090
AS 21.27.350
AS 21.36.122

3 AAC 23.580(a), (b), and (f) are amended to read:

(a) Money required to be held in a trust money account as a trust account asset is considered to be clearly identified in a licensee's financial statement if the financial statement identifies

(1) the trust money control account required by 3 AAC 23.520(a)(1) containing that money by using the title "Premium Trust Money [MONEY OF OTHERS HELD IN A TRUST CAPACITY]"; and

(2) the accounts payable account referred to in 3 AAC 23.520(a)(3) or a liability account used to hold return premium, with words that include "Premium Trust Money Payable [. . . FOR PAYMENT OF WHICH MONEY OF OTHERS IS HELD IN A TRUST CAPACITY]."

(b) Exempt from the clear identification requirement of this section are financial statements of a licensee that [WHICH] are

- (1) prepared for internal use only;
- (2) marked conspicuously with the words "For Internal Use Only"; and
- (3) used only for purposes internal to the licensee's business.

(Eff. 8/29/90, Register 115; am / / , Register)

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Authority: AS 21.06.090
AS 21.27.350
AS 21.27.360

3 AAC 23.590(c) and (f) are amended to read:

(c) as used in AS 21.27.360(b), "trust money [BANK] account" means a deposit account in a financial institution[, WHICH IS] insured by an agency of the United States government or an organization bearing the full faith and credit of the United States government.

(f) Failure to deposit trust money in a trust money [BANK] account as defined in (c) of this section is a violation of AS 21.27.360. (Eff. 8/29/90, Register 115; am / / , Register)

Authority: AS 21.06.090
AS 21.27.350
AS 21.27.360

3 AAC 23.600(a) is amended to read:

(a) A licensee shall, within 45 days after the receipt of a refund [OR FIRST ADVICE OF CREDIT], complete the processing of a refund received from the insurer by either

(1) disbursing money to the insured to whom it is owed; or
(2) notifying the insured of the application of a refund under 3 AAC 23.680 [SECURING A WRITTEN APPROVAL, SIGNED BY THE INSURED TO WHOM THE MONEY IS OWED, WHICH AUTHORIZES AN ALTERNATIVE USE].

(Eff. 8/29/90, Register 115; am / / , Register)

Authority: AS 21.06.090
AS 21.27.350
AS 21.27.360

3 AAC 23.620 is repealed & readopted to read:

3 AAC 23.620. EARNINGS OF COMMISSIONS. (a) A licensee who receives trust money, part of which consists of commissions due the licensee, may remove commission amounts only after they are earned.

(b) Unless there is a contract between the licensee and the insurer that provides for a commission to be earned at a different time, a commission is earned no earlier than the date on which both the funds are received by the licensee and the insurance coverage is bound, and the licensee may then remove the commission from the trust money account. Removal from the trust money account of a commission earned includes removal both by transfer of money and the reclassification within the trust money account from that portion assigned to trust money to that portion assigned to money allowed to be commingled with trust money. The holding of gross advance premium in the trust money account for payment to insurers before the receipt of premium from the insured does not have to meet the definition of commission earned before the transfer of the amount representing commission from the trust money account.

(c) The removal of commission from the trust money account or the reclassification within the trust money account must be documented as to

- (1) specific calculation of the appropriate commission amount; and
- (2) the date on which the amount calculated was considered

commission.

(d) Premium refunds paid to an insured shall include a ratable amount of commission, collected by the licensee, and refunded to the insured due to early termination of a contract of insurance.

(e) This section does not establish a generally accepted accounting principal for the purpose of the preparation of a financial statement of a licensee.

(f) Failure to comply with (a), (b), (c), or (d) of this section is a violation of AS 21.27.360. (Eff. 8/29/90, Register 115; am / / , Register)

Authority: AS 21.06.090
[AS 21.27.200(b)
AS 21.27.200(c)]
AS 21.27.360
AS 21.36.220[(c)]

3 AAC 23.650(a)(b) and (c) is amended to read:

(a) The advance of a premium by a licensee in the name of the insured who is purchasing a contract of insurance, if the insured has not yet paid the premium,

(1) must be documented in a premium finance agreement under 3 AAC 23.210 ~~[-]~~ 3 AAC 23.390 unless the advance of a premium meets the requirements of 3 AAC 23.250(b); and

(2) may not be made from trust money received and held in the trust money account for payment to others.

(b) The documents used to execute the advance of a premium by a licensee are records of a particular transaction, that [WHICH] must be maintained for the period specified in AS 21.27.350(b).

(c) Payments by an insured for [OF] a premium finance agreement with the licensee or extension of credit or loan by the licensee may not be placed in a trust money account unless they are earmarked specifically for additions to money allowed to be commingled under AS 21.27.360(d).

(Eff. 8/29/90, Register 115; am / / , Register)

Authority: AS 21.06.090
AS 21.27.350
AS 21.27.360
AS 21.36.100
AS 21.36.122

3 AAC 23.680 is repealed and readopted to read:

3 AAC 23.680. OFFSETS. (a) If a licensee receives a refund payable to an insured, the licensee may apply that refund to the payment of amounts due from that insured for insurance premium, an extension of credit, or a loan if the licensee notifies the insured in writing within the 45 day period required for the processing of refunds under 3 AAC 23.600.

(b) If notified by the insured that the use of a refund to pay an outstanding amount was not desired, the licensee must return the full refund to the insured or dispose of the full refund according to the instructions of the insured within 45 days.

(c) Failure to comply with (a) or (b) of this section is a violation of AS 21.27.350 and 21.27.360. (Eff. 8/29/90, Register 115; am / / , Register)

Authority: AS 21.06.090
AS 21.27.350
AS 21.27.360

3 AAC 23.710 is amended to read:

3 AAC 23.710. RESPONSIBLE PERSONS [PERSON] IN FIRM. (a) The listed principal or manager of a firm [OF LICENSEES] as listed on the insurance license or renewal or license registration or renewal [CONTINUATION NOTICE] issued by the division of insurance and the compliance officer designated under AS 21.27.020 (c) (3) (C) are [IS] the responsible parties [PARTY] of that firm.

(b) The listed principal or manager of a firm and the compliance officer designated under AS 21.27.020(c)(3)(C) must be signatory on all of that firm's trust money accounts.

(c) The listed principal or manager of a firm [OF LICENSEES] as shown on the insurance license or renewal or license registration or renewal [CONTINUATION NOTICE] issued by the division of insurance and the compliance officer designated under AS 21.27.020 (c) (3) (C) are [IS] the persons [PERSON] responsible for the maintenance of records of that firm.

(d) Failure to comply with (b) of this section is a violation of AS 21.27.360. (Eff. 8/29/90, Register 115; am / / , Register)

Authority: AS 21.06.090
AS 21.27.010
AS 21.27.020
AS 21.27.140
AS 21.27.350
AS 21.27.360
AS 21.27.410