

## Title 29

### INSURANCE AND INSURANCE COMPANIES

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#### Chapter 01

### GENERAL PROVISIONS

#### Sections:

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#### Reviser's Comment:

Section 1 of PL 13-58, 1974, provided, in part, that this part may be cited as the "Insurance Law".

Section 1 of PL 13-58, 1974, provided, in part, that: "No action or proceedings commenced, and no right accrued, prior to the effective date hereof, is affected by this act this part; but, all procedure hereafter taken shall conform to this act this part so far as possible."

Section 1 of PL 13-58, 1914, provided, in part, that: "This act this part insofar as it is substantially the same as existing statutory provisions relating to the same subject matter shall be construed as restatements and continuations thereof, and not as new enactments."

#### **29.0101 Definitions.**

The following rules and definitions shall be used in interpreting the provisions of this title:

- (1) The present tense includes the past and future tenses, and the future, the present.
- (2) "Shall" is mandatory and "may" is permissive unless otherwise apparent from the context.
- (3) "Action" means any action, suit, or legal proceeding.
- (4) "Adjuster" means any person who acts for or on behalf of an insurer or an insured in determining and making settlement of the amount payable to the insured for any loss or damage under a policy.
- (5) "Admitted" in relation to a person means entitled to transact insurance business in American Samoa under the laws of American Samoa; "nonadmitted" in relation to a person means not entitled to transact insurance business in American Samoa under the laws of American Samoa.

(6) “Advisory organization” means every person, other than an admitted insurer, who prepares policy forms or makes underwriting rules, or who collects and furnishes loss or expense statistics or other statistical information and data and acts in an advisory, as distinguished from a rate-making, capacity. No duly authorized attorney acting in the usual course of his profession shall be deemed an advisory organization.

(7) “Agent” means a person appointed by an insurer to solicit applications for insurance or to negotiate insurance on its behalf, and, if authorized to do so by the insurer, to effect and countersign insurance policies. Agent means both general agent and subagent unless otherwise apparent from the context.

(8) “Alien” means organized under the laws of any government other than American Samoa or the United States or any political subdivision thereof, whether admitted or not.

(9) “Broker” means a person who, for compensation and on behalf of another person, transacts insurance business other than as treasurer, general agent, subagent or solicitor.

(10) “Certificate” means the certificate of authority required of an insurer to transact business in American Samoa.

(11) “Commissioner” means the Commissioner of Insurance.

(12) “Domestic” means organized under the laws of American Samoa, whether or not admitted.

(13) “Domestic risks” means a subject of insurance resident, located or to be performed in this territory.

(14) “Foreign” means not organized under the laws of American Samoa, but organized under the laws of the United States or any political subdivision thereof, whether or not admitted.

(15) “General agent” means a person authorized by an insurer to countersign, issue and deliver new policies, to accept service of process on behalf of the insurer, and vested with full authority to consummate a contract of insurance and to transact all other necessary business of the insurer in American Samoa.

(16) “General insurance broker” means a broker who the Insurance Commissioner has certified to act for and on behalf of persons in American Samoa who are desirous of securing insurance from admitted or nonadmitted insurers.

(17) “Insurance” means a contract whereby one undertakes to indemnify another against lost, damage, or liability arising from contingent or unknown events.

(18) “Insurer” means the person who undertakes to indemnify another by insurance; “insured” means the person so indemnified.

(19) “Issue” means to write, renew, execute, effect or otherwise enter into a contract of insurance.

(20) “Judgment” includes decree or other final order.

(21) “Office” means the Office of the Commissioner of Insurance.

(22) “Paid-in capital” or “capital paid-in” means the lower of the following amounts:

(A) the value of an insurer’s assets in excess of the sum of its liabilities for losses reported, expenses, taxes, and all other indebtedness and reinsurance of outstanding risks as provided by law;

(B) the aggregate par value of an insurer’s issued shares of stock, including treasury shares. For the purpose of computing “paid-in capital” or “capital paid-in”, shares of stock are not considered as liabilities.

(23) “Person” means any person, association, organization, partnership, business trust, or corporation.

(24) “Policy” means the written instrument in which a contract of insurance is set forth and includes all clauses, riders, endorsements and papers which are a part thereof, and annuities.

(25) “Political subdivision” in reference to the United States means any State, the District of

Columbia, any Territory, Possession, or Commonwealth belonging to or part of the United States.

(26) “Rating bureau” means every person, other than an admitted insurer, who has as his object or purpose the making of rates-rating plans or rating systems.

(27) “Reinsurance” means the insurance ceded and accepted between two insurers one of whom has effected the direct insurance.

(28) “Public enemy” means any state at war with American Samoa or the United States of America, or a citizen or subject of that state, or a person, partnership or corporation doing business within the territory of an enemy state or an ally thereof.

(29) “Signature” includes a mark when the signer or subscriber cannot write, provided his name is written near the mark by a witness who also signs the instrument together with a second witness.

(30) “Solicitor” means a person authorized by either the insurer or its general agent or a subagent to act as its representative but whose duties and authority are confined merely to soliciting insurance and aiding in the preparation of applications for insurance.

(31) “Subagent” means a person authorized by either the insurer or its general agent to solicit applications, receive proposals, receive first premiums, deliver policies, and make contracts of insurance subject only to the acceptance and countersignature of the general agent.

(32) “Transact insurance” means one or more of the following acts effected by mail or otherwise:

(A) making or proposing to make an insurance contract;

(B) taking or receiving any obligation for insurance;

(C) receiving or collecting any premium, commission, membership fee, assessment, due or other consideration for any insurance or any part thereof;

(D) issuing or delivering policies of insurance;

(E) directly or indirectly acting as an agent for, or otherwise representing or aiding on behalf of, another, any person in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof, the dissemination of information as to coverage or rates, the forwarding of applications, the delivering of policies, the inspection of risk, the fixing of rates, the investigation or judgment of claims or lawsuits, the transaction of matters subsequent to effectuation of the policy and arising out of it, or in any other manner representing or assisting a person with respect to insurance;

(F) advertising locally or circularizing therein without regard for the source of such circulation, whenever such advertising or circulation is for the purpose of solicitation of insurance business;

(G) doing any other kind of business specifically recognized as constituting the conduct of an insurance business within the meaning of the insurance law;

(H) doing or proposing to do an insurance business in substance equivalent to any of paragraphs (A) to (G) in a manner designed to evade the insurance law.

(33) “United States” means its entire system and group of political jurisdictions including the states, the District of Columbia, territories, possessions, or commonwealths.

(34) “Writing” means any form of recorded message capable of comprehension by ordinary visual means.

**History:** 1974, PL 13-58 § 1; amd 1978, PL 15-79 § 1.

**Amendment:** 1978 Added definition of “general insurance broker”.

**Research Guide:**

For definitions of types of insurance, see 29.1502 et seq.

**29.0102 Scope of title.**

All insurance transacted in American Samoa is governed by this title.

**History:** 1974, PL 13-58 § 1.

**29.0103 Notices to be in writing-Service.**

Whenever any notice is required by this title, it shall be in writing unless expressly otherwise provided. Any required notice may be given by mailing the notice, postage prepaid, addressed to the person to be notified, at his last known residence or his principal place of business unless expressly otherwise provided. An affidavit setting forth the facts of the mailing by the person doing so is prima facie evidence of the notice.

**History:** 1974, PL 13-58 § 1.

**29.0104 References to time.**

Any date or time mentioned in this title, or in any policy of insurance issued under authority of this title, shall be conclusively presumed to refer to American Samoa time unless specifically and clearly otherwise stated.

**History:** 1974, PL 13-58 § 1.

**29.0105 Prohibited acts.**

Except as otherwise expressly provided by law, no person directly or indirectly may enter into any contract, understanding or combination with any insurer or manager, agent or representative thereof for the purpose of, nor may any persons or insurers jointly or severably do any act or engage in any practice for the purpose of:

(1) controlling the rates to be charged, or the commissions or other compensation to be paid, for insuring any risk or class of risks;

(2) entering into any agreement to commit, or individually or by any concerted action commit, any act of boycott, coercion, or intimidation resulting or tending to result in unreasonable restraint of, or a monopoly in, the business of insurance.

**History:** 1974, PL 13-58 § 1.

**29.0106 Exercise of power.**

Whenever, under this title, a power is granted to a public officer or a duty imposed upon that officer, the power or duty maybe performed by a deputy or assistant of the officer authorized to do so.

**History:** 1974, PL 13-58 § 1.

**29.0107 Perjury.**

Any person who knowingly swears to or verifies any false or fraudulent statement, or who, when testifying at any hearing, examination or inquiry pursuant to this title, makes any false or fraudulent statement, is guilty of a felony, and upon conviction thereof shall be sentenced to imprisonment for not more than 5 years, or fined not more than \$5,000, or both.

**History:** 1974, PL 13-58 § 1.

**29.0108 Violation-Penalty.**

Any person violating this title, or any regulations issued under this title, or any lawful order of the Commissioner, for which a penalty is not otherwise specifically provided, is guilty of a misdemeanor, and upon conviction is subject to a fine not to exceed \$500, or imprisonment for not more than 6 months, or both.

**History:** 1974, PL 13-58 § 1.

**Chapter 02**

**INSURANCE COMMISSIONER**

**Sections:**

- 29.0201 Appointment-Duties.**
- 29.0202 Appointment of deputies and other employees.**
- 29.0203 Conflict of interest regulation.**
- 29.0204 Bonds.**
- 29.0205 Authority and powers.**
- 29.0206 Interpretation of order of Commissioner.**
- 29.0207 Cease and desist order.**
- 29.0208 Enforcement of order.**
- 29.0209 Inquiries by Commissioner to others.**
- 29.0210 Investigation of persons transacting insurance.**
- 29.0211 Examination of insurers-Audit.**
- 29.0212 Records to be kept.**
- 29.0213 Complaints-Determination of public record.**
- 29.0214 False or misleading filings with the Commissioner prohibited.**
- 29.0215 Request for hearing.**
- 29.0216 Promulgation of regulations.**
- 29.0217 Annual reports.**

**29.0201 Appointment-Duties.**

- (a) The Governor shall appoint the Commissioner of Insurance.
- (b) He shall perform all duties imposed upon him by this title and other laws regulating the business of insurance in American Samoa, and shall enforce all provisions and laws.

**History:** 1974, PL 13-58 § 1.

**29.0202 Appointment of deputies and other employees.**

The Commissioner may appoint a deputy, who may be delegated all the duties and powers of the Commissioner, and such additional employees as may be necessary for the performance of the functions of his office. Such appointments must be made in accordance with the merit system law.

**History:** 1974, PL 13-58 § 1.

**29.0203 Conflict of interest regulation.**

Neither the Commissioner, deputy commissioner, or any employee of the Office of Insurance Commissioner may be a broker, agent, or solicitor, or an officer or employee of an insurer, or in

any way, directly or indirectly, participate in or have any financial interest in, or be affiliated with, any insurance business, except as a policyholder or claimant under an insurance policy.

**History:** 1974, PL 13-58 § 1.

#### **29.0204 Bonds.**

The Commissioner and deputy commissioner shall be bonded with a good and sufficient surety, to be approved by the Governor, in an amount determined by the Governor, but not less than \$10,000, conditioned that he shall faithfully account for and dispose of any funds and securities received into his custody or control, in accordance with applicable law.

**History:** 1974, PL 13-58 § 1.

#### **29.0205 Authority and powers.**

(a) The Commissioner has all the authority and powers specifically set out in this title, or as may be reasonably implied from the powers conveyed in this section, for the proper administration and enforcement of this title and other laws relating to the business of insurance.

(b) The Commissioner may examine, or cause to be examined, the books, papers and property, and the affairs of any insurer, broker, agent, solicitor, or rating bureau, or any person believed by him to be violating this title or other laws relating to the business of insurance, and generally, he may make such examinations, conduct such inquiries and hold such hearings as are specifically provided for in this title or as are reasonably necessary for the proper discharge of his duties.

(c) In connection with any examination, inquiry, or hearing, the Commissioner may administer oaths, summon and compel the attendance of witnesses, examine under oath all persons having information or believed by him to have information concerning the affairs of any insurer, broker, agent, solicitor, or rating bureau, or any person engaged in organizing, promoting, or forming an insurer, or any person whom the Commissioner believes is violating this title or other laws relating to the business of insurance, and compel that person to produce any books or papers under this custody or control relevant thereto.

(d) Should a person fail to comply with a subpoena issued under this title, or should a party or witness refuse to testify on any matter relevant to the investigation, examination, inquiry or hearing, the Commissioner may apply to the High Court of American Samoa, which shall compel obedience by proceeding for contempt as in the case of the crime of disobedience of a subpoena issued from such court or a refusal to testify therein.

(e) The Commissioner has such additional powers and duties as may be provided by the laws of American Samoa.

(f) The Commissioner is authorized to adopt rules under the Administrative Procedure Act 4.1001 et seq., by which insurers transacting motor vehicle liability insurance shall be required to participate in an equitable, assigned risk arrangement for liability insurance coverage of vehicles used in transportation of passengers for hire, including buses and taxis.

**History:** 1974, PL 13-58 § 1; 1979, PL 16-3 § 4.

#### **29.0206 Interpretation of order of Commissioner.**

(a) Any finding, decision, or order of the Commissioner shall be deemed an order within this title when it is in writing and adversely and directly affects any person.

(b) No order of the Commissioner shall become effective until it has become a final order as provided in subsection (c).

- (c) An order of the Commissioner becomes a final order:
  - (1) when confirmed or amended after a hearing as provided in 29.0207;
  - (2) if no hearing is requested, then automatically on the tenth day after serving of notice.

**History:** 1974, PL 13-58 § 1.

**29.0207 Cease and desist orders.**

(a) Whenever the Commissioner has reason to believe that any person has been engaged or is engaging or is about to engage in any violation of the insurance law, he may issue an order, directed to that person, to discontinue or desist from the violation or violations. The copy of the order forwarded to the person involved must set forth the statement of the specific charges and the fact that the person may request a hearing within 20 days of the date of mailing.

(b) Where a hearing is requested, the Commissioner shall set a date for the hearing to be held 30 days after receipt of the request, and shall give the person involved written notice of the hearing date at least 7 days prior thereto. The person requesting the hearing must establish to the satisfaction of the Commissioner that the order should not be complied with. The order becomes final 20 days after the date of mailing unless within the 20-day period the person to whom it is directed files with the Commissioner a written request for a hearing. To the extent applicable and not inconsistent with the foregoing, the provisions of 4.1001 et seq., govern the hearing procedure in any judicial review thereof. Where a hearing has been requested, the Commissioner's order becomes final at such time as the right to further hearing or review has expired or been exhausted.

(c) No order of the Commissioner under this section, or order of a court to enforce the same, may in any way relieve or absolve any person affected by the order from any liability under any other laws of the territory.

(d) The powers vested in the Commissioner pursuant to this section are supplementary and not in lieu of any other power to suspend or revoke certificates of authority or licenses to enforce any penalty, fines, or forfeitures, authorized by law with respect to any violations for which an order of discontinuance has been issued.

**History:** 1974, PL 13-58 § 1.

**29.0208 Enforcement of orders.**

(a) If any person fails to comply with any provision of the insurance law or any order that has become final, or any action taken by the Commissioner, the Commissioner may apply for the enforcement of the order to the High Court of American Samoa. If the court determines that the order was made and served in accordance with this title and is not arbitrary, capricious, or unreasonable, and that the person has failed to comply therewith, the court shall enforce obedience to the order by writ of injunction or otherwise enjoin upon the person compliance with the order.

b) If the Commissioner has reason to believe that any person has violated the insurance law or other law applicable to insurance operations for which criminal prosecution is provided and in his opinion would be in order, he shall give the information relative thereto to the Attorney General, who shall promptly institute such action or proceedings against such person as the information requires or justifies.

**History:** 1974, PL 13-58 § 1.

**29.0209 Inquiries by Commissioner to others.**

The Commissioner may address any proper inquiries to any insurer, licensee, or its officers in relation to its activities or conditions or any other matter connected with its transactions. Any person so addressed shall promptly and truthfully reply in writing to the inquiries. The reply shall be verified by an officer of that person if the Commissioner so requires. A reply is subject to the penalties for false or misleading filings.

**History:** 1974, PL 13-58 § 1.

**29.0210 Investigation of persons transacting insurance.**

The Commissioner, whenever he deems it advisable in the interest of policyholders or for the public good, shall investigate into the affairs of any person engaged in, proposing to engage in, or claiming or advertising to engage in:

- (1) transacting insurance in this territory;
- (2) organizing or receiving subscriptions for, or disposing of the stock of, or in any manner taking part in the formation or business of, an insurer; or
- (3) holding capital stock of one or more insurers for the purpose of controlling the management thereof as for the trustee or otherwise.

**History:** 1974, PL 13-58 § 1.

**29.0211 Examination of insurers-Audit.**

For the purposes of determining its financial condition, ability to fulfill and manner of fulfillment of its obligation, the nature of its operations, and compliance with the insurance law, the Commissioner shall annually examine every domestic insurer, including an audit of the financial affairs of each insurer. The Commissioner may at any time make an examination of any insurer, or a person holding capital stock of any insurer for the purpose of controlling the management thereof as a voting trustee or otherwise, or both. Examination of an alien insurer shall be limited to its insurance transactions, assets, trust deposits and affairs within American Samoa, except as otherwise required by the Commissioner.

**History:** 1974, PL 13-58 § 1.

**29.0212 Records to be kept.**

The Commissioner shall keep and preserve in summary form a full record of all proceedings, including all of his orders, findings and decisions and a full statement of his reasons for arriving at and issuing them.

**History:** 1974, PL 13-58 § 1.

**29.0213 Complaints-Determination of public record.**

No complaint made to the Commissioner, or the record thereof, against any person regulated by the insurance law may be deemed a public record or a public writing. Neither the preliminary complaint pursuant to an investigation authorized by the Commissioner nor the record thereof may be a public record or public writing.

Each written and signed complaint received by the Commissioner shall be recorded by the Commissioner, including the subsequent disposition thereof, and maintained for a period of not less than 7 years. The record of the complaint shall be filed whenever applicable both by the name of the insurer and by the name of the agent involved. The Commissioner shall consider the complaint before issuing or continuing any certificate of authority or license of an insurer or

agent named in the complaint.

**History:** 1974, PL 13-58 § 1.

**29.0214 False or misleading filings with the Commissioner prohibited.**

No person may file or cause to be filed with the Commissioner any article, certificate, report, statement, application or any other information required or permitted to be so filed under the insurance law, which is misleading in any material respect.

**History:** 1974, PL 13-58 § 1.

**29.0215 Request for hearing.**

Within 10 days after the serving of notice of any order by the Commissioner, any person adversely and directly affected thereby may request a hearing thereon before the Commissioner. A final order must be made within 10 days after the final closing of the hearing. All hearings must be conducted pursuant to rules set out in 4.1001 et seq.

**History:** 1974, PL 13-58 § 1.

**29.0216 Promulgation of regulations.**

Regulations may be promulgated not inconsistent with the law, as may be reasonably necessary or appropriate for the administration of this title and other laws of American Samoa relating to insurance. Each regulation shall be promulgated, amended, or repealed in accordance with 4. 1001 et seq.

**History:** 1974, PL 13-58 § 1.

**29.0217 Annual reports.**

The Commissioner shall transmit to the Governor and to the Legislature, on or before 1 July, of each year, a report containing a tabulated statement and synopsis of the reports which have been filed in his office regarding the condition of every admitted insurer; the general condition of insurance business in American Samoa; a list of insurers whose business to current date has been terminated and reason for the termination; a detailed statement of the moneys, fees and taxes received by the Commissioner and from what source; and other matters covering insurance for the last preceding calendar year.

**History:** 1974, PL 13-58 § 1.

## **Chapter 03**

### **INSURERS-GENERAL REQUIREMENTS**

**Sections:**

- 29.0301 Required.**
- 29.0302 Application.**
- 29.0303 Continuance.**
- 29.0304 Issuance or refusal.**
- 29.0305 Evidence and ownership.**
- 29.0306 Continuance, expiration, or reinstatement.**

- 29.0307 Suspension or revocation-Mandatory grounds.**
- 29.0308 Suspension or revocation-Discretionary and special grounds.**
- 29.0309 Suspension, revocation, or refusal-Order-Effect on agent's authority.**
- 29.0310 Suspension-Duration-Insurer's obligations-Reinstatement.**
- 29.0320 Fees.**
- 29.0321 Maximum single risk.**
- 29.0322 Required reserves.**
- 29.0323 Withdrawal from American Samoa-Procedure.**
- 29.0324 Violation-Penalty.**

**29.0301 Required.**

(a) No person may transact insurance in American Samoa as an insurer without a certificate of authority issued by the Commissioner and when the certificate is issued that person may not transact any class of insurance which is not specifically authorized by his certificate.

(b) The certificate may not be granted by the Commissioner until the applicant conforms to the applicable requirements of this title and of the other laws of American Samoa, prerequisite to its issue. After a certificate is granted, the insurer shall continue to comply with the requirements pertaining to it as set forth in this title and in the other laws of American Samoa.

**History:** 1974, PL 13-58 § 1.

**29.0302 Application.**

Any person desiring to transact insurance business in American Samoa as an insurer shall file with the Commissioner an application for a certificate stating the class or classes of insurance which it proposes to transact accompanied by the following:

(1) a copy of its charter, articles of association, articles of incorporation, or other controlling instruments, certified by the official who is required to keep or record the same in the jurisdiction under the laws of which the insurer is organized, or incorporated;

(2) a resolution adopted by its governing body in accordance with its bylaws or other internal laws, consenting that service of process upon the Commissioner in any action or proceedings against the insurer brought or pending in American Samoa upon any cause of action arising in or growing out of business transacted in American Samoa shall be valid personal service upon the insurer, irrevocable so long as a policy of the company shall remain in force in American Samoa, or any loss remains unpaid therein;

(3) a statement setting forth the location and post office address of its principal office, and it shall continue until changed by a similar statement filed with the Commissioner;

(4) a statement of its financial condition and business in such form as prescribed by, or acceptable to, the Commissioner, signed and sworn to by the president and secretary or other principal officers of the insurer; if an alien insurer, the statement shall comprise only its condition and business in the United States and shall be signed and sworn to, in addition to its principal officers, by its United States manager;

(5) if a foreign insurer, a copy of the last report of examination certified to by the Commissioner, or like officer, of the political subdivision in which the insurer is organized, or if alien, of the political subdivision in which the United States branch is located, or other proper supervisory official;

(6) a good and sufficient bond, with a surety company approved by the Commissioner with the applicant as principal, in a form to be approved by the Commissioner, and running to the Commissioner and his successor in office in the sum of \$50,000, with the condition that the surety on the bond shall be answerable up to the amount of the bond for all judgments, decrees,

or orders given, made or rendered against the principal on the bond by the High Court of American Samoa for the payment of money; in case of any breach of the condition of any bond, the Commissioner may, and upon demand and receipt of satisfactory assurance for the payment of costs shall, enforce the bond either in his own name or in the name of the interested party thereto for the use and benefit of any person injured by the breach; the surety on the above bond may withdraw from the same upon giving to the Commissioner written notice of such intention not less than 60 days prior to the date on which the then existing certificate of the principal insurer is to expire, the withdrawal to then be effective on the date of expiration of the certificate; in lieu of the bond as required by this section, the applicant may deposit with the Commissioner acceptable unencumbered securities or other unencumbered assets of the value of \$50,000 as surety subject to the same conditions as the bond;

(7) a resolution adopted by its governing body in accordance with its bylaws or other internal laws consenting to be sued by the injured person or his heirs or representatives in a direct action on any policy of liability insurance in accordance with 29.1537, whether or not the policy of insurance sued upon was written or delivered in American Samoa, and whether or not the policy contains a provision forbidding direct action, provided that the cause of action arose in American Samoa;

(8) such further information as the Commissioner shall require by regulation specifically request from the applicant

**History:** 1974, PL 13-58 § 1.

### **29.0303 Continuance.**

Unless revoked by the Commissioner, every certificate shall continue in force subject to the payment of continuance fees on or before 1 April of each year and the filing of an affidavit setting forth that the insurer has continued to comply with all applicable provisions of this part and other information as the Commissioner may require by regulation or request specifically from the insurer.

**History:** 1974, PL 13-58 § 1; amd 1981, PL 17-9 § 1.

### **29.0304 Issuance or refusal.**

(a) The Commissioner shall issue to an insurer a certificate of authority if upon completion of the application for a certificate of authority by the insurer the Commissioner finds, from the application and any other investigation and information he may acquire, that the insurer is fully qualified and entitled thereto under the insurance law.

(b) The Commissioner shall take all necessary action and shall either issue or refuse to issue a certificate of authority within a reasonable time after the completion of the application for the certificate.

(c) The certificate of authority, if issued, shall specify the class or classes of insurance the insurer is authorized to transact. The Commissioner may issue authority limited to particular subclasses of insurance or types of insurance coverage within the scope of a class of insurance.

**History:** 1974, PL 13-58 § 1.

### **29.0305 Evidence and ownership.**

(a) An insurer's subsisting certificate of authority is evidence of its authority to transact the class or classes of insurance specified therein, either as direct insurer or as reinsurer or as both.

(b) Although issued to the insurer the certificate of authority is at all times the property of the

government. Upon any suspension, revocation or termination thereof, the insurer promptly shall deliver the certificate of authority to the Commissioner.

**History:** 1974, PL 13-58 § 1.

**29.0306 Continuance, expiration, or reinstatement.**

(a) A certificate of authority shall continue in force as long as the insurer is entitled thereto under the insurance law and until suspended or revoked by the Commissioner or terminated at the request of the insurer; subject, however, to continuance of the certificate by the insurer each year by:

- (1) payment prior to 1 April of the continuation fee provided in 29.0320;
- (2) due filing by the insurer of its annual statement for the calendar year preceding.

(b) If not so continued by the insurer, its certificate of authority shall expire at midnight on 30 April next following failure of the insurer to continue it in force. The Commissioner promptly shall notify the insurer of impending expiration of its certificate of authority.

(c) The Commissioner, in his discretion, upon the insurer's request made within 3 months after expiration, may reinstate a certificate of authority which the insurer has permitted to expire after the insurer has cured all its failures which resulted in the expiration and has paid the fee for reinstatement specified in 29.0320. Otherwise the insurer shall be granted another certificate of authority only after filing application therefor and meeting all other requirements as for an original certificate of authority.

**History:** 1974, PL 13-58 § 1.

**29.0307 Suspension or revocation-Mandatory grounds.**

(a) The Commissioner shall refuse to continue, or shall suspend or revoke, an insurer's certificate of authority if:

(1) as a foreign insurer, it no longer meets the requirements for the authority, or as a domestic insurer, it has failed to cure an impairment of required capitalization within the time allowed therefor by the Commissioner;

(2) the insurer knowingly exceeds its charter powers or powers granted under its certificate of authority; or

(3) as a foreign or alien insurer, its certificate of authority to transact insurance is suspended or revoked in its domicile.

(b) Except in cases of impairment of required capitalization or suspension or revocation by another domicile as referred to in paragraph (a) (3), the Commissioner shall refuse, suspend, or revoke the certificate of authority only after a hearing granted to the insurer unless the insurer waives the hearing in writing.

**History:** 1974, PL 13-58 § 1.

**29.0308 Suspension or revocation- Discretionary and special grounds.**

(a) The Commissioner may refuse to continue or may suspend or revoke an insurer's certificate of authority if he finds after a hearing that the insurer:

(1) has management which is untrustworthy, or so lacking in insurance experience as to make the operation hazardous to the insurance buying public;

(2) has violated or failed to comply with any lawful order of the Commissioner, or any provision of the insurance law other than those for which suspension or revocation is mandatory;

(3) is in unsound condition, or in such condition or using such methods and practices in the

conduct of its business, as to render its further transaction of insurance hazardous or injurious to its policyholders or to the public;

(4) has failed, after written request by the Commissioner, to remove or discharge an officer or director who has been convicted in any jurisdiction of an offense which, if committed in American Samoa, constitutes a misdemeanor involving moral turpitude or a felony, or is punishable by death or imprisonment under the laws of the United States in any of which cases the record of his conviction shall be conclusive evidence;

(5) is affiliated with, and under the same general management, interlocking directorate or ownership as, another insurer that transacts direct insurance in American Samoa without having a certificate of authority therefor, except as permitted under the insurance law;

(6) refuses to be examined, or its directors, officers, employees or representatives refuse to submit to examination relative to its affairs, or to produce its accounts, records, and files for examination by the Commissioner when required, or refuses to perform any legal obligation relating to the examination;

(7) has failed to pay any final judgment rendered against it upon any policy, bond, recognizance, or undertaking issued or guaranteed by it, within 30 days after the judgment became final, or within 30 days after time for taking an appeal has expired or within 30 days after dismissal of an appeal before final determination, whichever date is the later.

(b) Without advance notice or a hearing thereon, the Commissioner may suspend immediately the certificate of authority of any insurer as to which proceedings for receivership, conservatorship, rehabilitation, or other delinquency proceedings has been commenced in any state by the public insurance supervisory official of that state.

**History:** 1914, PL 13-58 § 1.

#### **29.0309 Suspension, revocation, or refusal-Order-Effect on agent's authority.**

(a) All suspensions or revocations of, or refusals to continue, an insurer's certificate of authority shall be by the Commissioner's order.

(b) Upon suspending, revoking, or refusing to continue the insurer's certificate of authority, the Commissioner forthwith shall give notice thereof to the insurer's agents of record in the division, and likewise shall suspend or revoke the authority of the agents to represent the insurer. The Commissioner also shall give notice to the insurance supervisory authority in jurisdictions in which the insurer is authorized, if a domestic insurer, or in its domicile if a foreign or alien insurer.

(c) In his discretion, the Commissioner may publish notice of the suspension, revocation, or refusal in one or more newspapers of general circulation.

**History:** 1974, PL 13-58 § 1.

#### **29.0310 Suspension-Duration-Insurer's obligations-Reinstatement.**

(a) Suspension of an insurer's certificate of authority shall be for such period as the Commissioner specifies in the order of suspension, but not to exceed 1 year for any 1 suspension order. During the suspension, the Commissioner may rescind or shorten the suspension by his further order.

(b) During the suspension period, the insurer shall not solicit or write any new business, but shall file its annual statement and pay fees, licenses, and taxes as required under the insurance law, and may service its business already in force, as if the certificate of authority had continued in full force.

(c) Upon expiration of the suspension period, if within that period the certificate of authority

has not terminated, the insurer's certificate of authority automatically shall reinstate unless the Commissioner finds that the causes of the suspension have not terminated, or that the insurer is otherwise not in compliance with the requirements of the insurance law, and the Commissioner shall give the insurer notice thereof not less than 30 days in advance of the expiration of the suspension period.

(d) Upon reinstatement of the insurer's certificate of authority, the authority of its agents to represent the insurer shall likewise reinstate. The Commissioner promptly shall notify the insurer and its agents of record in the division of the reinstatement. If pursuant to 29.0309, the Commissioner has published notice of suspension, in like manner he shall publish notice of the reinstatement.

**History:** 1974, PL 13-58 § 1.

**29.0320 Fees.**

(a) The Commissioner shall require the payment in advance of the following fees:

(1) filing of applicant for certificate or authority	\$100.00
(2) annual continuation fee	50.00
(3) filing of any other certificate, statement, paper or exhibit required by this part	10.00
(4) filing of new application after refusal to issue original certificate	75.00
(5) filing of application for issuance of certificate after revocation or expiration	250.00
(6) filing of application for withdrawal	10.00
(7) furnishing copies of papers filed, per page	.50
(8) certifying copies of paper filed, per document	2.00

Fees paid in accordance with this section shall not be refundable under any circumstances.

(b) All funds deriving from this section shall be deposited in the general fund of the government.

**History:** 1974, PL 13-58 § 1.

**29.0321 Maximum single risk.**

The maximum single risk which may be assumed by any insurer, after deduction of any reinsurance taking effect simultaneously with the policy, shall be 10% of the paid-in capital and surplus of the insurer; provided, however, that a corporate insurer may assume any net single risk in excess of 10% of its capital and surplus if it deposits with the Commissioner, prior to the assumption of the risk, a collateral agreement and collateral security, both of which shall be subject to approval by the Commissioner, in an amount not less than that proportion in excess of the foregoing limitation.

**History:** 1974, PL 13-58 § 1.

**29.0322 Required reserves.**

Every insurer authorized to transact insurance, or transacting insurance, in American Samoa shall at all times maintain, in addition to reserves few all other liabilities, reserves as follows:

(1) loss or claim reserves in an amount estimated in the aggregate to provide for the payment of all losses or claims insured, whether reported or unreported, which are unpaid and for which such insurer may be liable, together with an amount estimated to provide for the expense of adjustment or settlement of such claims; and

(2) premium reserves equal to the unearned portions of the gross premiums charged on unexpired or undetermined risks and policies.

**History:** 1974, PL 13-58 § 1.

**29.0323 Withdrawal from American Samoa-Procedure.**

(a) An insurer who desires to withdraw from American Samoa must first make application to the Commissioner for an order granting permission to withdraw.

(b) The application shall be accompanied by an affidavit of its principal officer and general agent that:

(1) it desires to withdraw and to permanently discontinue the transaction of the insurance business in American Samoa;

(2) all its outstanding policies have either expired or have been reinsured, in which case it shall file an affidavit by the reinsuring company stating that it has reinsured certain policies of the withdrawing company and setting forth in detail the policies it has reinsured: and that

(3) all existing claims arising out of insurance transacted in American Samoa have been paid in full.

(c) It shall cause publication of a notice of its intention to withdraw in a newspaper of general circulation in American Samoa once a week for 4 consecutive weeks, and shall cause the newspaper to file affidavit of publication with the Commissioner.

(d) If any person objects to such withdrawal within 1 week from date of last publication, and gives good and sufficient cause thereof, the Commissioner may order that permission for the withdrawal be refused.

(e) If the insurer has complied with the provisions of this section and no objection has been made, or if objection is made, but without good and sufficient cause, the Commissioner shall order permission to withdraw, and the withdrawing insurer shall deliver to the Commissioner for cancellation its certificate of authority and current licenses of its agents and solicitors.

**History:** 1974, PL 13-58 § 1.

**Case Notes:**

Withdrawal” from “acting” not withdrawal contemplated by this section. *Zacha v. Liberty Mutual Insurance Co.*, ASR (1978).

**29.0324 Violation-Penalty.**

Any person violating this chapter is guilty of a misdemeanor, and shall upon conviction be subject to a fine of not more than \$1,000 if the person convicted is a natural person, a fine of not more than \$500, or imprisonment of not more than 6 months, or both.

**History:** 1974, PL 13-58 § 1.

## **Chapter 04**

### **UNIFORM UNAUTHORIZED INSURERS ACT**

**Sections:**

**29.0401 Short title.**

**29.0402 Interpretation and construction.**

**29.0403 Representing or placing insurance with unauthorized insurers prohibited.**

**29.0404 Aiding unauthorized insurers prohibited.**

**29.0405 Representing or aiding insured in effecting insurance on property or risk in unauthorized state.**

- 29.0406**      **Exceptions.**
- 29.0407**      **Service of process-Interpretation.**
- 29.0408**      **Service of process-Procedure and payment of fees.**
- 29.0409**      **Service of process-Validity.**
- 29.0410**      **Service of process-Limitation or abridgement of rights.**
- 29.0411**      **Certificate of authority required.**
- 29.0412**      **Defense of action by unauthorized insurer.**
- 29.0413**      **Violation-Penalty.**

**29.0401**      **Short title.**

This chapter may be cited as the “Uniform Unauthorized Insurers Act”.

**29.0402**      **Interpretation and construction.**

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states and territories which enact it.

**History:**1974, PL 13-58 § 1.

**29.0403**      **Representing or placing insurance with unauthorized insurers prohibited.**

No person, corporation, association or partnership may, in this Territory, act as agent for any insurer not authorized to transact business in this Territory, or negotiate for or place or aid in placing insurance coverage in this Territory for another with any such insurer.

**History:**1974, PL 13-58 § 1.

**29.0404**      **Aiding unauthorized insurers prohibited.**

No person, corporation, association, or partnership may, in this Territory, aid any unauthorized insurer in adjusting insurance or in transacting insurance business in this territory, either by fixing rates, by adjusting or investigating losses, by inspecting or examining risks, by acting as attorney-in-fact or as attorney for service of process, or otherwise, except as provided in 29.0407 through 29.0410.

**History:**1974, PL 13-58 § 1.

**29.0405**      **Representing or aiding insured in effecting insurance on property or risk in unauthorized state.**

No person, corporation, association, or partnership may make, negotiate for or place, or aid in negotiating or placing, any insurance contract in this territory for another who is an applicant for insurance covering any property or risk in another state, territory, or district of the United States with any insurer not authorized to transact insurance business in the state, territory, or district wherein such property or risk or any part thereof is located.

**History:** 1974, PL 13-58 § 1.

**29.0406**      **Exceptions.**

The provisions of 29.0403 through 29.0405 do not apply to contracts of reinsurance or to contracts of insurance covering risks of transportation and navigation, or to contracts of insurance made through authorized surplus line brokers or agents, nor do they apply to an insurer not authorized in this Territory, or its representatives, in investigating, adjusting losses or

otherwise complying in this Territory with the terms of its insurance contracts made in a state wherein the insurer was authorized and in which the property or risk was located or residing at time of the execution of the contract.

**History:** 1974, PL 13-58 § 1.

**29.0407 Service of process-Interpretation.**

The transacting of business in this territory by a foreign or alien insurer without a certificate of authority and the issuance or deliver by such foreign or alien insurer of a policy or contract of insurance to a citizen of this Territory or to a resident hereof, or to a corporation authorized to do business herein, is equivalent to an appointment by such insurer to the Commissioner and his successor or successors in office, to be its true and lawful attorney, upon whom may be served all lawful process in any action, suit or proceeding arising out of such policy or contract of insurance, and the issuance or delivery is a signification of its agreement that any such service or process is of the same legal force and validity as personal service of process in this Territory upon it.

**History:** 1974, PL 13-58 § 1.

**29.0408 Service of process-Procedure and payment of fees.**

Service of process shall be made by delivering and leaving with the Commissioner, or to some person in apparent charge of his office, 2 copies thereof and the payment to him of such fees as may be prescribed by law. The Commissioner shall forthwith mail by registered mail one of the copies of such process to the defendant at his last known principal place of business and shall keep a record of all processes so served upon him. Such service of process is sufficient provided notice of such service and a copy of the process are sent within 10 days thereafter by registered mail by plaintiffs attorney to the defendant at his last known principal place of business, and the defendant's receipt, or receipt issued by the post office with which the letter is registered, showing the name of the sender at the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiffs attorney showing a compliance herewith, are filed with the clerk of the High Court where such action is pending on or before the date the defendant is required to appear, or within such further time as the court may allow. However, no plaintiff or complainant shall be entitled to a judgment by default, or a judgment with leave to prove damages, or a judgment pro confessor under 29.0407 through 29.0410 until the expiration of 30 days from date of the filing of the affidavit of compliance.

**History:** 1974, PL 13-58 § 1.

**29.0409 Service of process-Validity.**

Service of process in any such action, suit or proceedings is, in addition to the manner provided in 29.0408, valid if served upon any person within this Territory who, in this Territory, on behalf of such insurer, is soliciting insurance, making any contract of insurance or issuing or delivering any policies or written contracts of insurance, or collecting or receiving any premium for insurance, and a copy of such process is sent within 10 days thereafter by registered mail by the plaintiff's attorney to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing a compliance herewith, are filed with the clerk of the High Court where such action is pending on

or before the date the defendant is required to appear, or within such further time as the court may allow.

**History:** 1974, PL 13-58 § 1.

**29.0410 Service of process-Limitation or abridgement of rights.**

Nothing in 29.0407 through 29.0409 limits or abridges the right to serve any process, notice or demand upon any insurer in any other manner now or hereafter permitted by law.

**History:** 1974, PL 13-58 § 1.

**29.0411 Certificate of authority required.**

No unauthorized insurer may institute or file, or cause to be instituted or filed, any suit, action or proceedings in this Territory to enforce any right, claim or demand arising out of the transaction of business in this Territory until such insurer has obtained a certificate of authority to transact insurance business in this Territory.

**History:** 1974, PL 13-58 § 1.

**29.0412 Defense of action by unauthorized insurer.**

(a) Before any unauthorized insurer may file or cause to be filed any pleading in any action, suit or proceeding instituted against it, such unauthorized insurer shall either:

(1) file with the clerk of the High Court a bond with good and sufficient sureties, to be approved by the court, in an amount to be fixed by the court sufficient to secure the payment of any final judgment which may be rendered in such action; or

(2) procure a certificate of authority to transact the business of insurance in this Territory.

(b) The court in any action, suit, or proceeding, in which service is made in the manner provided in 29.0408 or 29.0409, may order such postponement as may be necessary to afford the defendant reasonable opportunity to comply with the provisions of subsection (a) and to defend such action.

(c) Nothing in subsection (a) is to be construed to prevent an unauthorized insurer from filing a motion to quash a writ or to set aside service thereof made in the manner provided in 29.0408 or 29.0409 on the ground either:

(1) that no policy or contract of insurance has been issued or delivered to a citizen or resident of this Territory or to a corporation authorized to do business therein; or

(2) that such insurer has not been transacting business in this Territory; or

(3) that the person on whom service was made pursuant to 29.0409 was not doing any or the acts therein enumerated.

**History:** 1974, PL 13-58 § 1.

**29.0413 Violation-Penalty.**

Any person violating 29.0403 through 29.0412 is guilty of a class B misdemeanor and shall upon conviction be sentenced accordingly.

**History:** 1974, PL 13-58 § 1; amd 1980, PL 16-90 § 26.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

(RESERVED)

Chapter 10

GENERAL INSURANCE BROKERS

Sections:

- 29.1001 Commissioner responsible for regulation.
- 29.1002 Authority of Commissioner.
- 29.1003 Qualifications of brokers.
- 29.1004 Fees.
- 29.1005 Term of certificate.
- 29.1006 Revocation of certificate.
- 29.1007 Withdrawal from American Samoa.
- 29.1008 Permission to withdraw.
- 29.1009 Applications for renewal-Payment of fees.
- 29.1010 Hearings-Judicial review.
- 29.1011 Violation-Penalty.

**29.1001 Commissioner responsible for regulation.**

The responsibility for the regulation of general insurance brokers and the insurers they do business with shall be with the Insurance Commissioner. The Commissioner may delegate this responsibility, or any portion thereof, to his deputies, assistants and other personnel as may be necessary.

**History:** 1978, PL, 15-79 § 2.

**29.1002 Authority of Commissioner.**

The Insurance Commissioner shall have the authority to adopt rules as he considers necessary and appropriate to:

- (1) interpret this chapter;
- (2) regulate general insurance brokers and the insurers they do business with; and
- (3) protect the public from all potential harm and abuses ranging from, but not limited to, the licensing of unscrupulous brokers to the denial of assigned risk automobile coverage at rates based upon the widest possible participation by admitted and nonadmitted carriers in any pool which may be in effect.

**History;** 1978, PL, 15-79 § 2.

**29.1003 Qualifications of brokers.**

(a) Every applicant for a certificate of authority as a general insurance broker shall be required to submit the following with the Insurance Commissioner:

- (1) a copy of its charter, articles of association, articles of incorporation, partnership agreement, or other controlling instruments, certified by the official who is required to keep those records in the jurisdiction where the applicant is incorporated, organized, or otherwise doing business in a capacity similar to that of a general broker as defined in this title;
- (2) a resolution adopted by its governing body in accordance with its bylaws or other internal law, stating that service of process upon the Treasurer, in any action or proceeding against it

brought or pending out of business transacted in American Samoa, shall be valid personal service upon the general insurance broker;

(3) a statement setting forth the location and post office address of its principal office; and similar such statement anytime the general insurance broker changes its principal office;

(4) a good and sufficient bond, with a surety company approved by the Commissioner with the applicant as principal, in a form to be approved by the Commissioner, and running to the Commissioner or his successor in the office in the sum of \$10,000, with the condition that the surety on the bond shall be answerable up to the amount of the bond for all judgments, decrees, or orders given, made or rendered against the principal on the bond by the High Court of American Samoa for the payment of costs, shall enforce the bond either in his own name or in the name of the interested party thereto for the use and benefit of any person injured by the breach; the surety on the above bond may withdraw from it upon giving to the Commissioner written notice of his intention not less than 60 days prior to the date on which the then existing certificate of the general insurance broker is to expire, the withdrawal then is effective on the date of expiration of the certificate; in lieu of the bond as required by this section, the applicant may deposit with the Commissioner acceptable unencumbered securities or other unencumbered assets of \$10,000 as surety subject to the same conditions as the bond;

(5) the name and complete information regarding the financial stability, reputation, and integrity of any nonadmitted insurer with whom such applicant has dealt or proposes to deal with in the transaction of insurance business in American Samoa. The applicant shall provide, in writing, so much of the information requested as he can produce, together with a signed statement identifying the same and giving reasons for omissions, if any. These are continuing obligations and must be complied with any time the general broker proposes to deal with a nonadmitted insurer that he has not previously obtained the Commissioner's approval to deal with. After due examination of the information, the Commissioner shall identify those insurers with whom the general broker may deal and set forth in writing the specific reasons for rejecting others. The Commissioner may, if he finds it to be in the public interest, order the general broker not to place or continue to place further insurance business on property located, or operations conducted within or on lives of persons residing in this territory with the non-admitted insurer. Any placement of such insurance with a nonapproved, nonadmitted insurer by a general broker shall subject him to the revocation or penalty, or both provisions set forth in this chapter:

(6) other information as in the Commissioner's opinion would assist him in making his determination of the qualifications of the applicant

(b) Within a reasonable time after having received all of the necessary information, the Commissioner shall make a determination of the applicant's qualifications.

**History:** 1978, PL 15-79 § 2; amd 1978, PL, 15-99.

**Amendment:** 1978 Subsection (a)(5): deleted the followings from the end of first sentence: and resolutions by both the applicant and each of the nonadmitted insurers stating that service of process upon the nonadmitted insurers may be made by serving the general broker or in his absence, the Treasurer”.

#### **29.1004 Fees.**

The fee schedule set forth in 29.0320, or any successor section, shall be applicable to general insurance brokers.

**History:** 1978, PL, 15-79 § 2.

#### **29.1005 Term of certificate.**

Certificates of authority expire on 1 June each year unless revoked or withdrawn or unless an

application for renewal has been filed and a final decision is pending.

**History:** 1978, PL, 15-79 § 2.

**29.1006 Revocation of certificate.**

The Commissioner may revoke a certificate of authority if in his opinion:

- (1) the general insurance broker no longer meets the requirements for the authority;
- (2) the general insurance broker knowingly exceeds its charter powers or powers granted under its certificate of authority; or
- (3) the general insurance broker's actions are not consistent with the public's well being.

**History:** 1978, PL, 15-79 § 2.

**29.1007 Withdrawal from American Samoa.**

A general insurance broker desiring to withdraw from American Samoa may do so by applying to the Commissioner for an order granting permission to withdraw. The application shall be accompanied by an affidavit of its principal officer and general agent that:

- (1) it desires to withdraw and to permanently discontinue the transaction of the general insurance brokerage business in American Samoa;
- (2) all claims against it have been satisfied; and
- (3) it has caused publication of its notice to withdraw in a newspaper of general circulation in American Samoa once a week for 4 consecutive weeks.

**History:** 1978, PL, 1579 § 2.

**29.1008 Permission to withdraw.**

If within 1 week from the last publication as specified in paragraph (3) of 29.1007, the Commissioner does not find that any person has given good and sufficient cause why an order permitting withdrawal should not be entered, he shall order permission to withdraw, and the withdrawing general insurance broker shall deliver to the Commissioner for cancellation its certificate of authority and current licenses of its agents and solicitors.

**History:** 1978, PL 15-79 § 2.

**29.1009 Applications for renewal-Payment of fees.**

Applications for renewal and the payment of continuance fees are to be submitted on or before 1 April of each year. If there has been no change in the information required for the previous year, the application may consist of a verified statement by the principal officer to that effect. If there has been a change in the information submitted for the previous year, the applicant shall identify and explain all those changes in a verified statement by the principal officer.

**History:** 1978, PL 15-79 § 2.

**29.1010 Hearings-Judicial review.**

Persons adversely affected by a final order of the Commissioner may request a hearing under the Administrative Procedure Act, 4.1001 et seq. Judicial review of orders must also be in accordance with the Administrative Procedure Act.

**History:** 1978, PL, 15-79 § 2.

**29.1011 Violation-Penalty.**

A person acting as, or holding himself out to be a certified general insurance broker, who in fact is not, or who otherwise violates any provision of this chapter, is guilty of a class B misdemeanor, and shall upon conviction be sentenced accordingly.

**History:** 1978, PL, 15-79 § 2: amd 1980, PL 16-90 § 27.

**Amendments:** 1980 Amended to comply with penalties provided for in Title 46, Criminal Justice.

**Chapters 11-14**

**(RESERVED)**

**Chapter 15**

**CONTRACT OF INSURANCE**

**Sections:**

**I. Classes of Insurance**

- 29.1501 Limitation.
- 29.1502 Fire insurance.
- 29.1503 Marine insurance.
- 29.1504 Life insurance.
- 29.1505 Accident, sickness, health, and liability insurance.
- 29.1506 Fidelity and surety insurance.
- 29.1507 Motor vehicle insurance.
- 29.1508 Title insurance.
- 29.1509 Workmen's compensation insurance.
- 29.1510 Annuity.
- 29.1511 Mortgage insurance.
- 29.1512 Property insurance.
- 29.1513 Miscellaneous.

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- 29.1522 Insurable interest-Generally.
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- 29.1580 Definition.
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## **29.1591 Authorization.**

### **I. Classes of Insurance**

#### **29.1501 Limitation.**

An insurer authorized to do business in American Samoa may only write classes of insurance authorized by this chapter and by the insurer's certificate of authority.

**History:** 1974, PL 13-58 § 1.

#### **29.1502 Fire insurance.**

Fire insurance includes insurance upon buildings and other property against loss or damage by fire, lightning, windstorms, cyclones, tornadoes, typhoons, hail or earthquakes, water from the breakage or leakage of sprinkler pumps or other apparatus erected for extinguishing fires, and water pipes; and against loss or damage arising from the prevention or suspension of rent or use and occupation of any building, plant, or manufacturing establishment, due to the hazard or peril against which the insurance is carried.

**History:** 1974, PL 13-58 § 1.

#### **29.1503 Marine insurance.**

Marine insurance includes insurance upon ocean and inland risks, and transportation, but not including any other casualty insurance as hereinafter provided.

**History:** 1974, PL 13-58 § 1.

#### **29.1504 Life insurance.**

Life insurance includes insurance on all forms of life, endowments, and annuities, but does not include health, accident, or sickness insurance or any other casualty insurance as hereinafter provided.

**History:** 1974, PL 13-58 § 1.

#### **29.1505 Accident, sickness, health, and liability insurance.**

(a) Accident insurance and sickness or health insurance includes insurance against injury, disablement, or death resulting from travel or general accident and against disablement resulting from sickness, and every insurance appertaining thereto.

(b) Liability insurance includes all insurance against loss or damage resulting from accident to, or injury, fatal or nonfatal, suffered by, any person, and for which the insurer is liable.

**History:** 1974, PL 13-58 § 1.

#### **29.1506 Fidelity and surety insurance.**

Fidelity and surety insurance includes all guaranteeing of persons holding places of public trust, and of the performance of contracts other than insurance policies. It also includes the execution of all bonds, undertakings and contracts of suretyship.

**History:** 1974, PL 13-58 § 1.

#### **29.1507 Motor vehicle insurance.**

Motor vehicle insurance includes all insurance on motor or motor driven vehicles, except those operating on water or on rails, against loss or damage to or loss of use of the vehicle or its tools, appliances or equipment, against local liability for loss or damage to persons or property resulting through the operation of the vehicle caused by fire, self-ignition, explosion, theft, collision, or other insurance hazards, including hazards incident to transporting the vehicle on land or water.

**History:** 1974, PL 13-58 § 1.

**Research Guide:**

For provisions regarding compulsory motor vehicle insurance. see 22.2001 et seq.

**29.1508 Title insurance.**

Title insurance includes insurance or guaranty of title to real or personal property or any interest or encumbrance thereon, or of information relative to real property, against loss by reason of defective titles, encumbrances, or adverse claims of title, or otherwise.

**History:** 1974, PL 13-58 § 1.

**29.1509 Workmen's compensation insurance.**

Workmen's compensation insurance includes insurance against loss from liability imposed by law upon employers to compensate employees and their dependents for injury sustained by employees arising out of and in the course or scope of their employment.

**History:** 1974, PL 13-58 § 1.

**29.1510 Annuity.**

"Annuity" or "annuity policy" means any agreement to make periodic payments, whether fixed or variable in amount, where the making of all or some of the payments, or the amount of the payments, is dependent upon the continuance of human life, except payments made pursuant to the settlement provisions of a life insurance policy, and includes additional benefits operating to safeguard the policy from lapse or to provide a special surrender value or special benefit or annuity in the event of total and permanent disability of the annuitant.

**History:** 1974, PL 13-58 § 1.

**29.1511 Mortgage insurance.**

"Mortgage insurance" means insurance against financial loss by reason of:

(1) nonpayment of principal, interest and other sums agreed to be paid under the terms of an obligation secured by a mortgage, deed, or trust, or other instrument constituting a lien or charge on real or personal property; or

(2) nonpayment of rent and other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real property, such insurance also being referred to as "lease insurance".

**History:** 1974, PL 13-58 § 1.

**29.1512 Property insurance.**

"Property insurance" means insurance on real or personal property of every kind and of every interest therein, whether on land, water or in the air, against loss or damage from any and all

hazards or causes, and against consequential loss from such loss or damage, other than non-contractual legal liability for loss or damage. "Property insurance" does not include title insurance.

**History:** 1974, PL 13-58 § 1.

### **29.1513        Miscellaneous.**

"Miscellaneous insurance" includes insurance about any risk not included within or under any of the classes listed in 29.1502 through 29.1512 in which there is a proper subject for insurance, not prohibited by law or contrary to sound public policy.

**History:** 1974, PL 13-58 § 1.

## **II. Parties, Events and Interests**

### **29.1520        Capacity to insure.**

Any person capable of making a contract may be an insurer, subject to the restrictions imposed by this part.

**History:** 1974, PL 13-58 § 1.

### **29.1521        Capacity to be insured.**

Except as provided in 29.1520 through 29.1527, any contingent or unknown event, whether past or future, which may damage any person having an insurable interest, or create a liability against him, may be insured against, subject to this title.

**History:** 1974, PL 13-58 § 1.

### **29.1522        Insurable interest-Generally.**

(a) Every interest in property, or any relation thereto, or any liability in respect thereto, of such a nature that a contemplated peril might directly damage the insured, is an insurable interest. A mere contingent or expectant interest in anything, not founded upon an actual right to or in the thing, nor upon any valid contract for it, is not insurable.

(b) Every person has an insurable interest in the life and health of:

- (1) himself;
- (2) any person upon whom he depends wholly or in part for education or support;
- (3) any person under a legal obligation to him for the payment of money or respecting property or services, or whose death or illness might delay or prevent performance;
- (4) any person upon whose life any estate or interest vested in him depends.

(c) If the insured has no insurable interest, the contract is void.

**History:** 1974, PL 13-58 § 1.

### **29.1523        Insurable interest-Measure of.**

Except in the case of property held by the insured as a carrier or depository, the measure of an insurable interest in property is the extent to which the insured might be damaged by loss of, or injury to, the property.

**History:** 1974, PL 13-58 § 1.

**29.1524 Insurable interest-Carrier or depository.**

A carrier or depository of any kind has an insurable interest in a thing held by him as such to the extent of its value.

**History:** 1974, PL 13-58 § 1.

**29.1525 Insurable interest-Type of- Existence.**

An interest in property insured must exist when the insurance takes effect and when the loss occurs, but need not exist in the meantime; and interest in the life or health of a person insured must exist when the insurance takes effect, but need not exist thereafter or when the loss occurs.

**History:** 1974, PL 13-58 § 1.

**29.1526 Change of interest.**

(a) Except in the cases herein specified, and in the cases of life and disability insurance, a change of interest in any part of a subject insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent until the interest in the subject and the interest in the insurance are vested in the same person.

(b) A change of interest in a subject insured after the occurrence of an injury which results in a loss does not affect the right of the insured to indemnity for the loss.

(c) A change of interest in one or more of several distinct subjects separately insured by one policy does not avoid the insurance as to the others.

(d) A change of interest by will or succession, on the death of the insured, does not avoid insurance; and his interest in the insurance passes to the person taking his interest in the subject matter insured.

(e) In the case of partners, joint owners, or owners in common, who are jointly insured, a transfer of interest by one to another thereof does not avoid insurance even though it has been agreed that the insurance shall cease upon an alienation of the subject insured.

**History:** 1974, PL, 13-58 § 1.

**29.1527 Transfer of subject matter insured.**

The mere transfer of subject matter insured does not transfer the insurance, but suspends it until the same person becomes the owner of both the insurance and the subject matter insured.

**History:** 1974, PL 13-58 § 1.

**III. Contents of Policy**

**29.1530 Filing and approval.**

(a) Except where otherwise provided by law, no basic policy form, application form (where written application is required and is to be made a part of the policy), rider, endorsement or renewal certificate form, may be delivered or issued for delivery until the form has been filed with and is approved by the Commissioner. This section does not apply to:

(1) forms of unique character which are designed for, and used with respect to, insurance upon a particular risk or subject;

(2) forms issued at the request of a particular life or health insurance policy owner or certificate holder and which relate to the manner of distribution of benefits or to the reservation of rights and benefits thereunder; or

(3) forms of group life or health insurance policies, or both, which have been agreed upon as a result of negotiations between the policyholder and the insurer.

(b) The Commissioner shall, within 30 days after the filing of any form, approve or disapprove the form. The Commissioner shall give written notice of his action to the insurer proposing to deliver the form, and when a form is disapproved, the notice shall show wherein the form does not comply with the law.

(c) The 30-day period referred to in subsection (b) may be extended by the Commissioner for an additional period not to exceed 30 days if he gives written notice within the first 30-day period to the insurer proposing to deliver the form that he needs the additional time for the consideration of the form.

(d) The Commissioner may at any time request an insurer to furnish him a copy of any form exempted under subsection (a).

**History:** 1974, PL 13-58 § 1.

### **29.1531 Grounds for disapproval of policy forms.**

The Commissioner shall disapprove any form requiring his approval:

- (1) if he finds it does not comply with the law;
- (2) if he finds it contains any provisions, including statement of premium, or has any label, description of its contents, title, heading, backing or other indication of its provisions, which is unintelligible, uncertain, ambiguous or abstruse, or likely to mislead a person to whom the policy is offered, delivered or issued;
- (3) if, in his judgment, its use would be prejudicial to the interests of the insurer's policyholders;
- (4) if he finds it contains provisions which are unjust, unfair, or inequitable;
- (5) if he finds sales presentation material disapproved by him is being used with respect to the form; or
- (6) if, with respect to forms subject to approval, he finds the benefits provided therein are not reasonable in relation to the premium charged.

**History:** 1974, PL 13-58 § 1.

### **29.1532 Commissioner's withdrawal of approval.**

The Commissioner may, at any time after a hearing held not less than 20 days after written notice to the insurer, withdraw his approval of any form on any ground set forth in 29.1531. The written notice of the hearing shall state the reason for the proposed withdrawal. No insurer may deliver any form after the effective date of the withdrawal, which shall be as the Commissioner may prescribe but not less than 30 days after the giving of notice of withdrawal.

**History:** 1974, PL 13-58 § 1.

### **29.1533 Information required.**

(a) The written instrument in which a contract of insurance is set forth is the policy and it must contain the following information:

- (1) the parties between whom the contract is made;
- (2) a description of the property, life, or interest insured;
- (3) the interest of the insured;
- (4) the risk insured against;
- (5) the period during which the insurance is to continue;

(6) either a statement of the premium or, if the insurance is of a character where the exact premium is only determinable upon the termination of the contract, a statement of the basis and rates upon which the final premium is to be determined and paid;

(7) the conditions and provisions pertaining to the insurance;

(8) the time when the insurance thereunder takes effect and the period during which the insurance is to continue.

(b) In addition, the policy may contain other provisions not inconsistent with the insurance law and which are:

(1) required to be inserted by the laws of the insurer's domicile;

(2) necessary, on account of the manner in which the insurer is constituted or operated, in order to state the rights and obligations of the parties to the contract; or

(3) desired by the insured and neither prohibited by law nor in conflict with any provisions required to be included therein, and which are in each instance not less favorable in any respect to the insured or beneficiary.

**History:** 1974, PL 13-58 § 1.

### **29.1534 Signature.**

(a) All policies issued on risks in American Samoa shall be signed and subscribed as follows:

(1) if the insurer is an admitted domestic insurer, each policy shall be signed and subscribed by 2 of the major officers of the insurer designated in its articles of incorporation or in its bylaws to do so;

(2) if the insurer is an admitted foreign insurer, it shall be signed and subscribed by 2 of the major officers of the insurer authorized to do so and in all cases it shall be countersigned by the insurer's authorized resident general agent, or shall have attached thereto an appropriate countersignature endorsement signed by the resident general agent;

(3) if the insurer is an admitted alien insurer it shall be signed by its United States general manager or other person in charge of its United States business if it has such officials, or if it does not, by 2 of the major officers of the insurer authorized to do so, and in all cases or shall be countersigned by the insurer's authorized resident general agent, or shall have attached thereto an appropriate countersignature endorsement signed by the resident general agent.

(b) Countersignatures by an authorized resident general agent of the insurer originating a contract of insurance participated in by other insurers as cosureties or coindemnitors shall satisfy all the countersignature requirements in respect of the contract of insurance.

(c) The provisions of this section relating to countersignature by an insurer's authorized general agent shall not apply to:

(1) any contract of insurance covering any vessel or aircraft used in interstate or foreign commerce, or covering any liability or other risks incident to the ownership, maintenance, or operation thereof;

(2) any contract of reinsurance between any insurance companies or other insurers;

(3) any contract of insurance covering any property in interstate or foreign commerce, or any liability or risks incident thereto.

**History:** 1974, PL 13-58 § 1.

### **29.1535 Coverage.**

When the name of the person intended to be insured is specified in a policy, it can be applied only to his own interest.

**History:** 1974, PL 13-58 § 1.

**29.1536 Subsequent owner of interest.**

A policy may be so framed that it will insure to the benefit of whosoever, during the continuance of the risk, becomes the owner of the interest insured.

**History:** 1974, PL 13-58 § 1.

**29.1537 Liability policy direct action.**

On any policy of liability insurance, the injured person or his heirs or representatives has a right of direct action against the insurer within the terms and limits of the policy, whether or not the policy of insurance sued upon was written or delivered in American Samoa, and whether or not the policy contains a provision forbidding direct action, provided that the cause of action arose in American Samoa. The action may be brought against the insurer alone, or against both the insured and insurer.

**History:** 1974, PL 13-58 § 1.

**Case Notes:**

On causes of action arising in American Samoa from any policy of liability insurance, a plaintiff may take direct action against an insurer regardless of whether the policy forbids such action, whether the insured is bankrupt, or whether the plaintiff is suing for personal injury or property damages. A.S.C.A. § 29.1537. *Holland v. Haleck's Island Motors*, 15 A.S.R.2d 44 (1990).

Statute granting a right of direct action against an insurer even if a policy forbids such action must be liberally construed to enhance its public policy purpose of allowing direct actions on liability insurance policies. A.S.C.A. § 29.1537. *Holland v. Haleck's Island Motors*, 15 A.S.R.2d 44 (1990).

Statutory right of direct action applies to any policy of liability insurance. A.S.C.A. § 29.1537. *Holland v. Haleck's Island Motors*, 15 A.S.R.2d 44 (1990).

Plaintiff has a right of direct action against an insurance company. A.S.C.A. § 29.1537. *Holland v. Haleck's Island Motors*, 18 A.S.R.2d 2 (1991).

**29.1538 Insolvency or bankruptcy.**

No policy of liability insurance may be issued or delivered in American Samoa unless it contains provisions to the effect that the insolvency or bankruptcy of the insured may not release the insurer from the payment of damages for injuries sustained or loss occasioned during the term of the policy, and that in case execution against the insured is returned unsatisfied in any action brought by the injured person or his heirs because of the insolvency or bankruptcy, an action may be maintained by the injured person or his heirs or representatives against the insurer within the terms and limits of the policy for the amount of the judgment, not exceeding the amount of the policy.

**History:** 1974, PL 13-58 § 1.

**29.1539 Open or valued policy.**

A policy is either an open policy, which is one wherein the value of the subject matter is not agreed upon but is left to be ascertained in case of loss, or a valued policy, which is one containing on its face an expressed agreement that the thing insured shall be valued at a specified sum. An open policy must not be written on real property for fire insurance or miscellaneous insurance.

**History:** 1974, PL 13-58 § 1.

**29.1540 Approval of form.**

(a) An insurer may not use a policy form in effecting insurance without first obtaining the Commissioner's approval thereof as provided in this section. The Commissioner shall study each form for the purpose of guarding against any possible fraud, misrepresentation or other forms of unfairness. If he approves a form, he shall endorse his approval on the face of both duplicates and transmit one to the insured and keep one in his permanent files. If he disapproves a form, he shall issue an order of disapproval stating therein his reasons and transmit a copy to the insurer.

(b) All policies and provisions therein must be printed in a type of which the face is not smaller than 10-point.

**History:** 1974, PL 13-58 § 1.

**29.1541 Assignment of policies.**

A policy may be assignable or not assignable, as provided by its terms. Subject to its terms relating to assignability, any life or health insurance policy under the terms of which the beneficiary may be changed upon the sole request of the insured or owner may be assigned, either by pledge or transfer of title, by an assignment executed by the insured or owner alone and delivered to the insurer, whether or not the pledgee or assignee is the insurer. Any such assignment entitles the insurer to deal with the assignee as the owner or pledgee of the policy in accordance with the terms of the assignment until the insurer has received at its home office written notice of termination of the assignment or pledge, or written notice by or on behalf of some other person claiming some interest in the policy in conflict with the assignment.

**History:** 1974, PL 13-58 § 1.

**29.1542 Policy constitutes entire contract.**

(a) Every contract of insurance must be construed according to the terms and conditions of the policy. Where the contract is made pursuant to a written application therefore, if the insurer delivers a copy of the application with the policy to the insured, the application shall become a part of the insurance policy. If the application is not so delivered to the insured, it may not be a part of the insurance policy.

(b) If any life or health insurance policy is reinstated or renewed, and the insured or assignee or beneficiary with a vested interest under the policy makes written request to the insurer for a copy of the application, if any, for reinstatement or renewal, the insurer shall, within 30 days after the receipt at its home or branch office of the request and of satisfactory evidence of the requesting beneficiary's vested interest, deliver or mail to the person making the request a copy of the application. If the copy is not so delivered or mailed, the insurer shall be precluded from introducing the application as evidence in any action based upon or involving the policy or its reinstatement or renewal.

(c) This section does not apply to surety insurance.

**History:** 1974, PL 13-58 § 1.

**29.1543 Charter and bylaw provisions.**

No policy may contain any provision purporting to make a portion of the charter, bylaws or other similar document of the insurer (other than the subscriber's agreement of power of attorney of a reciprocal insurer) a part of the contract unless that portion is set forth in full in the policy. Any policy provision in violation of this section is invalid.

**History:** 1974, PL 13-58 § 1.

**29.1544 Payment discharges insurer.**

Whenever the proceeds of, or payments under, a life or health insurance policy become payable in accordance with the terms of the policy or the exercise of any right or privilege under the policy, and the insurer makes payment in accordance with the terms of the policy or in accordance with any written assignment of the policy, the person so designated as being entitled to the proceeds or payments shall be entitled to receive them and to give full acquittance therefor, and the payments shall fully discharge the insurer from all claims under the policy unless, before payment is made, the insurer has received at its home office written notice by or on behalf of some other person that the other person claims to be entitled to the proceeds or payments or some interest in the policy.

**History:** 1974, PL 13-58 § 1.

**29.1545 Regulation of sales material.**

The Commissioner, if he considers it necessary, may require the filing by an insurer of any sales presentation material for use in the sale or the presentation for sale of any policy. The Commissioner, within 30 days after the filing of the sales presentation material, shall disapprove any sales presentation material if he finds that, in whole or in part, it is false, deceptive, or misleading. Upon disapproval, the sales presentation material shall not be made, issued, circulated, displayed, or given other use by the insurer or its agents.

**History:** 1974, PL 13-58 § 1.

## IV. Premiums

**29.1550 Accrual of premium.**

The insurer is entitled to payment of the premium as soon as the subject matter insured is exposed to the peril insured against.

**History:** 1974, PL 13-58 § 1.

**29.1551 Right to return of premium.**

Unless the insurance contract otherwise provides, a person insured is entitled to a return of premium after a policy is cancelled or rescinded as provided herein:

(1) to the whole premium if no part of his interest in the thing insured was exposed to any of the perils insured against;

(2) where the insurance is for a definite term, and the insured surrenders his policy, to such proportion of the premium as corresponds to the unexpired portion of the term after deducting from the whole premium any claim for loss or damage which has previously accrued;

(3) when the contract is void or voidable on account of the fraud or misrepresentation of the insurer;

(4) when the contract is void or voidable on account of facts of the existence of which the insured was ignorant without his fault;

(5) When, by any default of the insured other than actual fraud, the insurer did not incur any liability under the policy.

**History:** 1974, PL 13-58 § 1.

**29.1552 Acknowledgment of receipt of premium.**

An acknowledgment in a policy of receipt of the premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation in the policy that it shall be binding until the premium is actually paid.

**History:** 1974, PL 13-58 § 1.

**V. Rates**

**29.1560 Approval.**

(a) All rates, rate schedules, rate plans, and methods of computing rates to be applied to any insurance transacted in American Samoa must be filed in the office of the Commissioner, and before any rates may be charged, advertised, publicized, or otherwise represented, they must have the approval of the Commissioner.

(b) No insurer may use any rates in violation of this section, or alter, amend, or otherwise change any rates without the approval of the Commissioner.

(c) No insurer may charge any rate for any insurance transacted in American Samoa in excess of the rate approved by the Commissioner for that insurer for that risk and class of insurance.

(d) A filing shall be open to public inspection immediately upon submission to the Commissioner.

**History:** 1974, PL 13-58 § 1; amd 1977, PL 15-29.

**Amendment:** 1977 subsection (c): substituted "in excess of the rate" for other than the rate".

**29.1561 Standards.**

An insurer, in making rates, and the Commissioner in approving them, shall apply the following standards:

(a) Rates shall not be excessive or inadequate, as herein provided, nor shall they be unfair or discriminatory.

(b) No rate may be held excessive unless such rate is unreasonably high for the insurance provided and a reasonable degree of competition does not exist in American Samoa with respect to the classification to which the rate is applicable.

(c) No rate may be held inadequate unless the rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insurer, or unless the rate is unreasonably low for the insurance provided and the use of the rate by the insurer will have the effect of destroying competition in American Samoa.

(d) Consideration must be given, to the extent applicable, to past and prospective loss experiences, to prevailing hazards, and to underwriting profits, contingencies, expenses and other normal business requirements and factors, or used by the insurer, rating, or advisory organization, does not comply with the requirements and standards of 29.1560 through 29.1565, he shall, unless he has reason to believe the noncompliance is willful, give notice in writing to the insurer, rating or advisory organization stating in what manner the noncompliance is alleged to exist and specifying a time, not less than 10 days after the date of mailing, in which the noncompliance must be corrected.

**History:** 1974, PL 13-58 § 1.

**29.1562 Rating bureaus.**

Insurers are authorized to become members or subscribers of rating bureaus, or advisory organizations of a like nature and may use the rating systems, and underwriting rules and policy forms of those organizations, provided they are not excessive, inadequate or unfairly discriminatory, conform to the provisions of this part, and are approved by the Commissioner prior to their use as provided.

**History:** 1974, PL 13-58 § 1.

**29.1563 Disapproval of filings by Commissioner.**

(a) If, within the waiting period, the Commissioner finds that a filing does not meet the requirements of 29.1560 through 29.1565, he shall send to the insurer or rating organization which made the filing, written notice of disapproval of the filing, specifying therein in what respects he finds the filing fails to meet the requirements and stating that the filing shall not become effective.

(b) If the Commissioner has reason to believe that an insurer, rating, or advisory organization or any rate, rating plan, or rating system made

**History:** 1974, PL 13-58 § 1.

**29.1564 Motor vehicle insurance rates.**

The following chart indicates the maximum allowable annual motor vehicle liability rates:

Type	Surcharge	.00	+ .40	+ .90	+1 .50	+2.20
Private		\$187.50	\$262.50	\$356.25	\$468.75	\$600.
Points		0	1	2	3	4
Commercial & Fleet		231.25				
Rentals			375.			
Motorcycles & Motorbikes		56.25	78.75	106.25	140.00	142.50

The points referred to are under the "Safe Driver Plan" referred to under the study conducted for the insurance commission by Mr. Clifford Miyoi entitled "Automobile Insurance Problems in American Samoa", and dated February 1978. This plan shall be adopted by the Insurance Commissioner prior to 1 July 1978 and implemented in conjunction with these new maximum rates.

These rates are effective with policies written to cover periods commencing on 1 July 1978 and after.

**History:** 1978, PL 15-93 § 1, amd 1979, PL 16-3 § 1; amd 1989 PL 21-3.

**Amendments:** 1979 deleted bus and taxi rates.

**29.1565 Liability rates for buses and taxis.**

(a) Annual maximum motor vehicle liability rates for buses and taxis are as follows:

<b>Points</b>	<b>0</b>	<b>1</b>	<b>2</b>
<b>Rates</b>	<b>\$350</b>	<b>\$450</b>	<b>\$600</b>

Points shall be calculated in the same manner as provided in 29.1564 for private vehicles, except that:

(1) the points shall be the total points of both the owner and all other operators of the vehicle. The owner shall identify all operators of the vehicle in the application for insurance.

(2) the rates shall apply to each vehicle to be insured.

(b) No person who has accumulated more than 2 points under the provisions of this section shall operate a bus or taxi.

(c) The Insurance Commissioner is authorized, upon notice and opportunity for hearing afforded to the owner and the insurance carrier issuing vehicle liability insurance in accordance with the Administrative Procedure Act, 4.1025 through 4.1034, to require the insurance carrier to cancel, revoke or suspend the operation of the motor vehicle liability policy of insurance covering any bus or taxi which is operated by a person who has accumulated more than 2 points under the provisions of this section. The cancellation, revocation or suspension may extend up to the remaining period of the insurance policy then in effect, and to any or all buses or taxis then owned and operated by the owner.

**History:** 1979, PL 16-3 § 2.

**Research Guide:** For assigned risk rules, see subsection (f) of 29.0205.

### **29.1566 Violation-Penalty.**

Any person violating 29.1560 through 29.1564 is guilty of a class B misdemeanor, and shall, upon conviction, be sentenced accordingly.

**History:** 1974, PL 13-58 § 1, amd 1980, PL 16-90 § 28.

**Amendments:** 1980 Amended to conform with penalties provided for in Title 46, Criminal Justice.

## **VI. Losses**

### **29.1570 Perils not insured against-Rescue efforts.**

An insurer is liable:

(1) when the thing insured is rescued from a peril insured against and which would otherwise have caused a loss if in the course of the rescue, the thing is exposed to a peril not insured against, and which permanently deprives the insured of its possession, in whole or in part:

(2) if a loss is caused by efforts to rescue the thing insured from a peril insured against.

**History:** 1974, PL 13-58 § 1.

### **29.1571 Liability of insurer—Negligence of insured.**

An insurer is not liable for a loss caused by the willful act of the insured; but the insurer is not exonerated by the negligence of the insured or of the Insured's agents or others.

**History:** 1974, PL 13-58 § 1.

### **29.1572 Notice of loss.**

Failure to give notice of loss covered by any insurance within any period provided for by the policy or otherwise may not exonerate the insurer if the notice is given within a reasonable time after the insured has or should have first knowledge of the loss. In classes of insurance, except marine and fire, the insured shall have at least 10 days after the event within which to give notice of loss. No requirement of notice within a lesser period is valid.

**History:** 1974, PL 13-58 § 1.

### **29.1573 Preliminary proof of loss.**

When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice, but it is sufficient for him to give the best evidence in his power at the time.

**History:** 1974, PL 13-58 § 1.

**29.1574 Waiver of defects in notice or preliminary proof.**

All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as ground of objection, are waived.

**History:** 1974, PL 13-58 § 1.

**29.1575 Waiver of delay.**

Delay in the presentation to an insurer of notice, or preliminary proof of loss, is waived if caused by an act of the insurer, or if he omits to make objection promptly and specifically upon that ground.

**History:** 1974, PL 13-58 § 1.

**29.1576 Proof by third person-Sufficient compliance.**

If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured or beneficiary, there is sufficient compliance with the requirement if the insured or the beneficiary uses reasonable diligence to procure the certificate or testimony, and in case of refusal to give it to him, furnishes reasonable evidence to the insurer that the refusal was not induced by just grounds of disbelief in the facts necessary to be certified or testified to.

**History:** 1974, PL 13-58 § 1.

**29.1577 Failure to pay loss, recovery of amount due, and damages.**

In all cases where loss occurs and the insurer liable therefor fails to pay the same within the time specified in the policy, after demand made therefor, the insurer is liable to pay the holder of the policy, in addition to the amount of such loss, 12% damages upon the amount of the loss, together with all reasonable attorney's fees for the prosecution and collection of the loss, the attorney's fees to be taxed by the court where the matter is heard on original action, by appeal or otherwise, and to be taxed as a part of the costs therein, and collected as other costs are or may be by law collected. Writs of attachment or garnishment filed or issued after proof of loss or death has been received by the insurer shall not defeat the provisions of this section, provided the insurer desiring to pay the amount of the claim as shown in the proof of loss or death may pay the amount into the registry of the court after issuance of writs of attachment and garnishment, in which event there shall be no further liability on the part of the insurer.

**History:** 1974, PL 13-58 § 1.

**29.1578 Total loss by fire or miscellaneous insurance-Recovery of full amount.**

A fire or miscellaneous insurance policy, in case of a total loss of any risk insured under the classes specified in this chapter as fire or miscellaneous insurance, must be held and considered to be a liquidated demand against the insurer taking the risk for the full amount stated in the

policy, or the full amount upon which the insurer charges, collects or receives a premium; provided the provisions of 29.1570 through 29.1578 may not apply to personal property. In the event of a total loss or destruction of any personal property on which the amount of the appraisal or agreed loss is less than the total amount insured thereon, the insurer shall return to the insured the unearned premium for the excess of insurance over the appraised or agreed loss, to be paid at the same time and in the same time and manner as the loss shall be paid, and the unearned premium shall be a just and legal claim against the insurer.

**History:** 1974, PL 13-58 § 1.

## **VII. Double Insurance**

### **29.1580 Definition.**

Double insurance exists when the same person is insured by several insurers separately in respect to the same subject, interest and risk.

**History:** 1974, PL 13-58 § 1.

### **29.1581 Contribution by insurers.**

In case of double insurance, the several insurers are liable to pay losses thereon as follows:

(a) In fire and miscellaneous insurance, each insurer shall contribute ratably without regard to the dates of the several policies.

(b) In marine insurance, the liability of the several insurers for a total loss, whether actual or constructive, where the policies are not simultaneous, is in the order of the dates of the several policies. No liability attaches to a second or other subsequent policy, except as to the excess of the loss over the amount of all previous policies on the same interest. If 2 or more policies bear the same date, they are deemed to be simultaneous, and each insurer on simultaneous policies shall contribute ratably. The insolvency of any of the insurers does not affect the proportionate liability of the other insurers. All insurers on the same marine interest shall contribute ratably for a partial or average loss.

**History:** 1974, PL 13-58 § 1.

## **VIII. Reinsurance**

### **29.1590 Definition.**

A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

**History:** 1974, PL 13-58 § 1.

### **29.1591 Authorization.**

No admitted insurer may reinsure with any other insurer who has not been previously admitted in American Samoa, or who has not been approved by the Commissioner as a reinsurer.

**History:** 1974, PL 13-58 § 1.