



# LAWS OF ALASKA

1968

**Source**

HB 103 am FCC

**Chapter No.**

234

**AN ACT**

Relating to unauthorized insurers.

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

\* Section 1. AS 21.33 is amended by adding new sections to read:

**ARTICLE 1. UNAUTHORIZED INSURERS.**

Sec. 21.33.011. PURPOSE. The purpose of secs. 11 - 71 of this chapter is to subject certain persons and insurers to the jurisdiction of the director, of proceedings before the director, and of the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to these residents the often insuperable obstacle of asserting their legal rights under these policies in forums foreign to them under laws and rules of practice with which they are not familiar. The legislature declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers, which are subject to strict regulation, from unfair competition by unauthorized persons and insurers and by protecting against the evasion of the insurance regulatory laws of this state. In furtherance of this interest, the legislature, in secs. 11 - 71 of this chapter, provides methods for substituted service of process upon these persons or insurers in any proceeding, suit or action in any court and substitute service of any

notice, order, pleading or process upon these persons or insurers in any proceeding before the director to enforce or effect full compliance with the insurance and tax statutes of this state, and declares in so doing it exercises its power to protect residents of this state and to define what constitutes doing an insurance business in this state, and also exercises powers and privileges available to this state by virtue of P.L. 79 - 15 (1945), (Chapter 20, 1st Sess., S. 340), 59 Stat. 33, as amended, which declares that the business of insurance and every person engaged in the business of insurance shall be subject to the laws of the several states.

Sec. 21.33.015. UNAUTHORIZED INSURANCE PROHIBITED. No person or insurer may directly or indirectly do any of the acts of an insurance business set out in sec. 71 of this chapter, except as provided by and in accordance with the specific authorization of statute.

Sec. 21.33.021. SERVICE OF PROCESS ON DIRECTOR. (a) An act of doing an insurance business as set out in sec. 71 of this chapter by an unauthorized person or insurer is equivalent to and constitutes an irrevocable appointment by that person or insurer, binding upon him, his executor, administrator or personal representative, or successor in interest if a corporation, of the director and his successors in office to be the lawful attorney of that person or insurer upon whom may be served all legal process in any action, suit or proceeding in any court arising out of doing an insurance business in this state by that person or insurer, except in an action, suit or proceeding by the director or by the state. An act of doing an insurance business as set out in sec. 71 of this chapter by an unauthorized person or insurer is signification of his agreement that legal process so served is of the same legal force and validity as personal service of process in this state upon the person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) Service of process shall be made by leaving two copies in the hands or office of the director and paying to him for the use of the state the fee required by AS 21.06.-250(15) for each person or insurer. A certificate by the director showing the service, which shall be attached to the original or third copy of the process presented to him for that purpose, is sufficient evidence of service. Service upon the director as attorney shall be service upon the principal.

(c) The director shall immediately mail one copy of the process to the defendant at its last known principal place of business and shall keep a record of all process so served upon him which shall show the day and hour of service. This service of process is sufficient, provided notice of the service and a copy of the process are sent within 10 days by registered mail by the plaintiff or his attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or 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 or insurer to whom

the letter is addressed, and the affidavit of the plaintiff or his attorney showing compliance with this subsection are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within further time which the court may allow.

(d) Service of process in such an action, suit or proceeding, in addition to the manner provided in (b) and (c) of this section, is valid if served upon a person in this state who on behalf of an unauthorized person or insurer is doing any act of an insurance business as set out in sec. 71 of this chapter, and if a copy of the process is sent within 10 days by registered mail by the plaintiff or his attorney to the defendant at the last known principal place of business of the defendant and the defendant's receipt, or 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 or insurer to whom the letter is addressed and the affidavit of the plaintiff or his attorney showing compliance with this subsection are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear, or within further time which the court may allow.

(e) No plaintiff or complainant is entitled to a judgment by default in an action, suit or proceeding in which the process is served under this section unless there is compliance with the Rules of Civil Procedure.

(f) Nothing contained in this section limits or abridges the right to serve a process, notice or demand upon a person or insurer in any other manner now or hereafter permitted by law.

Sec. 21.33.025. SERVICE OF PROCESS ON SECRETARY OF STATE. (a) An act of doing an insurance business as set out in sec. 71 of this chapter by an unauthorized person or insurer is equivalent to and constitutes an irrevocable appointment by that person or insurer, binding upon him, his executor, administrator or personal representative, or successor in interest if a corporation, of the secretary of state and his successors in office to be the lawful attorney of that person or insurer upon whom may be served all legal process in any action, suit or proceeding in any court by the director or by the state and upon whom may be served any notice, order, pleading or process in any proceeding before the director and which arises out of doing an insurance business in this state by that person or insurer. An act of doing an insurance business as set out in sec. 71 of this chapter by an unauthorized person or insurer is signification of his agreement that legal process in the court action, suit or proceeding and any notice, order, pleading or process in an administrative proceeding before the director so served is of the same legal force and validity as personal service of process in this state upon the person or insurer, or upon his executor, administrator or personal representative, or its successor in interest if a corporation.

(b) The service of process in the action, suit or proceeding in any court or the notice, order, pleading or

process in the administrative proceeding authorized by (a) of this section shall be made by leaving two copies in the hands or office of the secretary of state. A certificate by the secretary of state showing the service, which shall be attached to the original or third copy of the process presented to him for that purpose, is sufficient evidence of service. Service upon the secretary of state as attorney shall be service upon the principal.

(c) The secretary of state shall immediately mail one copy of the court process or notice, order, pleading or process in proceedings before the director to the defendant in the court proceeding or to whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at his last known principal place of business and shall keep a record of all process so served on him which shall show the day and hour of service. The service is sufficient, provided notice of the service and a copy of the court process or the notice, order, pleading or process in the administrative proceeding are sent within 10 days after service by registered mail by the plaintiff or his attorney in the court proceeding or by the director in the administrative proceeding to the defendant in the court proceeding or by whom the notice, order, pleading or process in the administrative proceeding is addressed or directed at its last known principal place of business of the defendant in the court or administrative proceeding, and the defendant's receipt, or 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 or insurer to whom the letter is addressed, and the affidavit of the plaintiff or his attorney in court proceeding or of the director in an administrative proceeding, showing compliance are filed with the clerk of the court in which the action, suit or proceeding is pending or with the director in administrative proceedings, on or before the date the defendant in the court or administrative proceeding is required to appear or respond, or within further time which the court or director may allow.

(d) No plaintiff or complainant may be entitled to a judgment or determination by default in a court or administrative proceeding in which court process or notice, order, pleading, or process in proceedings before the director is served under this section until there is compliance with the Rules of Civil Procedure regarding default judgments.

(e) This section does not limit or abridge the right to serve a process, notice, order, pleading or demand upon a person or insurer in any other manner now or hereafter permitted by law.

(f) The attorney general, upon request of the director, is authorized to proceed in the courts of this or another state or in a federal court or agency to enforce an order or decision in a court proceeding or in an administrative proceeding before the director.

Sec. 21.33.031. UNAUTHORIZED PERSON OR INSURER DEFENSE OF ACTION. (a) Before an unauthorized person or

insurer files or causes to be filed a pleading in a court action, suit or proceeding or in a notice, order, pleading or process in an administrative proceeding before the director instituted against the person or insurer, by service made as provided in secs. 21 and 25 of this chapter, the person or insurer shall either:

(1) deposit with the clerk of the court in which the action, suit or proceeding is pending, or with the director in administrative proceedings before the director, cash or securities or bond with good and sufficient sureties to be approved by the court, or the director, in an amount to be fixed by the court or the director sufficient to secure the payment of a final judgment which may be rendered in the court proceeding or in the administrative proceeding before the director; however the court or the director in administrative proceedings before the director may in its or his discretion make an order dispensing with the deposit or bond where the insurer makes a showing satisfactory to the court or the director that it maintains in a state of the United States funds or securities, in trust or otherwise, sufficient and available to satisfy a final judgment which may be entered in the court action, suit or proceeding or in an administrative proceeding before the director; or

(2) procure proper authorization to do an insurance business in this state.

(b) The court in an action, suit or proceeding in which service is made as provided in sec. 21 of this chapter, or the director in an administrative proceeding before the director in which service is made as provided in sec. 25 of this chapter, may, in his discretion, order postponement which may be necessary to afford the defendant reasonable opportunity to comply with (a) of this section and to defend himself in the court action or administrative proceeding.

(c) Nothing in (a) of this section may be construed to prevent an unauthorized person or insurer from filing a motion to quash a writ or to set aside service made as provided in secs. 21 or 25 of this chapter on the ground that the unauthorized person or insurer has not done any of the acts enumerated in sec. 71 of this chapter or that the person or whom service was made under sec. 21(d) of this chapter was not doing any of the acts enumerated in sec. 71 of this chapter.

Sec. 21.33.035. ATTORNEY FEES. In an action against an unauthorized person or insurer upon a contract of insurance issued or delivered in this state to a resident or to a corporation authorized to do business in this state, if the person or insurer has failed for 30 days after demand before the commencement of the action to make payment in accordance with the terms of the contract, and it appears to the court that the refusal was vexatious and without reasonable cause, the court may allow to the plaintiff a reasonable attorney fee and include the fee in the judgment that may be rendered in the action. Failure of the person or insurer to defend the action shall be considered prima facie evidence that its failure to make payment was vexatious and without reasonable cause.

Sec. 21.33.041. VALIDITY OF INSURANCE CONTRACTS.

Except for lawfully procured surplus lines insurance and contracts of insurance independently procured through negotiations occurring entirely outside this state which are reported and on which premium tax is paid in accordance with sec. 61 of this chapter, a contract of insurance effective in this state and entered into by an unauthorized insurer is unenforceable by such insurer. If the unauthorized insurer fails to pay a claim or loss within the provisions of the insurance contract, a person who assisted or in any manner aided directly or indirectly in the procurement of the insurance contract shall be liable to the insured for the full amount under the provisions of the insurance contract.

Sec. 21.33.045. INVESTIGATION AND DISCLOSURE OF INSURANCE CONTRACTS. (a) When the director has reason to believe that insurance has been effectuated by or for a person in this state with an unauthorized insurer the director shall in writing order the person to produce for examination all insurance contracts and other documents evidencing insurance with both authorized and unauthorized insurers and to disclose to the director the amount of insurance, name and address of each insurer, gross amount of premium paid or to be paid and the name and address of the person or persons assisting or aiding in the solicitation, negotiation or effectuation of the insurance.

(b) Every person who, for 30 days after the written order under (a) of this section neglects to comply with the requirements of the order or who wilfully makes a disclosure that is untrue, deceptive or misleading shall forfeit \$50 and an additional \$50 for each day of neglect after expiration of the 30 days.

Sec. 21.33.051. REPORTING OF UNAUTHORIZED INSURANCE.

(a) Every person investigating or adjusting a loss or claim on a subject of insurance in this state shall immediately report to the director every insurance policy or contract which has been entered into by an insurer not authorized to transact the insurance in this state.

(b) Every person acting in the capacity of an insurance adviser, counselor or analyst and as such serving a person not engaged in the insurance business for compensation paid or to be paid by the person served, shall report to the director every insurance policy or contract covering a subject of insurance in this state which has been entered into by an insurer not authorized to transact insurance in this state.

(c) This section does not apply to transactions in this state involving a policy lawfully solicited, written, and delivered outside this state covering only subjects of insurance not resident, located or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of the policy.

Sec. 21.33.055. UNAUTHORIZED INSURANCE PREMIUM TAX.

(a) Except as to premiums on lawfully procured surplus lines insurance and premiums on independently procured insurance on which a tax has been paid under sec. 61 of

this chapter, every unauthorized insurer shall pay to the director before April 1 following the calendar year in which the insurance was so effectuated, continued or renewed a premium-receipts tax of three per cent of gross premiums charged for the insurance other than marine insurance and a premium-receipts tax of three-fourths of one per cent of gross premiums charged for the marine insurance on subjects resident, located or to be performed in this state. The insurance on subjects resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made in or from in or out of this state, or for which premiums in whole or in part are remitted directly or indirectly from in or out of this state, shall be considered to be insurance procured, or continued or renewed in this state. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. The tax shall be in lieu of all taxes and fire department dues. On default of an unauthorized insurer in the payment of the tax the insured shall pay the tax. If the tax prescribed by this section is not paid within the time stated, the tax shall be increased by a penalty of 25 per cent and by the amount of an additional penalty computed at the rate of one per cent per month or any part of a month from the date the payment was due to the date paid.

(b) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured, or received in this state and all premiums on policies negotiated in this state shall be considered written on property or risks located or resident in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of another state.

Sec. 21.33.061. INDEPENDENTLY PROCURED INSURANCE.

(a) Every insured who procures or causes to be procured or continues or renews insurance with an unauthorized insurer, or an insured or self-insurer who so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed in this state, other than insurance procured through a surplus lines agent under the surplus lines law of this state shall, within 60 days after the date the insurance was procured, continued, or renewed, file a report with the director in writing and upon forms designated by the director and furnished to the insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged, and additional pertinent information which is reasonably requested by the director.

(b) Insurance in an unauthorized insurer of a subject of insurance resident, located or to be performed in this state procured through negotiations or an application, in whole or in part occurring or made in or from in or out of

this state, or for which premiums in whole or in part are remitted directly or indirectly from in or out of this state, shall be considered to be insurance procured, or continued or renewed in this state within the intent of (a) of this section.

(c) There is levied upon the obligation, chose in action, or right represented by the premium charged for the insurance, a premium receipts tax of three per cent of gross premiums charged for the insurance other than marine insurance and a premium receipts tax of three-fourths of one per cent of gross premiums charged for the marine insurance. The term "premium" includes all premiums, membership fees, assessments, dues and any other consideration for insurance. The tax is in lieu of all taxes and fire department dues. The insured shall, before April 1 following the calendar year in which the insurance was procured, continued or renewed, pay the amount of the tax to the director. In event of cancellation and rewriting of the insurance contract the additional premium for premium receipts tax purposes is the premium in excess of the unearned premium of the canceled insurance contract.

(d) If a policy covers risks or exposures only partially in this state, the tax payable shall be computed on the portions of the premium which are properly allocable to the risks or exposures located in this state. In determining the amount of premiums taxable in this state, all premiums written, procured or received in this state and all premiums on policies negotiated in this state shall be considered written on property or risks located or resident in this state, except premiums which are properly allocated or apportioned and reported as taxable premiums of another state.

(e) If the insured fails to withhold from the premium the amount of tax levied, the insured is liable for the amount and shall pay the tax to the director within the time stated in (c) of this section. If the tax prescribed by this section is not paid within the time stated in (c) of this section, the tax shall be increased by a penalty of 25 per cent and by the amount of an additional penalty computed at the rate of one per cent per month or any part of a month from the date the payment was due to the date paid.

(f) The attorney general, upon request of the director, shall proceed in the courts of this or another state or in a federal court or agency to recover the tax not paid within the time prescribed in this section.

(g) This section does not apply to individual life or individual disability insurance.

Sec. 21.33.065. PENALTY FOR UNAUTHORIZED INSURANCE.

(a) An unauthorized insurer who does an unauthorized act of an insurance business as set out in sec. 71 of this chapter shall be fined not more than \$5,000.

(b) In addition to any other penalty provided for in secs. 11 - 71 of this chapter or otherwise provided by law, a person or insurer violating a provision of secs. 11 - 71 of this chapter shall forfeit to the people of this

state the sum of \$500 for the first offense and an additional sum of \$500 for each month during which the person or insurer continues the violation.

Sec. 21.33.068. VENUE OF ACT COMMITTED BY MAIL. The venue of an act listed in sec. 71 of this chapter when committed by mail is at the point where the matter transmitted by mail is delivered and takes effect.

Sec. 21.33.071. INSURANCE BUSINESS DEFINED. Unless otherwise indicated, the term "insurer" as used in secs. 11 - 71 of this chapter includes all corporations, associations, partnerships, and individuals engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies. "Doing an insurance business in this state" is defined as doing any of the following acts in this state, effected by mail or otherwise.

- (1) the making of or proposing to make, as an insurer, an insurance contract;
- (2) the making of or proposing to make, as guarantor or surety, a contract of guaranty or suretyship as a vocation and not merely incidental to another legitimate business or activity of the guarantor or surety;
- (3) the taking or receiving of an application for insurance;
- (4) the receiving or collection of a premium, commission, membership fees, assessments, dues or other consideration for insurance or any part of insurance;
- (5) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;
- (6) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another a person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals of insurance or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state; this subsection does not operate to prohibit a full-time salaried employee of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of his employer;
- (7) the doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance;
- (8) the doing or proposing to do any insurance

business in substance equivalent to any of the actions in (1) - (7) of this subsection in a manner designed to evade the provisions of the statutes;

(9) any other transactions of business in this state by an insurer.

Sec. 21.33.075. EXCEPTIONS. Secs. 11 - 71 of this chapter do not apply to

(1) the lawful transaction of surplus lines insurance;

(2) the lawful transaction of reinsurance by insurers;

(3) transactions in this state involving a policy lawfully solicited, written, and delivered outside this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of the policy;

(4) transactions involving contracts of insurance independently procured through negotiations occurring entirely outside of this state which are reported and on which premium tax is paid in accordance with sec. 65 of this chapter;

(5) attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses;

(6) wet marine and transportation, except pipeline, insurance;

(7) insurance on aircraft or cargo of aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance or use of the aircraft;

(8) transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups were lawfully issued and delivered in a state in which the insurer was authorized to do an insurance business;

(9) any insurance company or underwriter issuing contracts of insurance to industrial insureds, nor does it apply to contracts of insurance issued to an industrial insured, nor does it apply to industrial insureds, except for the purposes of sec. 21 of this chapter, and provided the tax provisions of sec. 61 of this chapter are complied with; for the purposes of secs. 11 - 71 of this chapter, an industrial insured is

(A) an insured who procures insurance in whole or in part for any risk, or who assumes any risk, and who used the services of an employee acting as an insurance manager or buyer, or the services of a regularly retained, qualified insurance consultant, which consultant shall comply with AS 21.33.210

through 21.33.250, but in no case shall the Alaska tax be paid twice;

(B) an insured whose aggregate annual premiums for insurance on all risks total at least \$25,000; and

(C) an insured having at least 15 full-time employees.

\* Sec. 2. AS 21.03.020 and 21.33.010 - 21.33.070 are repealed.

\* Sec. 3. AS 21.03 is amended by adding a new section to read:

Sec. 21.03.021. APPLICATION OF CODE. This title does not apply to a life insurance or annuity company organized and operated without profit to any private shareholder or individual exclusively for the purpose of aiding and strengthening educational institutions by issuing insurance and annuity contracts only to or for the benefit of the institutions and individuals engaged in the service of these institutions; however, all policies and contracts issued by such an organization shall provide for acceptance of service of process within this state.