

HOUSE BILL NO. 530

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 2/28/96

Referred: Labor and Commerce, Transportation, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to insurance obtained from or provided by nonadmitted insurers;
2 and providing for an effective date."

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

4 * **Section 1.** AS 21.09.020 is amended to read:

5 Sec. 21.09.020. EXCEPTIONS TO [,] CERTIFICATE OF AUTHORITY
6 REQUIREMENT. A certificate of authority is not required of an insurer, not
7 otherwise authorized in this state, in regard to

8 (1) transactions relative to its policies lawfully written in the state, or
9 liquidation of assets and liabilities of the insurer, [(] other than collection of new
10 premiums [)], all as resulting from its former authorized operations in the state;

11 (2) related transactions subsequent to issuance of a policy covering
12 only subjects of insurance not resident, located, or expressly to be performed in the
13 state at time of issuance, and which coverage was lawfully solicited, written, and
14 delivered outside the state;

1 (3) transactions under surplus lines coverages **and wet marine and**
2 **transportation insurance** lawfully written under **AS 21.35** [AS 21.34]; or

3 (4) reinsurance, except as to domestic reinsurers.

4 * **Sec. 2.** AS 21.09.150(b) is amended to read:

5 (b) The director shall, after a hearing, suspend or revoke an insurer's certificate
6 of authority if the director finds that the insurer

7 (1) is in unsound condition, or in a condition, or using methods or
8 practices in the conduct of its business, which render its further transaction of
9 insurance in this state injurious or hazardous to its policyholders or to the public;

10 (2) has refused to be examined or to produce its accounts, records, and
11 files for examination, or that any of its officers have refused to give information with
12 respect to its affairs, when required by the director;

13 (3) has failed to pay a final judgment rendered against it in this state
14 within 30 days after the judgment became final; a judgment appealed from is not final
15 until determined by the appellate court;

16 (4) with a frequency that indicates its general business practice in this
17 state, has without just cause refused to pay proper claims arising under its policies,
18 whether the claim is in favor of an insured or is in favor of a third person, or without
19 just cause delays adjustment of claims, or compels the insured or claimant to accept
20 less than the amount due them or to employ attorneys or to bring suit against the
21 insurer or an insured to secure full payment or settlement of claims;

22 (5) is affiliated with and under the same general management or
23 interlocking directorate or ownership as another insurer that transacts direct insurance
24 in this state without having a certificate of authority, except as permitted for surplus
25 line insurance under **AS 21.35** [AS 21.33];

26 (6) has failed, after written request by the director, to remove or
27 discharge an officer or director who has been convicted of a felony involving fraud,
28 dishonesty, or moral turpitude.

29 * **Sec. 3.** AS 21.12.090(b) is amended to read:

30 (b) For the purposes of this title, "wet marine and transportation" insurance is
31 that part of marine insurance that includes only

1 (1) insurance upon vessels, crafts, hulls and of interests in or with
2 relation to vessels, crafts, and hulls;

3 (2) insurance of marine builder's risks, marine war risks and contracts
4 of marine protection and indemnity insurance;

5 (3) insurance of freights and disbursements pertaining to a subject of
6 insurance coming within this **subsection** [SECTION]; and

7 (4) insurance of personal property and interests in personal property,
8 in the course of exportation from or importation into any country, and in the course
9 of transportation coastwise or on inland waters, including transportation by land, water,
10 or air from point of origin to final destination, in respect to, appertaining to, or in
11 connection with, any and all risks or perils of navigation, transit, or transportation, and
12 while being prepared for and while awaiting shipment, and during delays, storage,
13 transshipment, or reshipment incident thereto; **"wet marine and transportation
14 insurance" does not include insurance of personal property and interests in
15 personal property if the**

16 **(A) property has been transported solely by land;**

17 **(B) property has reached its final destination as specified in**
18 **the bill of lading or other shipping document; or**

19 **(C) insured no longer has an insurable interest in the**
20 **property.**

21 * **Sec. 4.** AS 21.14.100(b) is amended to read:

22 (b) If a report, plan, or revised plan has not been filed in conformance with
23 the requirements of this chapter, the director may, as provided

24 (1) under AS 21.09.150, suspend the authority of an insurer to enter
25 into new obligations or issue a new or renewal policy of insurance in this state; or

26 (2) under **AS 21.35.180(f)** [AS 21.34.070], declare a surplus lines
27 insurer ineligible to transact business in this state.

28 * **Sec. 5.** AS 21.27.550(h) is amended to read:

29 (h) Except as provided under AS 21.27.560, an agency appointment may not
30 extend, directly or indirectly, to a client for whom the insurance producer is a
31 producing broker or for whom insurance is exported to nonadmitted insurers under

1 AS 21.35 [AS 21.34].

2 * **Sec. 6.** AS 21.27.810 is amended to read:

3 Sec. 21.27.810. SURPLUS LINES BROKER RECORDS. In addition to any
4 other records requirements under this chapter, a surplus lines broker shall maintain in
5 organized form a complete record including

6 (1) the amount of insurance and perils insured;

7 (2) a complete description of property insured and the location of the
8 property;

9 (3) gross premium charged;

10 (4) a return premium paid;

11 (5) the rate of premium charged upon the several items of property;

12 (6) the effective date of the contract and the terms of the contract;

13 (7) the name and address of the insured;

14 (8) the name and address of the insurer;

15 (9) the amount of tax and other sums to be collected from the insured;

16 (10) the allocation of taxes by state under AS 21.35.200
17 [AS 21.34.180];

18 (11) evidence of insurance issued in compliance with AS 21.35.240
19 [AS 21.34.100];

20 (12) the identity and license number of the producing broker;

21 (13) any confirming correspondence from the insurer or the
22 representative of the insurer; and

23 (14) the application.

24 * **Sec. 7.** AS 21.27.860(b) is amended to read:

25 (b) A nonresident independent adjuster may be sued upon a cause of action
26 arising in this state arising from an adjustment under this section under the procedure
27 provided in AS 21.35 [AS 21.33].

28 * **Sec. 8.** AS 21 is amended by adding a new chapter to read:

29 CHAPTER 35. NONADMITTED INSURERS; SURPLUS LINES;

30 SURPLUS WET MARINE AND TRANSPORTATION.

31 ARTICLE 1. NONADMITTED INSURERS.

1 Sec. 21.35.010. PURPOSE. (a) The legislature declares there is a significant
2 public interest in insurance transactions with nonadmitted insurers and these insurance
3 transactions require regulation, taxation, supervision, and control as provided in this
4 chapter in order to

5 (1) protect persons seeking insurance in this state;

6 (2) protect the insureds and claimants of this state in transactions
7 involving the purchase of insurance from nonadmitted insurers;

8 (3) avoid the obstacle of resorting to distant forums for the purpose of
9 asserting legal rights under policies issued by nonadmitted insurers;

10 (4) permit surplus lines insurance and surplus wet marine and
11 transportation insurance to be placed with reputable and financially sound nonadmitted
12 insurers, and to be exported from this state under this chapter;

13 (5) establish a system of regulations that

14 (A) permits orderly access to surplus lines insurance and surplus
15 wet marine and transportation insurance in this state;

16 (B) encourages admitted insurers to provide new and innovative
17 types of insurance to consumers in this state;

18 (C) protects regulated, admitted insurers from unregulated and
19 unfair competition by nonadmitted insurers; and

20 (D) maintains reliable insurance markets;

21 (6) provide a system through which persons may purchase insurance
22 from nonadmitted insurers under this chapter;

23 (7) protect the revenue of this state;

24 (8) provide a system that subjects nonadmitted insurance activities in
25 this state to the jurisdiction of the director and state or federal courts in suits by or on
26 behalf of the state.

27 (b) This chapter shall be liberally construed and applied to promote its
28 underlying purposes.

29 Sec. 21.35.020. APPLICABILITY TO INSURERS. A nonadmitted insurer
30 assuming insurance in this state, or relative to property, risks, or exposures located or
31 to be performed in this state, is subject to this chapter.

1 Sec. 21.35.030. PLACEMENT OF INSURANCE. (a) A nonadmitted insurer
2 may not transact insurance unless authorized by a license issued under this title or
3 exempted from licensure by a provision of this title.

4 (b) A person may not directly or indirectly, act as agent for, or otherwise
5 represent or aid on behalf of another, any nonadmitted insurer in the solicitation,
6 negotiation, procurement, effectuation, or renewal of insurance, forwarding of
7 applications, delivery of policies or contracts, inspection of risks, fixing of rates,
8 investigation or adjustment of claims or losses, collection or forwarding of premiums,
9 or in any other manner represent or assist a nonadmitted insurer in the transaction of
10 insurance.

11 (c) A person who represents or aids a nonadmitted insurer in violation of this
12 section is subject to the penalties provided under AS 21.35.440. If an insurance
13 contract is entered into in violation of this section, this section does not preclude the
14 insured from enforcing the insured's rights under the contract according to the terms
15 and provisions of the contract of insurance and the laws of this state to the same
16 degree those rights would have been enforceable if the contract had been lawfully
17 procured.

18 (d) If a nonadmitted insurer fails to pay a claim or loss within the provisions
19 of the insurance contract and the laws of this state, a person who assisted or in any
20 manner aided directly or indirectly in the procurement of the insurance contract is
21 liable to the insured for the full amount of the claim or loss under the provisions of
22 the insurance contract.

23 (e) Subsections (b) and (d) of this section do not apply to a person in regard
24 to an insured who independently procures insurance as provided under AS 21.35.050.

25 (f) This section does not apply to a person properly licensed as an insurance
26 producer under AS 21.27 who, for a fee and under a written agreement, is engaged
27 solely to offer to the insured advice, counsel, opinion, or service with respect to the
28 benefits, advantages, or disadvantages promised under a proposed or in-force policy
29 of insurance if the person does not, directly or indirectly, participate in the solicitation,
30 negotiation, or procurement of insurance on behalf of the insured.

31 (g) This section does not apply to

1 (1) a person acting in material compliance with the insurance laws of
2 this state, including a licensee under as 21.27, in the placement of

3 (A) surplus lines insurance under AS 21.35.140 - 21.35.300, or
4 surplus wet marine and transportation insurance under AS 21.35.300 -
5 21.35.420;

6 (B) a transaction for which a certificate of authority to do
7 business is not required of an insurer under the insurance laws of this state;

8 (C) insurance offered by a nonprofit educational insurer to a
9 nonprofit educational institution and employees of the institution if the prior
10 written approval of the director is obtained and no other insurance is offered;

11 (D) reinsurance if the assuming insurer

12 (i) is authorized by its domiciliary jurisdiction to do
13 insurance or reinsurance business and is authorized to write the type of
14 reinsurance in its domiciliary jurisdiction; and

15 (ii) satisfies all legal requirements for the reinsurance in
16 the state of domicile of the ceding insurer;

17 (2) the property and operation of railroads or aircraft engaged in
18 interstate or foreign commerce;

19 (3) ocean marine insurance; or

20 (4) transactions subsequent to issuance of a policy not covering
21 properties, risks, or exposures located or to be performed in this state at the time of
22 issuance, and lawfully solicited, written, or delivered outside this state.

23 Sec. 21.35.040. NONADMITTED INSURANCE PREMIUM TAX. (a)
24 Except as to premiums on lawfully procured surplus lines insurance exported under
25 AS 21.35.140 - 21.35.290, surplus wet marine and transportation insurance exported
26 under AS 21.35.300 - 21.35.420, and premiums on independently procured insurance
27 on which a tax has been paid under this section, every nonadmitted insurer shall pay
28 to the director on or before March 1 following the calendar year in which the
29 insurance was procured, continued, or renewed a premium receipts tax of three percent
30 of gross premiums charged for the insurance on subjects resident, located, or to be
31 performed in this state. The insurance on subjects resident, located, or to be performed

1 in this state procured through negotiations or an application, in whole or in part
2 occurring or made in or from inside or outside of this state, or for which premiums in
3 whole or in part are remitted directly or indirectly from inside or outside of this state,
4 shall be considered to be insurance procured, continued, or renewed in this state. The
5 tax is in lieu of all taxes and fire department dues. On default of a nonadmitted
6 insurer in the payment of the tax, the insured shall pay the tax within 30 days of
7 written notice from the director of the default by the nonadmitted insurer. If the tax
8 prescribed by this section is not paid by the nonadmitted insurer within the time stated
9 or by the insured within the time stated after the director provides notice of default,
10 the tax may be increased by

11 (1) a late payment fee of \$1,000 or 10 percent of the tax due,
12 whichever is greater;

13 (2) interest at the rate of one percent a month or part of a month from
14 the date the payment was originally due to the date paid; and

15 (3) a penalty not to exceed \$100 a day or 25 percent of the tax due,
16 whichever is greater, from the date the payment was due to the date paid.

17 (b) In determining the amount of premiums taxable in this state, all premiums
18 written, procured, or received in this state shall be considered written on property or
19 a subject located or resident in this state, except premiums that are properly allocated
20 or apportioned and reported as taxable premiums of another state. In determining the
21 amount of gross premiums taxable in this state covering a subject resident, located, or
22 to be performed both inside and outside the state, the tax due shall be computed on
23 that portion of the policy premium that is attributable to the subject resident, located,
24 or to be performed in this state and that relates to the type of insurance being placed
25 as determined by reference to the allocation schedule set out in AS 21.35.200(f).

26 (c) A person licensed under AS 21.27 who maintains a fiduciary account under
27 AS 21.27.360 or a deposit or surety bond under AS 21.27.365 may collect and transmit
28 to the director on behalf of the nonadmitted insurer or the insured the premium receipts
29 tax due and owing under this section.

30 (d) This section does not apply to insurance of risks of the state, a political
31 subdivision of the state, a nonprofit educational insurer insuring only nonprofit

1 educational institutions and their employees as permitted under AS 21.35.030(g),
2 railroads or aircraft regularly engaged in interstate or foreign commerce, life insurance,
3 disability insurance, or annuity contracts.

4 Sec. 21.35.050. PREMIUM TAX ON INDEPENDENTLY PROCURED
5 INSURANCE. (a) Except for lawfully procured surplus lines insurance exported
6 under AS 21.35.140 - 21.35.290 or surplus wet marine and transportation insurance
7 exported under AS 21.35.300 - 21.35.420, an insured in this state who procures, causes
8 to be procured, continues, or renews insurance with a nonadmitted insurer, or an
9 insured or self-insured who procures or continues excess loss, catastrophe, or other
10 insurance, on properties, risks, or exposures located or to be performed in whole or in
11 part in this state shall, within 30 days after the date the insurance was procured,
12 continued, or renewed, file a written report with the director in a form prescribed by
13 the director. The report must show the name and address of the insured, name and
14 address of the insurer, the subject of the insurance, a general description of the
15 coverage, the amount of premium currently charged, and additional information
16 required by the director.

17 (b) For the purposes of this section, properties, risks, or exposures only
18 partially located or to be performed in this state that are covered under a multi-state
19 policy placed by a surplus lines licensee in another state shall be considered to be
20 insurance independently procured unless the insurer is an admitted insurer.

21 (c) Insurance in a nonadmitted insurer of a subject of insurance resident,
22 located, or to be performed in this state procured through negotiation or an application,
23 in whole or in part occurring or made in or from inside or outside of this state, or for
24 which premiums in whole or in part are remitted directly or indirectly from inside or
25 outside of this state, is considered to be insurance procured, continued, or renewed in
26 this state within the intent of (a) of this section.

27 (d) There is levied upon the obligation or right represented by the premium
28 charged for the insurance a premium receipts tax of three percent of gross premiums
29 charged for the insurance. The tax is in lieu of all taxes and fire department dues.
30 The insured shall, on or before March 1 following the calendar year in which the
31 insurance was procured, continued, or renewed, pay the amount of the tax to the

1 director. In event of cancellation and rewriting of the insurance contract, the additional
2 premium for premium receipts tax purposes is the premium in excess of the unearned
3 premium of the cancelled insurance contract. If the tax prescribed by this section is
4 not paid within the time stated, the tax may be increased by

5 (1) a late payment fee of \$1,000 or 10 percent of the tax due,
6 whichever is greater;

7 (2) interest at the rate of one percent a month or part of a month from
8 the date the payment was due to the date paid; and

9 (3) a penalty not to exceed \$100 a day or 25 percent of the tax due,
10 whichever is greater, from the date the payment was due to the date paid.

11 (e) In determining the amount of premiums taxable in this state, all premiums
12 written, procured, or received in this state shall be considered written on property or
13 a subject located or resident in this state, except premiums that are properly allocated
14 or apportioned and reported as taxable premiums of another state. In determining the
15 amount of gross premiums taxable in this state, the tax due shall be computed on that
16 portion of the policy premium that is attributable to a subject resident, located, or to
17 be performed in this state and that relates to the type of insurance being placed as
18 determined by reference to the allocation schedule set out in AS 21.35.200(f).

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

22 (g) This section does not apply to insurance of risks of the state, a political
23 subdivision of the state, a nonprofit educational insurer insuring only nonprofit
24 educational institutions and their employees as permitted under AS 21.35.030(g),
25 railroads or aircraft regularly engaged in interstate or foreign commerce, life insurance,
26 disability insurance, or annuity contracts.

27 Sec. 21.35.060. INVESTIGATION AND DISCLOSURE OF INSURANCE
28 CONTRACTS; PENALTY. (a) When the director has reason to believe that
29 insurance has been procured by or for a person in this state with a nonadmitted insurer,
30 the director may in writing order the person to produce for examination all insurance
31 contracts and other documents evidencing the insurance and to disclose to the director

1 the amount of insurance, name and address of each insurer, gross amount of premium
2 paid or to be paid, the name and address of the person assisting or aiding in the
3 solicitation, negotiation, or procurement of the insurance, and other information
4 required by the director.

5 (b) If a person fails to comply with the director's order under (a) of this
6 section, on application of the director, the superior court may issue an order requiring
7 the production of the records and information sought by the director.

8 (c) For each refusal to obey an order issued under (a) of this section, in
9 addition to any other penalty provided by law, the person is subject to a civil penalty
10 of not more than \$25,000 following a hearing under AS 21.06.170 - 21.06.240.

11 Sec. 21.35.070. SERVICE OF CIVIL PROCESS ON DIRECTOR. (a) The
12 transaction of insurance by an unauthorized person or nonadmitted insurer is equivalent
13 to and constitutes an irrevocable appointment by that person or insurer, binding upon
14 the person or insurer, the executor, administrator, or personal representative of the
15 person or insurer, or its successor in interest if a corporation, of the director to be the
16 lawful attorney of that person or insurer upon whom may be served all legal process
17 in an action, suit, or proceeding in a court arising out of a transaction of insurance in
18 this state or relative to a subject resident, located, or to be performed in this state by
19 that person or nonadmitted insurer, except in an action, suit, or proceeding by the
20 director or by the state. The transaction of insurance by an unauthorized person or
21 nonadmitted insurer is acceptance by that person or insurer that legal process served
22 upon the director has the same legal force and validity as personal service of process
23 in this state upon the person or insurer, or upon the executor, administrator, or personal
24 representative of the person or insurer, or its successor in interest if a corporation.

25 (b) Service of process shall be made by leaving two copies in the office of the
26 director and paying to the director, for the use of the state, a fee established under
27 AS 21.06.250. A certificate by the director showing the service is sufficient evidence
28 of service of process. The certificate shall be attached to the original or third copy of
29 the process presented to the director. Service upon the director as attorney shall be
30 considered service upon the principal.

31 (c) The director shall immediately mail one copy of the process to the

1 defendant at the last known principal place of business and shall keep a record of all
2 process served upon the director, including the day and hour of service. Service of
3 process allowed under this subsection is sufficient, provided notice of the service and
4 a copy of the process are also sent within 10 days by registered mail by the plaintiff
5 or the attorney of the plaintiff to the defendant at the last known principal place of
6 business of the defendant. The defendant's receipt, or receipt issued by the post office
7 with which the letter is registered, showing the name of the sender of the letter and the
8 name and address of the person or insurer to whom the letter is addressed, and the
9 affidavit of the plaintiff or the attorney of the plaintiff showing compliance with this
10 subsection, must be filed with the clerk of the court in which the action is pending on
11 or before the date the defendant is required to appear, or within additional time that
12 the court may allow.

13 (d) Service of process in an action, suit, or proceeding described in (a) of this
14 section, in addition to the service provided in (b) and (c) of this section, is valid if
15 served upon a person in this state who on behalf of an unauthorized person or
16 nonadmitted insurer is doing any insurance transaction and if a copy of the process is
17 sent within 10 days by registered mail by the plaintiff or the attorney of the plaintiff
18 to the defendant at the last known principal place of business of the defendant. The
19 defendant's receipt, or receipt issued by the post office with which the letter is
20 registered, showing the name of the sender of the letter and the name and address of
21 the person or insurer to whom the letter is addressed, and the affidavit of the plaintiff
22 or the attorney of the plaintiff showing compliance with this subsection, must be filed
23 with the clerk of the court in which the action is pending on or before the date the
24 defendant is required to appear, or within additional time that the court may allow.

25 (e) A plaintiff or complainant is not entitled to a judgment by default in an
26 action, suit, or proceeding in which the process is served under this section unless the
27 default judgment complies with the Alaska Rules of Civil Procedure.

28 (f) This section does not limit or abridge the right to serve a process, notice,
29 or demand upon a person or insurer in any other manner permitted by law.

30 Sec. 21.35.080. SERVICE OF PROCESS ON LIEUTENANT GOVERNOR.

31 (a) The transaction of insurance by an unauthorized person or nonadmitted insurer

1 constitutes an irrevocable appointment of the lieutenant governor to be the lawful
2 attorney of that person or insurer. The lieutenant governor may be served all legal
3 process in any action or proceeding in any court by the director or by the state and
4 may be served any notice, order, pleading, or process in a proceeding before the
5 director that arises out of the transaction of insurance in this state or relative to a
6 subject resident, located, or to be performed in this state by that person or insurer.
7 The transaction of insurance by an unauthorized person or nonadmitted insurer is
8 acceptance by that person or insurer that legal process in the court action, suit, or
9 proceeding and any notice, order, pleading, or process served in an administrative
10 proceeding before the director has the same legal force and validity as personal service
11 of process in this state upon the person or insurer, or upon the executor, administrator,
12 or personal representative of that person or insurer.

13 (b) The service of process in the action, suit, or proceeding in any court or the
14 notice, order, pleading, or process in the administrative proceeding authorized by (a)
15 of this section shall be made by leaving an original and two copies in the office of the
16 lieutenant governor. A certificate by the lieutenant governor showing the service is
17 sufficient evidence of service. The certificate shall be attached to the original or third
18 copy of the process presented to the lieutenant governor. Service upon the lieutenant
19 governor as attorney shall be considered service upon the principal.

20 (c) The lieutenant governor shall immediately mail one copy of the process to
21 the defendant at the last known principal place of business of the defendant and shall
22 keep a record of all process served, including the day and hour of service. The service
23 is sufficient, provided notice of the service and a copy of the court process or the
24 notice, order, pleading, or process in the administrative proceeding are sent within 10
25 days after service by registered mail by the plaintiff or the attorney of the plaintiff in
26 the court proceeding or by the director in the administrative proceeding to the
27 defendant in the court proceeding or by whom the notice, order, pleading, or process
28 in the administrative proceeding is addressed or directed at the last known principal
29 place of business of the defendant. The defendant's receipt, or receipt issued by the
30 post office with which the letter is registered, showing the name of the sender of the
31 letter and the name and address of the person or insurer to whom the letter is

1 addressed, and the affidavit of the plaintiff or the attorney of the plaintiff in a court
2 proceeding or of the director in an administrative proceeding, showing compliance
3 must be filed with the clerk of the court in which the action, suit, or proceeding is
4 pending, or with the director in administrative proceedings, on or before the date the
5 defendant in the court or administrative proceedings is required to appear or respond,
6 or within additional time that the court or director may allow.

7 (d) A plaintiff or complainant may not obtain a judgment by default in a court
8 or administrative proceeding in which court process or notice, order, pleading, or
9 process in proceedings before the director is served under this section unless the
10 default judgment complies with the Alaska Rules of Civil Procedure.

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

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

17 Sec. 21.35.090. VALIDITY OF NONCOMPLYING POLICY PROVISIONS.

18 (a) Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted
19 insurer may be sued upon any cause of action arising in this state or relative to
20 property, risks, or exposures located or to be performed in this state under any
21 insurance contract made by the nonadmitted insurer.

22 (b) Notwithstanding conditions or stipulations in the policy or contract, a
23 nonadmitted insurer subject under a policy or contract made by it to arbitration or
24 another alternative dispute resolution mechanism on a matter arising in this state or
25 relative to property, risks, or exposures located or to be performed in this state shall
26 conduct the arbitration or other alternative dispute resolution mechanism in this state.

27 (c) A policy or contract issued or delivered by a nonadmitted insurer or
28 otherwise valid that contains a condition or provision not in compliance with the
29 requirements of this chapter is not rendered invalid by the noncompliance, but shall
30 be construed and applied in the manner that the conditions and provisions would have
31 been applied had the policy or contract been in full compliance with this chapter.

1 Sec. 21.35.100. DEFENDANT’S DUTIES AND RIGHTS. (a) Before an
2 unauthorized person or nonadmitted insurer files a pleading in court or a notice, order,
3 pleading, or process in an administrative proceeding before the director, the person or
4 insurer shall either

5 (1) deposit with the clerk of the court in which the action is pending,
6 or with the director in administrative proceedings before the director, cash or securities
7 or bond with an admitted insurer to be approved by the court, or the director, in an
8 amount to be fixed by the court or the director sufficient to secure the payment of a
9 final judgment that may be rendered in the court proceeding or in the administrative
10 proceeding before the director; however, the court, or the director in administrative
11 proceedings before the director, may in its or the director’s discretion issue an order
12 waiving the deposit or bond if the insurer makes a showing satisfactory to the court
13 or the director that it maintains in a state of the United States funds or securities, in
14 trust or otherwise, sufficient and available to satisfy a final judgment that may be
15 entered in the court action, suit, or proceeding or in an administrative proceeding
16 before the director; or

17 (2) obtain admission to transact insurance in this state through a
18 certificate of authority issued under this title; in considering the application of an
19 insurer for a certificate of authority, for the purposes of this paragraph, the director is
20 not required to enforce the provisions of AS 21.09.270 against the insurer with respect
21 to its application if the director determines that the company would otherwise comply
22 with the requirements for a certificate of authority.

23 (b) The court in an action, suit, or proceeding in which service of process is
24 made as provided in AS 21.35.070 or 21.35.080, or the director, in the director’s
25 discretion, in an administrative proceeding before the director in which service is made
26 as provided in AS 21.35.080, may order postponement that may be necessary to afford
27 the defendant reasonable opportunity to comply with (a) of this section and to offer
28 a defense in the court action or administrative proceeding.

29 (c) Nothing in (a) of this section may be construed to prevent an unauthorized
30 person or nonadmitted insurer from filing a motion to quash a writ or to set aside
31 service made as provided in AS 21.35.070 or 21.35.080 on the ground that the

1 unauthorized person or insurer has not transacted insurance in this state or relative to
2 a subject resident, located, or to be performed in this state or that the person on whom
3 service was made under AS 21.35.070(d) was not transacting insurance in this state,
4 or relative to a subject resident, located, or to be performed in this state.

5 Sec. 21.35.110. ATTORNEY FEES. In an action against an unauthorized
6 person or nonadmitted insurer upon an insurance contract issued or delivered in this
7 state to a resident or to a corporation authorized to do business in this state, if the
8 person or insurer has failed for 30 days after demand and before the commencement
9 of the action to make payment required by the terms of the contract, and it appears to
10 the court that the refusal was without reasonable cause, the court may allow to the
11 plaintiff a reasonable attorney fee and may include the fee in the judgment that may
12 be rendered in the action. Failure of the person or insurer to defend the action shall
13 be considered prima facie evidence that its failure to make payment was without
14 reasonable cause.

15 Sec. 21.35.120. ENFORCEMENT. (a) The director may proceed in the
16 appropriate court to enforce an order or decision made by the director.

17 (b) A copy of any foreign decree authenticated as required by law in this state
18 may be filed in the appropriate court of this state. The clerk, upon verifying with the
19 director that the decree or order qualifies as a foreign decree, shall treat the foreign
20 decree in the same manner as a decree issued by a court of this state. A foreign
21 decree filed under this subsection has the same effect and shall be considered a decree
22 of a court of this state, and is subject to the same procedures, defenses, and
23 proceedings for reopening, vacating, or staying as a decree of a court of this state and
24 may be enforced or satisfied as required by law and court rules.

25 (c) At the time of the filing of the foreign decree, the plaintiff shall file with
26 the clerk of the court an affidavit setting out the name and last known mailing address
27 of the defendant.

28 (d) Promptly upon the filing of a foreign decree and the affidavit required
29 under (c) of this section, the clerk shall mail notice of the filing of the foreign decree
30 to the defendant and to the director and shall make a note of the mailing in the docket.
31 In addition, the plaintiff may mail a notice of the filing of the foreign decree to the

1 defendant and to the director of this state and may file proof of mailing with the clerk.
2 Lack of mailing notice of filing by the clerk does not affect the enforcement
3 proceedings if proof of mailing by the plaintiff has been filed with the court.

4 (e) Execution or other process for enforcement of a foreign decree may not be
5 filed until 30 days after the date the decree is filed with the court.

6 (f) If the defendant shows the court that an appeal from the foreign decree is
7 pending or will be taken or that a stay of execution has been granted, the court shall
8 stay enforcement of the foreign decree until the appeal is concluded, the time for
9 appeal expires, or the stay of execution expires or is vacated, upon proof that the
10 defendant has furnished the security for the satisfaction of the decree required by the
11 state in which it was rendered.

12 (g) If the defendant shows the court any ground upon which enforcement of
13 a decree of any court of this state would be stayed, the court shall stay enforcement
14 of the foreign decree for an appropriate period upon requiring the same security for
15 satisfaction of the decree that is required in this state.

16 (h) The director shall cooperate with regulatory officials in other United States
17 jurisdictions to the greatest degree reasonably practicable in enforcing lawfully issued
18 orders of other officials provided the order does not violate the laws of this state.

19 Sec. 21.35.130. ACTIONS BY NONADMITTED INSURERS. A nonadmitted
20 insurer may not commence or maintain an action, including arbitration or any other
21 dispute resolution mechanism, in this state to enforce any right arising out of an
22 insurance transaction, except with respect to

23 (1) claims under policies lawfully written in this state;

24 (2) liquidation of assets and liabilities of the insurer, other than
25 collection of new premiums, resulting from its former authorized operations in this
26 state;

27 (3) transactions subsequent to issuance of a policy not covering
28 domestic risks at the time of issuance, and lawfully procured under the laws of the
29 jurisdiction where the transaction took place;

30 (4) surplus lines insurance exported under AS 21.35.140 - 21.35.290
31 or surplus wet marine and transportation insurance exported under AS 21.35.300 -

1 21.35.420;

2 (5) reinsurance placed by reinsurance intermediaries under the authority
3 of AS 21.27 by reinsurance intermediaries or placed as authorized by other provisions
4 of this title;

5 (6) the continuation and servicing of life insurance, health insurance
6 policies, or annuity contracts remaining in force as to residents of this state where the
7 formerly authorized insurer has withdrawn from the state and is not transacting new
8 insurance;

9 (7) servicing of policies written by an admitted insurer in a state to
10 which the insured has moved but in which the company does not have a certificate of
11 authority until the term of the policy expires;

12 (8) claims under policies covering ocean marine insurance;

13 (9) placements of insurance that were lawful in the jurisdiction in
14 which the transaction took place and that were not unlawful placements under the laws
15 of this state.

16 ARTICLE 2. SURPLUS LINES INSURANCE.

17 Sec. 21.35.140. PLACEMENT OF SURPLUS LINES INSURANCE. (a)
18 Except as provided in (b) of this section, insurance other than reinsurance, wet marine
19 and transportation insurance, insurance independently procured, life insurance,
20 disability insurance, and annuity contracts may be procured from nonadmitted insurers
21 through a surplus lines broker licensed under AS 21.27 if

22 (1) each insurer is an eligible surplus lines insurer;

23 (2) each insurer is authorized to write the type of insurance in its
24 domiciliary jurisdiction;

25 (3) the full amount or type of insurance cannot be obtained from
26 insurers who are admitted to do business in this state;

27 (4) the producing broker has conducted and documented a diligent
28 search among insurers who are admitted to transact business in this state and are
29 actually writing the particular kind or class of insurance required by the client in this
30 state;

31 (5) the director authorizes an exception to (2) of this subsection by

1 regulation or by written authorization for an individual placement upon written request
2 by the broker; and

3 (6) all other requirements of this chapter are met.

4 (b) Liability insurance may be procured through a surplus lines broker licensed
5 in this state from a risk retention group that does not hold a certificate of authority
6 from this state only if the risk retention group is currently and validly registered with
7 the division.

8 Sec. 21.35.150. SUBSCRIPTION POLICIES OR JOINT UNDERWRITING
9 IN COMBINATION WITH ADMITTED INSURERS. Subscription policies or joint
10 underwriting of insurance other than reinsurance, wet marine and transportation
11 insurance, insurance independently procured, life insurance, disability insurance, and
12 annuity contracts by a combination of authorized insurers and nonadmitted insurers is
13 a surplus lines insurance placement in its entirety, is subject to this chapter, is not
14 subject to AS 21.39 or AS 21.42.120 - 21.42.130, and losses or claims are not covered
15 by AS 21.80 (Alaska Insurance Guaranty Association Act).

16 Sec. 21.35.160. WORKERS' COMPENSATION INSURANCE. (a) Workers'
17 compensation insurance may be placed in and written by a nonadmitted insurer if

18 (1) the director considers it in the best interest of the public and issues
19 a written order to that effect;

20 (2) the insurance is written as required by this chapter; and

21 (3) all conditions established for writing workers' compensation
22 insurance in a nonadmitted market are met.

23 (b) The rates and rating plans for workers' compensation insurance are subject
24 to AS 21.39. The surplus lines broker is responsible for making the filings required
25 under AS 21.39 and for maintaining the records required under that chapter.

26 (c) Insurance placed with or written by a nonadmitted insurer and the activities
27 of the surplus lines broker relating to that transaction are subject to the applicable
28 provisions of this title.

29 (d) The minimum capital and surplus required of a nonadmitted insurer who
30 places or writes workers' compensation insurance is two times that required under
31 AS 21.35.180(a)(1).

1 Sec. 21.35.170. RESTRICTIONS ON SURPLUS LINES BROKERS. A
2 surplus lines broker may not place coverage with a nonadmitted insurer, unless the
3 surplus lines broker is licensed under AS 21.27 and, at the time of placement, the
4 surplus lines broker has determined that the nonadmitted insurer

5 (1) has established satisfactory evidence of good repute and financial
6 integrity;

7 (2) has provided to the director a copy of its current annual statement
8 certified by the insurer and an actuarial opinion as to the adequacy of, and
9 methodology used to determine, the insurer's loss reserves; the statement shall be
10 provided at the same time it is provided to the regulatory authority of the insurer's
11 domicile, but in no event more than eight months after the close of the period reported
12 on, and shall be certified as a true and correct copy by an accounting or auditing firm
13 licensed in the jurisdiction of the insurer's domicile and certified by a senior officer
14 of the nonadmitted insurer as a true and correct copy of the statement filed with the
15 regulatory authority in the domicile of the nonadmitted insurer; in the case of an
16 insurance exchange qualifying under AS 21.35.180(a)(2), the statement may be an
17 aggregate combined statement of all underwriting syndicates operating during the
18 period reported; and

19 (3) qualifies under AS 21.35.180(a).

20 Sec. 21.35.180. NONADMITTED INSURER CAPITAL AND SURPLUS
21 REQUIREMENTS. (a) A nonadmitted insurer may be eligible to provide coverage
22 in this state if it qualifies under one of the following:

23 (1) a foreign but nonalien insurer, reciprocal insurer, or mutual
24 protection and indemnity association may qualify under this subsection if it has the
25 minimum unimpaired basic surplus and additional surplus equal to that required in its
26 domiciliary jurisdiction or in the amount of \$15,000,000, whichever is greater;

27 (2) an individual syndicate of an insurance exchange created by the
28 laws of a state other than this state may qualify under this subsection if

29 (A) the syndicates of the exchange maintain under terms
30 acceptable to the director capital and surplus, or its equivalent under the laws
31 of its domiciliary jurisdiction, of at least \$75,000,000 in the aggregate;

1 (B) the exchange must maintain under terms acceptable to the
2 director at least 50 percent of the policyholder surplus of each syndicate in a
3 custodial account accessible to the exchange or its domiciliary regulator in the
4 event of insolvency or impairment of the individual syndicate; and

5 (C) in addition, each individual syndicate to be eligible to
6 accept surplus lines insurance placements from this state meets either of the
7 following requirements:

8 (i) for insurance exchanges that maintain funds in an
9 amount of at least \$15,000,000 for the protection of all exchange
10 policyholders, the syndicate shall maintain under terms acceptable to the
11 director minimum capital and surplus, or its equivalent under the laws
12 of the domicile jurisdiction, of at least \$5,000,000; or

13 (ii) for insurance exchanges that do not maintain funds
14 in an amount of at least \$15,000,000 for the protection of all exchange
15 policyholders, the syndicate shall maintain under terms acceptable to the
16 director minimum capital and surplus, or its equivalent under the laws
17 of its domiciliary jurisdiction, of at least the minimum capital and
18 surplus requirements under the laws of its domiciliary jurisdiction or
19 \$15,000,000, whichever is greater;

20 (3) in the case of a Lloyd's plan or other similar group of insurers that
21 consists of unincorporated individual insurers or a combination of both unincorporated
22 and incorporated insurers,

23 (A) each sponsoring syndicate maintains a trust fund that shall
24 consist of a trusteed account representing at least 100 percent of the sponsoring
25 syndicate's gross liabilities attributable to the surplus lines business written in
26 the United States;

27 (B) in addition, the group shall establish and maintain in trust
28 a surplus in the amount of at least \$100,000,000 that must be available for the
29 benefit of United States surplus lines policyholders of any member of the
30 group;

31 (C) the incorporated members of the group may not be engaged

1 in a business other than underwriting as a member of the group and shall be
2 subject to the same level of solvency regulation and control by the group's
3 domiciliary regulator as are the unincorporated members; and

4 (D) the trust funds required under this paragraph shall be
5 maintained in an irrevocable trust account in the United States in a qualified
6 financial institution, consisting of cash, securities, letters of credit, or
7 investments of substantially the same character and quality as those that are
8 eligible investments for the capital and statutory reserves of admitted insurers
9 to write like kinds of insurance in this state and, in addition, the trust required
10 under this paragraph shall satisfy the requirements of the standard trust
11 agreement required for listing with the National Association of Insurance
12 Commissioners International Insurers Department;

13 (4) in the case of a group of incorporated insurers under common
14 administration that has continuously transacted an insurance business outside the
15 United States for at least three years immediately before January 1, 1996, and that
16 submits to this state's authority to examine its books and records and bears the expense
17 of the examination,

18 (A) the group must maintain an aggregate policyholders' surplus
19 of \$10,000,000,000;

20 (B) the group must maintain in trust a surplus in the amount of
21 \$100,000,000; the surplus shall be available for the benefit of United States
22 surplus lines policyholders of any member of the group;

23 (C) each insurer must individually maintain capital and surplus
24 of at least \$25,000,000 per company;

25 (D) the trust funds required by this paragraph shall be
26 maintained in an irrevocable trust account in the United States in a qualified
27 financial institution, consisting of cash, securities, letters of credit, or
28 investments of substantially the same character and quality as those that are
29 eligible investments for the capital and statutory reserves of admitted insurers
30 to write like kinds of insurance in this state and, in addition, the trust required
31 under this paragraph shall satisfy the requirements of the standard trust

1 agreement required for listing with the National Association of Insurance
2 Commissioners International Insurers Department;

3 (E) additionally, each member of the group shall make available
4 to the director an annual certification of the member's solvency by the
5 member's domiciliary regulator and its independent public accountant; or

6 (5) except for an exchange or plan complying with (3) or (4) of this
7 subsection, an alien insurer must satisfy the capital and surplus requirements of (2) of
8 this subsection and must have in force a trust fund of not less than the greater of

9 (A) \$2,500,000; or

10 (B) 50 percent of its United States surplus lines gross liabilities,
11 subject, at the discretion of the director, to a cap of \$100,000,000, to be
12 determined annually on the basis of accounting practices and procedures
13 substantially equivalent to those enacted by this state, as of December 31 next
14 preceding the date of determination, where

15 (i) at least 50 percent of surplus lines gross liabilities,
16 but not less than \$2,500,000, is maintained in an irrevocable trust
17 account in the United States in a qualified financial institution, on
18 behalf of United States policyholders consisting of cash, securities,
19 letters of credit, or investments of substantially the same character and
20 quality as those that are eligible investments under AS 21.21 for the
21 capital and statutory reserves of admitted insurers to write like kinds of
22 insurance in this state; the trust account, which shall be included in any
23 calculation of capital and surplus or its equivalent, shall satisfy the
24 requirements of the standard trust agreement required for listing with
25 the National Association of Insurance Commissioners International
26 Insurers Department;

27 (ii) the insurer may request approval from the director
28 to use the trust fund to pay valid surplus lines claims, provided that the
29 balance of the trust fund is never less than \$2,500,000 or 50 percent of
30 the insurer's current gross United States surplus lines liabilities,
31 whichever is greater;

1 (iii) in calculating the trust fund amount required by this
2 paragraph, trust fund amounts in excess of \$2,500,000 shall be given
3 credit for surplus lines deposits separately required and maintained for
4 a particular state or United States territory, not to exceed the amount of
5 the insurer's loss and loss adjustment reserves in the particular state or
6 territory; and

7 (iv) the remaining required amount of surplus lines gross
8 liabilities shall be maintained in a trust account, for the exclusive
9 benefit of United States policyholders, in a financial institution in the
10 insurer's country of domicile, provided that the financial institution has
11 a United States office and the trust account and its corpus satisfy all of
12 the requirements of the standard trust agreement required for listing
13 with the National Association of Insurance Commissioners International
14 Insurers Department, except, if acceptable to the director, investments
15 in a foreign country or in a possession of the United States of
16 substantially the same kinds, classes, and investment grades as those
17 that are eligible investments for the capital and statutory reserves of
18 admitted insurers to write like kinds of insurance in this state, or a
19 clean, unconditional, irrevocable letter of credit confirmed by a
20 qualified United States financial institution.

21 (b) Except as provided in (c) of this section, and in addition to all of the other
22 requirements of this section, to be eligible, an alien nonadmitted insurer must be listed
23 by the National Association of Insurance Commissioners International Insurers
24 Department.

25 (c) The trust requirement for an alien insurer under (a)(5)(B) of this section
26 may be satisfied by an insurer's possessing less than the trust fund amount specified
27 upon a written affirmative finding of acceptability by the director if the director is
28 satisfied that the placement of insurance with the insurer is necessary and will not be
29 detrimental to the public and the policyholder. In determining whether business may
30 be placed with the insurer, the director shall consider the following factors:

31 (1) the interests of the public and policyholders;

1 (2) the length of time the insurer has been authorized in its domiciliary
2 jurisdiction and elsewhere;

3 (3) unavailability of particular coverages from authorized insurers or
4 unauthorized insurers meeting the requirements of this section;

5 (4) the size of the company as measured by its assets, capital and
6 surplus, reserves, premium writings, insurance in force, or other appropriate criteria;

7 (5) the kinds of business the company writes, its net exposure, and the
8 extent to which the company's business is diversified among several lines of insurance
9 and geographic locations; and

10 (6) the past and projected trend in the size of the company's capital and
11 surplus considering such factors as premium growth, operating history, loss and
12 expense ratios, or other appropriate criteria.

13 (d) Except as provided in (e) of this section, and in addition to meeting all
14 other requirements of this section, an insurer is an eligible surplus lines insurer if it
15 appears on the most recent list of eligible surplus lines insurers published by the
16 director or by the surplus lines association when approved by the director. The list
17 shall be published at least semiannually. This section does not require the director or
18 the surplus lines association to place or maintain the name of any nonadmitted insurer
19 on the list of eligible surplus lines insurers.

20 (e) Only that portion of any risk eligible for export for which the full amount
21 of coverage is not procurable from eligible surplus lines insurers listed under (d) of
22 this section may be placed with another nonadmitted insurer that does not appear on
23 the most recent list of eligible surplus lines insurers published by the director under
24 (d) of this section if the nonadmitted insurer meets all other requirements of this
25 section and regulations adopted under this chapter. The surplus lines broker seeking
26 to provide coverage through an unlisted nonadmitted insurer shall, within 30 days,
27 notify the director in writing on a form prescribed by the director of the amount and
28 percentage of each risk to be placed and name each unlisted nonadmitted insurer with
29 which placement is intended. Within 30 days after placing the coverage, the surplus
30 lines broker shall also send written notice to the insured and the producing broker that
31 the insurance, or a portion of the insurance, has been placed with the unlisted

1 nonadmitted insurer.

2 (f) If, after a review of a nonadmitted insurer and consideration of factors
3 including quality of management, capital and surplus of a parent company,
4 underwriting profit, investment income trends, trade practices, reserving practices,
5 company record, and reputation within the industry, the director finds the insurer to
6 be unacceptable, the director may declare the nonadmitted insurer to be ineligible. The
7 director may issue an order declaring a nonadmitted insurer ineligible and shall
8 promptly mail notice of a declaration to each surplus lines broker licensed under
9 AS 21.27 if at any time the director has reason to believe that the nonadmitted insurer

10 (1) is in unsound financial condition;

11 (2) has acted in an untrustworthy manner;

12 (3) is no longer eligible under this chapter;

13 (4) has wilfully violated the laws of this state or another jurisdiction;

14 or

15 (5) does not reasonably investigate and make prompt payment of just
16 losses and claims in this state or another jurisdiction.

17 Sec. 21.35.190. VALIDITY OF SURPLUS LINES CONTRACTS. Insurance
18 procured under AS 21.35.140 - 21.35.290 shall be valid and enforceable as to all
19 parties.

20 Sec. 21.35.200. SURPLUS LINES TAX. (a) Gross premiums charged, less
21 any return premium, for surplus lines insurance are subject to a premium receipts tax
22 of 2.7 percent that shall be collected by the surplus lines broker in addition to the full
23 amount of the gross premium charged by the insurer for the insurance. The tax on any
24 portion of the premium unearned at termination of the insurance that is credited by the
25 state to the surplus lines broker shall be returned to the policyholder directly by the
26 surplus broker or through the producing broker, if any. If a surplus lines policy
27 procured through a surplus lines broker covers property or a subject resident, located,
28 or to be performed both inside and outside of this state, the tax payable shall be
29 computed on that portion of the gross premiums properly allocated to this state. The
30 surplus lines broker may not absorb the tax or a part of the tax and may not rebate the
31 tax or a part of the tax.

1 (b) The surplus lines tax is due and shall be paid to the director on or before
2 March 1 following the calendar year in which the premium is written. The tax shall
3 be reported on forms prescribed by the director or, upon the director's order, paid to
4 and reported on forms prescribed by the surplus lines association.

5 (c) If the tax is not paid when due, an additional late payment fee of \$250 plus
6 two percent of the tax due per month, or part of a month, shall become due and
7 payable by the surplus lines broker.

8 (d) If a surplus lines policy procured through a licensed surplus lines broker
9 covers property or a subject only partially resident, located, or to be performed in this
10 state, the tax payable shall be computed on the portions of the premium that are
11 attributable to the property or subject resident, located, or to be performed in this state.
12 In determining the amount of a premium taxable in this state, all premiums written,
13 procured, or received in this state shall be considered written on property or a subject
14 located, resident, or to be performed in this state, except premiums that are properly
15 allocated or apportioned and reported as taxable premiums of a reciprocal state. The
16 tax payable to this state may not be less than the tax due under this section.

17 (e) The director or a surplus lines association shall, at least annually, furnish
18 to the insurance regulatory official of a reciprocal state a copy of all filings reporting
19 an allocation of tax as required by (d) of this section.

20 (f) In determining the amount of gross premiums taxable in this state for a
21 placement of surplus lines insurance covering property or a subject resident, located,
22 or to be performed both inside and outside this state, the tax due shall be computed
23 on that portion of the policy premium that is attributable to property or a subject
24 resident, located, or to be performed in this state and that relates to the kind of
25 insurance being placed as determined by reference to an allocation schedule as follows:

26 (1) if a policy covers more than one classification,

27 (A) for any portion of the coverage identified by a classification
28 on the allocation schedule, the tax shall be computed by using the allocation
29 schedule for the corresponding portion of the premium;

30 (B) for any portion of the coverage not identified by a
31 classification on the allocation schedule, the tax shall be computed by using an

1 alternative equitable method of allocation for the property or subject;

2 (C) for any portion of the coverage where the premium is
3 indivisible, the tax shall be computed by using the method of allocation that
4 pertains to the classification describing the predominant coverage;

5 (2) if the information provided by the surplus lines broker is
6 insufficient to substantiate the method of allocation used by the surplus lines broker
7 or if the director determines that the surplus lines broker's method is incorrect, the
8 director shall determine the equitable and appropriate amount of tax due to this state
9 as follows:

10 (A) by use of the allocation schedule where the subject is
11 appropriately identified in the schedule;

12 (B) where the allocation schedule does not identify a
13 classification appropriate to the coverage, the director may give significant
14 weight to documented evidence of the underwriting bases and other criteria
15 used by the insurer or may give consideration to other available information to
16 the extent sufficient and relevant, including the percentage of the insured's
17 physical assets in this state, the percentage of the insured's sales in this state,
18 the percentage of income or resources derived from this state, and the amount
19 of premium tax paid to another jurisdiction for the policy.

20 (g) This section does not apply to insurance of risks of the state, a political
21 subdivision of the state, or railroads or aircraft regularly engaged in interstate or
22 foreign commerce if an exemption on a form prescribed by the director is filed with
23 the report required by (b) of this section.

24 Sec. 21.35.210. SURPLUS LINES FILING FEE. (a) The fee for filing the
25 forms under AS 21.35.200(b) is an amount equal to one percent on gross premiums
26 charged less any return premiums during the preceding calendar year whether the
27 premiums are subject to tax or exempt. The surplus lines broker shall pay the fee at
28 the time of filing of the statement.

29 (b) If the filing fee is not paid when due, an additional late payment fee of
30 \$250 plus two percent of the fee due per month, or part of a month, shall become due
31 and payable by the surplus lines broker.

1 Sec. 21.35.220. COLLECTION OF SURPLUS LINES TAXES AND FEES.

2 (a) If the tax collectible under AS 21.35.200 or the fee collectible under AS 21.35.210
3 by a surplus lines broker is not paid within the time prescribed, the tax, fee, or both,
4 and late payment fees, along with appropriate penalties, may be collected by an action
5 in court against the surplus lines licensee and the surety on the bond filed under
6 AS 21.27.790.

7 (b) In addition to penalties provided in this chapter, failure to pay tax within
8 the time prescribed is subject to penalties provided in AS 21.35.440.

9 Sec. 21.35.230. CIVIL ACTIONS AGAINST ELIGIBLE SURPLUS LINES
10 INSURERS. (a) A person may bring a civil action against a surplus lines insurer
11 under a surplus lines insurance contract made by it or under other evidence of
12 insurance issued or delivered by the surplus lines licensee. A policy issued by a
13 surplus lines insurer shall contain a provision stating the substance of this section and
14 designating the person to whom the director shall mail service of process.

15 (b) The remedies provided in this section are in addition to any other methods
16 provided by law for service of process upon insurers.

17 Sec. 21.35.240. DUTY TO FILE SURPLUS LINES EVIDENCE OF
18 INSURANCE TRANSACTIONS AND AFFIDAVITS. (a) A surplus lines broker
19 shall execute and file with the monthly report required by AS 21.35.250 a written
20 report, that shall be kept confidential, regarding each surplus lines insurance transaction
21 occurring in the preceding calendar month. The report must include

22 (1) the name and address of the insured;

23 (2) the identity of each insurer including the National Association of
24 Insurance Commissioners group and company insurer number and the percentage of
25 coverage provided by each;

26 (3) a complete description of the subject and location of the risk;

27 (4) the amount of premium charged for the insurance; and

28 (5) other information required by the director.

29 (b) Instead of the report required in (a) of this section, the director may order
30 that evidence of insurance be filed with the surplus lines association and that the
31 surplus lines association provide periodic reports regarding insurance transactions to

1 the director.

2 (c) A producing broker shall execute and deliver to the surplus lines broker not
3 later than the end of each month on a form prescribed by the director, and a surplus
4 lines broker shall file with the director with the report required by (a) of this section
5 or with the surplus lines association with the evidence of insurance required by (b) of
6 this section, for surplus lines insurance first placed or renewed in the preceding
7 calendar month, an affidavit that shall be open to public inspection, as to the diligent
8 efforts to place the coverage with admitted insurers, and the results of those efforts.
9 The affidavit must contain a statement by the broker that the insured was expressly
10 informed in writing before placement of the surplus lines insurance that the surplus
11 lines insurer with whom the insurance was to be placed is not licensed in this state,
12 is not subject to this state's supervision, and, in the event of the insolvency of the
13 surplus lines insurer, losses will not be covered under AS 21.80 (Alaska Insurance
14 Guaranty Association Act).

15 (d) A report, evidence of insurance, or affidavit required by this section that
16 is filed late, incomplete, or incorrect is subject to a \$50 late filing fee.

17 Sec. 21.35.250. MONTHLY REPORTS; SUMMARY OF EXPORTED
18 SURPLUS LINES BUSINESS. (a) A surplus lines broker shall file with the director
19 on or before the end of each month, on forms prescribed by the director, a verified
20 report in duplicate of all surplus lines insurance by type of insurance as required to be
21 reported in the annual statement that must be filed with the director by admitted
22 insurers. The report must include all surplus lines insurance transactions during the
23 preceding calendar month, whether taxable or tax exempt, showing the

- 24 (1) aggregate gross premiums written;
25 (2) aggregate return premiums;
26 (3) amount of aggregate tax remitted to this state; and
27 (4) amount of aggregate tax remitted to each other state for which an
28 allocation is made under AS 21.35.200(f).

29 (b) Instead of the report required under (a) of this section, the director may
30 order that evidence of insurance be filed with the surplus lines association and that the
31 association file periodic reports regarding insurance transactions to the director.

1 (c) A report or evidence of insurance required by this section that is filed late,
2 incomplete, or incorrect is subject to a \$50 late filing fee.

3 Sec. 21.35.260. DUTY TO DELIVER EVIDENCE OF SURPLUS LINES
4 INSURANCE AND SUBSEQUENT CHANGES TO INSURANCE. (a) When surplus
5 lines insurance is placed, the surplus lines broker shall within 30 days after placing the
6 coverage deliver to the insured or the producing broker the policy, or, if the policy is
7 not then available, a certificate, cover note, binder, or other evidence of insurance.
8 The certificate, cover note, binder, or other evidence of insurance shall be executed by
9 the surplus lines broker and must contain a complete record of all policy insuring
10 agreements, conditions, exclusions, clauses, endorsements, other material facts that
11 would regularly be included in the policy, description, and location of the subject of
12 insurance, a general description of the coverages of the insurance, the premium and
13 rate charged and taxes to be collected from the insured, the name and address of the
14 insured, and the name of each surplus lines insurer and the percentage of the entire
15 risk assumed by each insurer. The policy, certificate, cover note, binder, or other
16 evidence of insurance must contain the name, address, phone number, and the license
17 number of the surplus lines broker.

18 (b) A surplus lines broker may not issue or deliver evidence of insurance or
19 purport to insure or represent that insurance will be or has been written by an eligible
20 surplus lines insurer unless the surplus lines broker has authority from the insurer to
21 insure the risk or has received information from the insurer in the regular course of
22 business that the insurance has been granted.

23 (c) If after delivery of evidence of insurance there is a change in the identity
24 of the insurers, or the percentage of the risk assumed by an insurer, or another material
25 change in coverage from that stated in the surplus lines broker's original evidence of
26 insurance, the surplus lines broker shall promptly issue and deliver to the insured or
27 the producing broker an appropriate substitute for, or endorsement of, the original
28 document accurately showing the current status of the coverage and the insurer's
29 responsibility.

30 (d) The surplus lines broker shall deliver a copy of the policy or cover note
31 issued by the insurer as soon as reasonably possible after placement of the insurance

1 coverage. A certificate or policy of insurance shall contain or have attached a
2 complete record of all policy insuring agreements, conditions, exclusions, clauses,
3 endorsements, or other material facts that would regularly be included in the policy.

4 (e) A policy, certificate, cover note, binder, or other evidence of insurance
5 negotiated, placed, or procured under the provisions of this chapter issued by a surplus
6 lines broker shall bear the name, address, phone number, and the license number of
7 the surplus lines broker, and the following statement in at least 10-point type: "This
8 is evidence of insurance procured and developed under AS 21.35 (Alaska Surplus
9 Lines Law). It is not covered by AS 21.80 (Alaska Insurance Guaranty Association
10 Act)." Information required under this subsection may not be covered, concealed, or
11 obscured by the producing broker.

12 Sec. 21.35.270. EFFECT OF PAYMENT TO SURPLUS LINES BROKER.

13 A payment of premium to a surplus lines broker acting for a person other than itself
14 in negotiating, continuing, or reviewing a policy of insurance under this chapter is
15 considered to be payment to the insurer, notwithstanding conditions or stipulations in
16 the policy or contract to the contrary.

17 Sec. 21.35.280. SURPLUS LINES BROKERS MAY ACCEPT BUSINESS
18 FROM OTHER BROKERS. A surplus lines broker licensed by this state may
19 originate surplus lines insurance or accept surplus lines insurance from another surplus
20 lines broker licensed by this state or a producing broker licensed by this state as to the
21 kind and class of insurance involved. The surplus lines broker may compensate the
22 producing broker or surplus lines broker for the insurance.

23 Sec. 21.35.290. SURPLUS LINES ADVISORY ORGANIZATIONS. (a) A
24 nonprofit association of surplus lines brokers may be created and known as the Alaska
25 Surplus Lines Association. The director may, by order, require that all surplus lines
26 brokers, as a condition of continued licensure under this chapter, join the association.
27 The association shall perform its functions under the plan or operation established
28 under (c) of this section and exercise its powers through a board of directors
29 established under (b) of this section. The association shall be supervised by the
30 director and shall

31 (1) receive, record, and, subject to (2) of this subsection, stamp all

1 surplus lines insurance documents that surplus lines brokers are required to file with
2 the association under the plan of operation;

3 (2) refuse to stamp submitted insurance documents, if the association
4 determines that a nonadmitted insurer does not meet minimum state financial standards
5 of eligibility, the producing broker or surplus lines broker is not licensed by this state,
6 or the director orders the association not to stamp insurance documents under (j) of
7 this subsection; the association shall notify the director and provide an explanation for
8 a refusal to stamp submitted insurance documents other than a refusal based upon the
9 order of the director;

10 (3) in addition to other reports required by this chapter, annually on or
11 before February 1 prepare and deliver to each licensee and to the director a report
12 regarding surplus lines business; the report must include a delineation of the classes
13 of business procured during the preceding calendar year in a form that the board of
14 directors may prescribe;

15 (4) encourage compliance by its members with the surplus lines law of
16 this state and the orders, bulletins, and regulations of the director relative to surplus
17 lines insurance;

18 (5) communicate with organizations of insurance producers and
19 admitted insurers with respect to the proper use of the surplus lines market;

20 (6) attend National Association of Insurance Commissioners meetings
21 and participate in technical advisory groups;

22 (7) employ and retain persons as necessary to carry out the duties of
23 the association;

24 (8) borrow money as necessary to carry out the purposes of the
25 association;

26 (9) enter contracts as necessary to carry out the purposes of the
27 association; and

28 (10) provide other services to its members that are incidental or related
29 to the purposes of the association.

30 (b) The association shall function through a board of directors consisting of
31 seven members appointed by the director. A member of the board serves at the

1 pleasure of the director for a term of three years and may be reappointed to an
2 unlimited number of terms. In appointing directors to the board, the director shall
3 consider, among other things, whether members of the association are fairly
4 represented. No more than one board member may be from the same firm licensee or
5 other entity. Membership of the board shall include

6 (1) three principals or managers of surplus lines broker firms or
7 individual surplus lines brokers consistently writing the most surplus lines premium
8 in this state; and

9 (2) not less than four resident principals or managers of surplus lines
10 broker firms or individual surplus lines brokers.

11 (c) The association shall establish a plan of operation. The plan of operation
12 shall provide for the formation, election of officers by the board of directors, operation,
13 and governance of the association. The plan and any amendments to it shall be
14 effective upon written approval by the director. The director may not unreasonably
15 withhold or delay approval. All association members must comply with the plan of
16 operation and any amendments to it. Failure to comply with the plan of operation or
17 any amendments to it constitutes a violation of this chapter.

18 (d) The association shall file with the director

19 (1) a copy of its plan of operation and any amendments to it;

20 (2) a copy of its constitution, articles of agreement of association,
21 certificates of incorporation, bylaws, and regulations, if any;

22 (3) a current list of its members revised at least annually;

23 (4) the name and address of a resident of this state upon whom notices
24 or orders of the director or processes issued at the direction of the director may be
25 served;

26 (5) an agreement that the director may examine the association; and

27 (6) a schedule of its membership fees and assessments.

28 (e) The director shall, at least once every three years, make or cause to be
29 made an examination of the association under AS 21.06.120.

30 (f) The association, its directors, officers, agents, or employees are not civilly
31 liable for any action taken or omitted by them in the performance of their powers and

1 duties under this section, except for a civil action based on gross negligence or wilful
2 misconduct.

3 (g) Within 30 days after a surplus lines coverage is procured, a licensee shall
4 submit to the association for recording and stamping all documents that surplus lines
5 brokers are required to file with the association. Each insurance document submitted
6 to the association under this subsection shall include the

7 (1) name and address of the insured;

8 (2) gross premium charged;

9 (3) name and address of the nonadmitted insurer;

10 (4) class of insurance procured; and

11 (5) name, address, phone number, and Alaska surplus lines license
12 number of the surplus lines broker.

13 (h) It is unlawful for an insurance producer or surplus lines broker to deliver
14 in this state an insurance document that surplus lines brokers are required to file with
15 the association unless the insurance document is stamped by the association or is
16 exempt from stamping requirements; provided, however, that a licensee's failure to
17 comply with this subsection does not affect the validity of the coverage.

18 (i) The services performed by the association on behalf of the director shall
19 be funded under written contract with the director.

20 (j) The director may declare a nonadmitted insurer ineligible and order the
21 association not to stamp insurance documents issued by the nonadmitted insurer and
22 issue any other appropriate order.

23 ARTICLE 3. SURPLUS WET MARINE AND

24 TRANSPORTATION INSURANCE.

25 Sec. 21.35.300. PLACEMENT OF SURPLUS WET MARINE AND
26 TRANSPORTATION INSURANCE. (a) Surplus wet marine and transportation
27 insurance, other than ocean marine insurance, may be procured from nonadmitted
28 insurers through an insurance producer or a surplus lines broker that satisfies the
29 requirements of (b) of this section if

30 (1) each insurer is an eligible surplus wet marine and transportation
31 insurer;

1 (2) each insurer is authorized to write the type of insurance in its
2 domiciliary jurisdiction;

3 (3) the full amount or type of insurance cannot be obtained from
4 insurers who are admitted to do business in this state;

5 (4) the insurance producer or a surplus lines broker has conducted and
6 documented a diligent search among insurers who are admitted to transact marine
7 business in this state and are actually writing the particular kind or class of insurance
8 required by the client in this state;

9 (5) the director authorizes an exception to (2) of this subsection by
10 regulation or by written authorization for an individual placement upon written request
11 by the insurance producer or a surplus lines broker; and

12 (6) all other requirements of this chapter are met.

13 (b) To qualify to place surplus wet marine and transportation insurance under
14 this section, an insurance producer or a surplus lines broker must

15 (1) be licensed under AS 21.27;

16 (2) have and maintain while transacting surplus wet marine and
17 transportation insurance a bond under AS 21.27.190 in the sum of not less than
18 \$100,000 aggregate liability and with the conditions that the insurance producer or
19 surplus lines broker conduct business under the provisions of this title, promptly remit
20 the taxes and fees provided by law, return premiums promptly when due, and pay
21 proper losses promptly; a surplus lines broker may satisfy this requirement if its bond
22 under AS 21.27.790(2) also covers surplus wet marine and transportation insurance;
23 and

24 (3) if the director requires, maintain an errors and omissions insurance
25 policy acceptable to the director.

26 Sec. 21.35.310. SUBSCRIPTION POLICIES OR JOINT UNDERWRITING
27 IN COMBINATION WITH ADMITTED INSURERS. Subscription policies or joint
28 underwriting of insurance other than reinsurance, ocean marine insurance, surplus lines
29 insurance, insurance independently procured, life insurance, disability insurance, and
30 annuity contracts by a combination of authorized insurers and nonadmitted insurers is
31 a surplus wet marine and transportation insurance placement in its entirety, is subject

1 to this chapter, is not subject to AS 21.39 or AS 21.42.120 - 21.42.130, and losses or
2 claims are not covered by AS 21.80 (Alaska Insurance Guaranty Association Act).

3 Sec. 21.35.320. RESTRICTIONS ON SURPLUS WET MARINE AND
4 TRANSPORTATION BROKERS. An insurance producer or a surplus lines broker
5 may not place surplus wet marine and transportation coverage with a nonadmitted
6 insurer, unless the insurance producer or surplus lines broker is licensed under
7 AS 21.27 and, at the time of placement, the insurance producer or surplus lines broker
8 has determined that the nonadmitted insurer

9 (1) is qualified to provide coverage under AS 21.35.180; and, if an
10 alien insurer subject to AS 21.35.180, includes surplus wet marine and transportation
11 gross liabilities in this state in its United States surplus lines gross liabilities; or

12 (2) has

13 (A) established satisfactory evidence of good repute and
14 financial integrity;

15 (B) provided to the director a copy of its current annual
16 statement certified by the insurer and an actuarial opinion as to the adequacy
17 of, and methodology used to determine, the insurer's loss reserves; the
18 statement shall be provided at the same time it is provided to the regulatory
19 authority of the insurer's domicile, but in no event more than eight months
20 after the close of the period reported on, and shall be certified as a true and
21 correct copy by an accounting or auditing firm licensed in the jurisdiction of
22 the insurer's domicile and certified by a senior officer of the nonadmitted
23 insurer as a true and correct copy of the statement filed with the regulatory
24 authority in the domicile of the nonadmitted insurer; in the case of an insurance
25 exchange qualifying under AS 21.35.330(a)(2), the statement may be an
26 aggregate combined statement of all underwriting syndicates operating during
27 the period reported; and

28 (3) qualifies under AS 21.35.330(a).

29 Sec. 21.35.330. RESTRICTIONS ON SURPLUS WET MARINE AND
30 TRANSPORTATION COVERAGE. (a) A nonadmitted insurer may be eligible to
31 provide surplus wet marine and transportation coverage in this state if it qualifies under

1 one of the following:

2 (1) a foreign but nonalien insurer, reciprocal insurer, or mutual
3 protection and indemnity association may qualify under this subsection if it has the
4 minimum unimpaired basic surplus and additional surplus equal to that required in its
5 domiciliary jurisdiction or in the amount of \$15,000,000, whichever is greater;

6 (2) an individual syndicate of an insurance exchange created by the
7 laws of a state other than this state may qualify under this subsection if

8 (A) the syndicates of the exchange maintain under terms
9 acceptable to the director capital and surplus, or its equivalent under the laws
10 of its domiciliary jurisdiction, of at least \$75,000,000 in the aggregate;

11 (B) the exchange must maintain under terms acceptable to the
12 director at least 50 percent of the policyholder surplus of each syndicate in a
13 custodial account accessible to the exchange or its domiciliary regulator in the
14 event of insolvency or impairment of the individual syndicate; and

15 (C) in addition, each individual syndicate to be eligible to
16 accept surplus wet marine and transportation insurance placements from this
17 state meets either of the following requirements:

18 (i) for insurance exchanges that maintain funds in an
19 amount of at least \$15,000,000 for the protection of all exchange
20 policyholders, the syndicate shall maintain under terms acceptable to the
21 director minimum capital and surplus, or its equivalent under the laws
22 of the domiciliary jurisdiction, of at least \$5,000,000; or

23 (ii) for insurance exchanges that do not maintain funds
24 in an amount of at least \$15,000,000 for the protection of all exchange
25 policyholders, the syndicate shall maintain under terms acceptable to the
26 director minimum capital and surplus, or its equivalent under the laws
27 of its domiciliary jurisdiction, of at least the minimum capital and
28 surplus requirements under the laws of its domiciliary jurisdiction or
29 \$15,000,000, whichever is greater;

30 (3) in the case of a Lloyd's plan or other similar group of insurers that
31 consists of unincorporated individual insurers or a combination of both unincorporated

1 and incorporated insurers,

2 (A) each sponsoring syndicate maintains a trust fund that shall
3 consist of a trusteed account representing at least 100 percent of the sponsoring
4 syndicate's gross liabilities attributable to the surplus wet marine and
5 transportation business in this state;

6 (B) in addition, the group shall establish and maintain in trust
7 a surplus in the amount of \$100,000,000 that must be available for the benefit
8 of surplus wet marine and transportation policyholders in this state who are
9 policyholders of any member of the group;

10 (C) the incorporated members of the group may not be engaged
11 in a business other than underwriting as a member of the group and shall be
12 subject to the same level of solvency regulation and control by the group's
13 domiciliary regulator as are the unincorporated members;

14 (D) the trust funds required under this paragraph shall be
15 maintained in an irrevocable trust account in this state in a qualified financial
16 institution, consisting of cash, securities, letters of credit, or investments of
17 substantially the same character and quality as those that are eligible
18 investments for the capital and statutory reserves of admitted insurers to write
19 like kinds of insurance in this state and, in addition, shall satisfy the
20 requirements of the standard trust agreement required for listing with the
21 National Association of Insurance Commissioners International Insurers
22 Department;

23 (4) in the case of a group of incorporated insurers under common
24 administration that has continuously transacted an insurance business outside the
25 United States for at least three years immediately before January 1, 1996, and that
26 submits to this state's authority to examine its books and records and bears the expense
27 of the examination,

28 (A) the group must maintain an aggregate policyholders' surplus
29 of \$10,000,000,000;

30 (B) the group must maintain in trust a surplus in the amount of
31 \$100,000,000; the surplus shall be available for the benefit of surplus wet

1 marine and transportation policyholders in this state who are policyholders of
2 any member of the group;

3 (C) each insurer must individually maintain capital and surplus
4 of not less than \$25,000,000 per company;

5 (D) the trust funds required by this paragraph shall be
6 maintained in an irrevocable trust account in this state in a qualified financial
7 institution, consisting of cash, securities, letters of credit, or investments of
8 substantially the same character and quality as those that are eligible
9 investments for the capital and statutory reserves of admitted insurers to write
10 like kinds of insurance in this state and, in addition, shall satisfy the
11 requirements of the standard trust agreement required for listing with the
12 National Association of Insurance Commissioners International Insurers
13 Department; and

14 (E) each member of the group shall make available to the
15 director an annual certification of the member's solvency by the member's
16 domiciliary regulator and its independent public accountant; or

17 (5) except for an exchange or plan complying with (3) or (4) of this
18 subsection, an alien insurer must satisfy the capital and surplus requirements of (2) of
19 this subsection, must have in force a trust fund of not less than the greater of

20 (A) \$2,500,000; or

21 (B) 50 percent of its surplus wet marine and transportation gross
22 liabilities in this state, subject, at the discretion of the director, to a cap of
23 \$10,000,000, to be determined annually on the basis of accounting practices
24 and procedures substantially equivalent to those enacted by this state, as of
25 December 31 next preceding the date of determination, where

26 (i) at least 50 percent of surplus lines gross liabilities,
27 but not less than \$2,500,000, is maintained in an irrevocable trust
28 account in this state in a qualified financial institution, on behalf of
29 United States policyholders consisting of cash, securities, letters of
30 credit, or other investments of substantially the same character and
31 quality as those that are eligible investments under AS 21.21 for the

1 capital and statutory reserves of admitted insurers to write like kinds of
2 insurance in this state; the trust account that shall be included in any
3 calculation of capital and surplus or its equivalent, shall satisfy the
4 requirements of the standard trust agreement required for listing with
5 the National Association of Insurance Commissioners International
6 Insurers Department; the insurer may request approval from the director
7 to use the trust fund to pay valid surplus wet marine and transportation
8 claims, provided, however, that the balance of the trust fund may not
9 be less than \$2,500,000 or 35 percent of the insurer's current gross
10 United States surplus wet marine and transportation liabilities,
11 whichever is greater;

12 (ii) the remaining required amount of surplus lines gross
13 liabilities shall be maintained in a trust account, for the exclusive
14 benefit of policyholders in this state, in a financial institution in the
15 insurer's country of domicile, provided that the financial institution has
16 a United States office and the trust account and its corpus satisfy all of
17 the requirements of the standard trust agreement required for listing
18 with the National Association of Insurance Commissioners International
19 Insurers Department, except, if acceptable to the director, investments
20 in a foreign country or in a possession of the United States of
21 substantially the same kinds, classes, and investment grades as those
22 that are eligible investments for the capital and statutory reserves of
23 admitted insurers to write like kinds of insurance in this state, or a
24 clean, unconditional, irrevocable letter of credit confirmed by a
25 qualified United States financial institution.

26 (b) The trust requirement for an alien insurer under (a) of this section may be
27 satisfied by an insurer's possessing less than the trust fund amount specified upon a
28 written affirmative finding of acceptability by the director if the director is satisfied
29 that the placement of insurance with the insurer is necessary and will not be
30 detrimental to the public and the policyholder. In determining whether business may
31 be placed with the insurer, the director shall consider the following factors:

- 1 (1) the interests of the public and policyholders;
- 2 (2) the length of time the insurer has been authorized in its domiciliary
3 jurisdiction and elsewhere;
- 4 (3) unavailability of particular coverages from authorized insurers or
5 unauthorized insurers meeting the requirements of this section;
- 6 (4) the size of the company as measured by its assets, capital and
7 surplus, reserves, premium writings, insurance in force, or other appropriate criteria;
- 8 (5) the kinds of business the company writes, its net exposure, and the
9 extent to which the company's business is diversified among several lines of insurance
10 and geographic locations; and
- 11 (6) the past and projected trend in the size of the company's capital and
12 surplus considering such factors as premium growth, operating history, loss and
13 expense ratios, or other appropriate criteria.

14 (c) If after a review of a nonadmitted insurer providing or attempting to
15 provide wet marine and transportation coverage and consideration of factors including
16 quality of management, capital and surplus of a parent company, underwriting profit,
17 investment income trends, trade practices, reserving practices, company record, and
18 reputation within the industry, the director finds the insurer to be unacceptable, the
19 director may declare the nonadmitted insurer to be ineligible. The director may issue
20 an order declaring a nonadmitted insurer ineligible and shall promptly mail notice of
21 a declaration to each insurance producer surplus lines broker licensed under AS 21.27
22 if at any time the director has reason to believe that the nonadmitted insurer

- 23 (1) is in unsound financial condition;
- 24 (2) has acted in an untrustworthy manner;
- 25 (3) is no longer eligible under this chapter;
- 26 (4) has wilfully violated the laws of this state or another jurisdiction;
- 27 or
- 28 (5) does not reasonably investigate and make prompt payment of just
29 losses and claims in this state or another jurisdiction.

30 Sec. 21.35.340. VALIDITY OF SURPLUS WET MARINE AND
31 TRANSPORTATION CONTRACTS. Insurance procured under AS 21.35.300 -

1 21.35.420 shall be valid and enforceable as to all parties.

2 Sec. 21.35.350. SURPLUS WET MARINE AND TRANSPORTATION TAX.

3 (a) Gross premiums charged, less any return premium, for surplus wet marine and
4 transportation insurance are subject to a premium receipts tax of 2.7 percent that shall
5 be collected by the insurance producer or surplus lines broker in addition to the full
6 amount of the gross premium charged by the insurer for the insurance. The tax on any
7 portion of the premium unearned at termination of the insurance that is credited by the
8 state to the insurance producer or surplus lines broker shall be returned to the
9 policyholder directly by the insurance producer or surplus lines broker, if any. If a
10 surplus wet marine and transportation policy procured through an insurance producer
11 or surplus lines broker covers property or a subject resident, located, or to be
12 performed both inside and outside of this state, this tax payable shall be computed on
13 that portion of the gross premiums properly allocated to this state. The insurance
14 producer or surplus lines broker may not absorb the tax or any part of it and may not
15 rebate the tax or a part of the tax.

16 (b) This surplus wet marine and transportation tax is due and shall be paid to
17 the director on or before March 1 following the calendar year in which the premium
18 is written. The tax shall be reported on forms prescribed by the director or, upon the
19 director's order, paid to and reported on forms prescribed by the surplus lines
20 association.

21 (c) If the tax is not paid when due, an additional late payment fee of \$250 plus
22 two percent of the tax due per month, or part of a month, shall become due and
23 payable by the insurance producer or surplus lines broker.

24 (d) If a surplus wet marine and transportation policy procured through a
25 licensed insurance producer or surplus lines broker covers property or a subject only
26 partially resident, located, or to be performed in this state, the tax payable shall be
27 computed on the portions of the premium that are attributable to the property or a
28 subject resident, located, or to be performed in this state. In determining the amount
29 of a premium taxable in this state, all premiums written, procured, or received in this
30 state shall be considered written on property or a subject resident, located, or to be
31 performed in this state, except premiums that are properly allocated or apportioned and

1 reported as taxable premiums of a reciprocal state. The tax payable to this state may
2 not be less than the tax due under this section.

3 (e) The director or a surplus lines association shall, at least annually, furnish
4 to the insurance regulatory official of a reciprocal state a copy of all filings reporting
5 an allocation of tax as required by (d) of this section.

6 (f) In determining the amount of gross premiums taxable in this state for a
7 placement of surplus wet marine and transportation insurance covering property or a
8 subject resident, located, or to be performed both inside and outside this state, the tax
9 due shall be computed on that portion of the policy premium that is attributable to
10 property or a subject resident, located, or to be performed in this state and that relates
11 to the type of insurance being placed as determined by reference to an allocation
12 schedule as set out in AS 21.35.200(f).

13 (g) This section does not apply to insurance of risks of the state or a political
14 subdivision of the state if an exemption on a form prescribed by the director is filed
15 with the report required by (b) of this section.

16 Sec. 21.35.360. SURPLUS WET MARINE AND TRANSPORTATION
17 FILING FEE. (a) The fee for filing the forms required under AS 21.35.350(b) is an
18 amount equal to one percent on gross premium charged less any return premiums
19 during the preceding calendar year, whether the premium is subject to tax or exempt.
20 The insurance producer or surplus lines broker shall pay the fee at the time of filing
21 of the statement.

22 (b) If the filing fee is not paid when due, an additional late payment fee of
23 \$250 plus two percent of the fee due per month, or part of a month, shall become due
24 and payable by the surplus wet marine and transportation broker.

25 Sec. 21.35.370. COLLECTION OF SURPLUS WET MARINE AND
26 TRANSPORTATION TAXES AND FEES. (a) If the tax collectible under
27 AS 21.35.350 or the fee collectible under AS 21.35.360 by an insurance producer or
28 surplus lines broker is not paid within the time prescribed, the tax, fee, or both, and
29 late payment fees, along with appropriate penalties may be collected by distraint or by
30 an action in court, against the insurance producer or surplus lines broker and the surety
31 on the bond filed under AS 21.35.310(b)(2).

1 (b) In addition to penalties provided in this chapter, failure to pay tax within
2 the time prescribed is subject to penalties provided in AS 21.35.440.

3 Sec. 21.35.380. CIVIL ACTIONS AGAINST ELIGIBLE SURPLUS WET
4 MARINE AND TRANSPORTATION INSURERS. (a) A person may bring a civil
5 action against an eligible surplus wet marine and transportation insurer under any
6 surplus wet marine and transportation insurance contract made by it or evidence of
7 insurance issued or delivered by the surplus wet marine and transportation licensee.
8 A policy issued by an eligible surplus wet marine and transportation insurer shall
9 contain a provision stating the substance of this section and designating the person to
10 whom the director shall mail service of process.

11 (b) The remedies provided in this section are in addition to any other methods
12 provided by law for service of process upon insurers.

13 Sec. 21.35.390. DUTY TO FILE EVIDENCE OF INSURANCE
14 TRANSACTIONS AND AFFIDAVITS. (a) An insurance producer or surplus lines
15 broker shall execute and file with the monthly report required by AS 21.35.400 a
16 written report that shall be kept confidential regarding each surplus wet marine and
17 transportation insurance transaction occurring in the preceding calendar month. The
18 report must include

- 19 (1) the name and address of the insured;
- 20 (2) the identity of each insurer including the National Association of
21 Insurance Commissioners group and company insurer number and the percentage of
22 coverage provided by each insurer;
- 23 (3) a complete description of the subject and location of the risk
24 insured;
- 25 (4) the amount of premium charged for the insurance; and
- 26 (5) other information required by the director.

27 (b) Instead of the report required in (a) of this section, the director may order
28 that evidence of insurance be filed with the surplus lines association and that the
29 surplus lines association provide periodic reports regarding insurance transactions to
30 the director.

31 (c) An insurance producer or surplus lines broker shall execute and deliver

1 with the report required by (a) of this section to the director or with the evidence of
2 insurance required by (b) of this section to the surplus lines association, for surplus
3 wet marine and transportation insurance first placed or renewed in the preceding
4 calendar month, an affidavit that shall be open to public inspection as to the diligent
5 efforts to place the coverage with admitted insurers and the results of those efforts.
6 The affidavit must contain a statement by the insurance producer or surplus lines
7 broker that the insured was expressly informed in writing before placement of the
8 surplus wet marine and transportation insurance that the surplus wet marine and
9 transportation insurer with whom the insurance was to be placed is not licensed in this
10 state and is not subject to this state's supervision, and, in the event of the insolvency
11 of the surplus wet marine and transportation insurance, losses will not be covered
12 under AS 21.80 (Alaska Insurance Guaranty Association Act).

13 (d) A report, evidence of insurance, or affidavit required by this section that
14 is filed late, incomplete, or incorrect is subject to a \$50 late filing fee.

15 Sec. 21.35.400. MONTHLY REPORTS; SUMMARY OF EXPORTED
16 SURPLUS WET MARINE AND TRANSPORTATION BUSINESS. (a) An insurance
17 producer or surplus lines broker shall file with the director on or before the end of
18 each month, on forms prescribed by the director, a verified report in duplicate of all
19 surplus wet marine and transportation insurance. The report must include all surplus
20 wet marine and transportation insurance transactions during the preceding calendar
21 month, showing the aggregate gross premiums written, the aggregate return premiums,
22 the amount of aggregate tax remitted to this state, and the amount of aggregate tax
23 remitted to each other state for which an allocation is made under AS 21.35.350(d).

24 (b) Instead of the report required under (a) of this section, the director may
25 order that evidence of insurance be filed with the surplus lines association and that the
26 association file periodic reports regarding insurance transactions to the director.

27 (c) A report or evidence of insurance required by this section that is filed late,
28 incomplete, or incorrect is subject to a \$50 late filing fee.

29 Sec. 21.35.410. DUTY TO DELIVER EVIDENCE OF SURPLUS WET
30 MARINE AND TRANSPORTATION INSURANCE AND SUBSEQUENT CHANGES
31 TO INSURANCE. (a) When surplus wet marine and transportation insurance is

1 placed, the insurance producer or surplus lines broker shall, within 30 days after
2 placing the coverage, deliver to the insured or the producing broker the policy, or if
3 the policy is not then available, a certificate, cover note, binder, or other evidence of
4 insurance. The certificate, cover note, binder, or other evidence of insurance shall be
5 executed by the insurance producer or surplus lines broker and must contain a
6 complete record of all policy insuring agreements, conditions, exclusions, clauses,
7 endorsements, other material facts that would regularly be included in the policy,
8 description, and location of the subject of insurance, a general description of the
9 coverages of the insurance, the premium and rate charged and taxes to be collected
10 from the insured, the name and address of the insured, and the name of each surplus
11 wet marine and transportation insurer and the percentage of the entire risk assumed by
12 each insurer. The policy, certificate, cover note, binder, or other evidence of insurance
13 must contain the name, address, phone number, and license number of the insurance
14 producer or surplus lines broker.

15 (b) An insurance producer or surplus lines broker may not issue or deliver
16 evidence of insurance or purport to insure or represent that insurance will be or has
17 been written by an eligible surplus wet marine and transportation insurer unless the
18 insurance producer or surplus lines broker has authority from the insurer to insure the
19 risk or has received information from the insurer in the regular course of business that
20 the insurance has been granted.

21 (c) If after delivery of evidence of insurance there is a change in the identity
22 of the insurers, or the percentage of the risk assumed by an insurer, or another material
23 change in coverage from that stated in the surplus wet marine and transportation
24 broker's original evidence of insurance, the insurance producer or surplus lines broker
25 shall promptly issue and deliver to the insured an appropriate substitute for, or
26 endorsement of, the original document accurately showing the current status of the
27 coverage and the insurer's responsibility.

28 (d) The insurance producer or surplus lines broker shall deliver a copy of the
29 policy or cover note issued by the insurer as soon as reasonably possible after
30 placement of the insurance coverage. A certificate or policy of insurance must contain
31 or have attached a complete record of all policy insuring agreements, conditions,

1 exclusions, clauses, endorsements, or other material facts that would regularly be
2 included in the policy.

3 (e) A policy, certificate, cover note, binder, or other evidence of insurance
4 negotiated, placed, or procured under the provisions of this chapter issued by a surplus
5 wet marine and transportation broker shall bear the name, address, phone number,
6 license number of the insurance producer or surplus lines broker, and the following
7 legend in at least 10-point type:

8 This is evidence of insurance procured and developed
9 under AS 21.35 (Alaska Surplus Wet Marine and Transportation
10 Law). It is not covered by AS 21.80 (Alaska Insurance
11 Guaranty Association Act).

12 Sec. 21.35.420. EFFECT OF PAYMENT TO INSURANCE PRODUCER OR
13 SURPLUS LINES BROKER. A payment of premium for surplus wet marine and
14 transportation insurance to an insurance producer or surplus lines broker, acting for a
15 person other than itself in negotiating, continuing, or reviewing a policy of insurance
16 under this chapter, is considered to be payment to the insurer, notwithstanding
17 conditions or stipulations in the policy or contract to the contrary.

18 ARTICLE 4. GENERAL PROVISIONS.

19 Sec. 21.35.430. LICENSEE'S DUTY TO NOTIFY INSURED. (a) Except as
20 provided in (b) of this section, a contract of insurance placed by an insurance producer
21 or surplus lines broker under this chapter is not binding upon the insured, and a
22 premium charged is not due and payable until the producing broker has notified the
23 insured in writing that the insurer with which the surplus lines broker places the
24 insurance does not hold a certificate of authority issued by this state and is not subject
25 to state supervision, and, in the event of the insolvency of the surplus lines insurer,
26 losses will not be covered under AS 21.80 (Alaska Insurance Guaranty Association
27 Act). Nothing in this subsection shall nullify an agreement by an insurer to provide
28 insurance. A copy of the notice required under this subsection shall be maintained by
29 the licensee with the records of the contract and shall be available for examination.

30 (b) A contract of insurance placed by a surplus lines broker under this chapter
31 with a risk retention group is not binding upon the insured, and a premium charged is

1 not due and payable until the producing broker has provided the insured with the
2 following federally mandated language in 10-point type:

3 This policy is issued by your risk retention group. Your
4 risk retention group may not be subject to all of the insurance
5 laws and regulations of your state. State insurance insolvency
6 funds are not available for your risk retention group.

7 Sec. 21.35.440. PENALTIES. In addition to any other penalty provided by
8 law, a person other than an insured that the director determines under AS 21.06.170 -
9 21.06.240 has violated the provisions of this chapter, is subject to

10 (1) a civil penalty equal to the premium or compensation promised,
11 paid, or to be paid, directly or indirectly, to the person;

12 (2) a civil penalty of not more than \$25,000 for each violation or a
13 civil penalty of not more than \$100,000 for each violation if the director determines
14 that the person wilfully violated the provisions of this chapter; and

15 (3) denial, nonrenewal, suspension, or revocation of the person's license
16 or certificate of authority.

17 Sec. 21.35.450. HEARING AND ORDER ON VIOLATION. (a) On the
18 complaint of a person or on the motion of the director, the director may conduct an
19 investigation to determine whether a person has violated this chapter.

20 (b) If the director determines that a person has violated this chapter, the
21 director shall serve an order upon the person charged requiring that person to cease
22 and desist from engaging in the act or practice. Service required under this subsection
23 shall be by mail with a certificate of mailing from the United States Postal Service.
24 A person aggrieved by the cease and desist order may request the hearing under
25 AS 21.06.170 - 21.06.240.

26 (c) If the director believes that a person has violated a cease and desist order
27 issued under (b) of this section, the director may certify the relevant facts to the court
28 for proceedings under AS 44.62.590. In addition to the penalties and remedies
29 provided for in AS 44.62.590, the court, upon finding that the cease and desist order
30 has been violated, may order the violator to comply with the order, pay a penalty of
31 not more than \$100,000 for each violation, revoke or suspend the violator's license or

1 certificate of authority, and bar the violator from transacting the business of insurance
2 in the future.

3 (d) If the director determines that a person is violating or about to violate the
4 provisions of this chapter, the director may cause a complaint to be filed in the court
5 for restitution. The court shall have jurisdiction of the proceeding and shall have the
6 power to make and enter judgment awarding restitution.

7 Sec. 21.35.460. EXCEPTION FOR CERTAIN INSURANCE
8 TRANSACTIONS. The provisions of this chapter may not operate to prohibit
9 employees, officers, directors, or partners of a commercial insured from acting in the
10 capacity of an insurance manager or buyer in placing insurance on behalf of the
11 employer, provided that the person's compensation is not based on buying insurance.

12 Sec. 21.35.470. VENUE FOR CERTAIN INSURANCE TRANSACTIONS.
13 The venue of an insurance transaction committed by mail, electronic transmission, or
14 otherwise is at the point where the matter transmitted by mail, electronic transmission,
15 or otherwise is delivered, issued for delivery, or takes effect.

16 Sec. 21.35.900. DEFINITIONS. In this chapter,

17 (1) "capital" means funds paid in for stock or other evidence of
18 ownership;

19 (2) "eligible surplus lines insurer" means a nonadmitted insurer with
20 which a surplus lines broker may place surplus lines insurance under AS 21.35.140 -
21 21.35.290;

22 (3) "eligible surplus wet marine and transportation insurer" means a
23 nonadmitted insurer with which an insurance producer or surplus lines broker may
24 place surplus wet marine and transportation insurance under AS 21.35.300 - 21.35.420;

25 (4) "export" means to place surplus lines insurance or surplus wet
26 marine and transportation insurance with a nonadmitted insurer;

27 (5) "foreign decree" means any decree or order in equity of a court
28 located in any United States jurisdiction, including a federal court of the United States,
29 against any person engaging in the transaction of insurance in this state;

30 (6) "ocean marine insurance" means that portion of wet marine and
31 transportation insurance that covers vessels

- 1 (A) solely engaged in interstate or foreign commerce;
- 2 (B) with a hull at the water line longer than 100 feet; or
- 3 (C) in excess of 100 gross registered tons;
- 4 (7) "producing broker" means the insurance producer or surplus lines
- 5 broker licensed under AS 21.27 dealing directly with the client seeking insurance;
- 6 (8) "reciprocal state" means a state that the director has determined has
- 7 enacted provisions substantially similar to AS 21.35.040, 21.35.050, 21.35.200, or
- 8 21.35.350;
- 9 (9) "surplus" means funds over and above liabilities and capital of the
- 10 company for the protection of policyholders;
- 11 (10) "transaction of insurance" means
- 12 (A) the solicitation, negotiation, procurement, effectuation, or
- 13 renewal of insurance; forwarding of applications; delivery of policies or
- 14 contracts; inspection of risks; fixing of rates; investigation or adjustment of
- 15 claims or losses; collection or forwarding of premiums; or transaction of
- 16 matters subsequent to effectuation of the contract of insurance and arising out
- 17 of it; and
- 18 (B) for purposes of this chapter, any of the following acts in
- 19 this state effected by mail, electronic transmission, or otherwise by a
- 20 nonadmitted insurer or by any person acting with the actual or apparent
- 21 authority of the insurer, on behalf of the insurer, constitutes the transaction of
- 22 an insurance business in or from this state:
- 23 (i) the making of or proposing to make, as an insurer,
- 24 an insurance contract;
- 25 (ii) the making of or proposing to make, as guarantor or
- 26 surety, any contract of guaranty or suretyship as a vocation and not
- 27 merely incidental to any other legitimate business or activity of the
- 28 guarantor or surety;
- 29 (iii) the taking or receiving of any application for
- 30 insurance;
- 31 (iv) the receiving or collection of a premium,

1 commission, membership fee, assessment, dues, or other consideration
2 for any insurance or any part of it;

3 (v) the issuance or delivery in this state of contracts of
4 insurance to residents of this state or to persons authorized to do
5 business in this state;

6 (vi) the solicitation, negotiation, procurement, or
7 effectuation of insurance or renewals of it;

8 (vii) the dissemination of information as to coverage or
9 rates, forwarding of applications, delivery of policies or contracts,
10 inspection of risks, the fixing of rates or investigation or adjustment of
11 claims or losses, the transaction of matters subsequent to effectuation
12 of the contract and arising out of it, or any other manner of representing
13 or assisting a person or insurer in the transaction of insurance with
14 respect to properties, risks, or exposures, located or to be performed in
15 this state;

16 (viii) the transaction of any kind of insurance business
17 specifically recognized as transacting an insurance business within the
18 meaning of the statutes relating to insurance;

19 (ix) the offering of any insurance or the transacting of
20 any insurance business; or

21 (x) offering any agreement or contract that alters,
22 amends, or voids coverage of an insurance contract;

23 (11) "type of insurance" means coverage provided under the particular
24 policy that is being placed;

25 (12) "unauthorized person" means a person

26 (A) not licensed under AS 21.27 as an insurance producer or a
27 surplus lines broker; or

28 (B) who is not an employee, officer, director, or partner of a
29 commercial insured acting in the capacity of an insurance manager or buyer in
30 placing insurance on behalf of the employer, provided that the person's
31 compensation is not based on buying insurance.

1 * **Sec. 9.** AS 21.36.195 is amended to read:

2 Sec. 21.36.195. SURPLUS LINES BROKERS AND INSURANCE
3 PRODUCERS; PROHIBITED ACTS. A surplus lines broker or an insurance producer
4 may not fail to provide evidence of insurance, affidavits, filings, or reports, or fail to
5 maintain the records, or fail to pay the taxes and fees, required under AS 21.35
6 [AS 21.34].

7 * **Sec. 10.** AS 21.36.235(c) is amended to read:

8 (c) This section does not apply to workers' compensation insurance, surplus
9 lines insurance, or surplus wet marine and transportation insurance under
10 AS 21.35.

11 * **Sec. 11.** AS 21.36.240 is amended by adding a new subsection to read:

12 (b) This section does not apply to surplus lines insurance or surplus wet
13 marine and transportation insurance under AS 21.35.

14 * **Sec. 12.** AS 21.36.370 is amended to read:

15 Sec. 21.36.370. EXCEPTION FOR COLLECTION OF CERTAIN CHARGES.
16 For the purpose of AS 21.36.360, the charging and collection by surplus line brokers
17 licensed under AS 21.27 of the amount of applicable state and federal taxes and filing
18 fees under AS 21.35 [AS 21.34] is not considered a premium or charge for insurance.

19 * **Sec. 13.** AS 21.39.040(i) is amended to read:

20 (i) An insurer may use a rate less than that provided by a filing otherwise
21 applicable on a specific risk the insurance for which would otherwise be exported
22 under AS 21.35 [AS 21.34]. Within 30 days of this action the insurer shall file a
23 report detailing the information required by the director on a form prescribed by the
24 director.

25 * **Sec. 14.** AS 21.76.070 is amended to read:

26 Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may
27 authorize the board of directors to purchase excess or catastrophic insurance on behalf
28 of the joint insurance arrangement. The cost of the insurance shall be apportioned in
29 the manner specified in the joint insurance agreement. The board may purchase
30 insurance under this section only from an insurer authorized to do business in the state,
31 except that an arrangement formed by municipalities or school districts may purchase

1 insurance under this section from a risk-sharing pool established by a national
2 association of similar entities if the risk-sharing pool meets the qualifications for an
3 unauthorized insurer under AS 21.35.170 [AS 21.34.040(b) AND (d) AND 21.34.220]
4 and has capital and policyholders surplus in an amount at least as great as would be
5 required if the association were a domestic multiple line insurer. An arrangement may
6 purchase insurance under this section for property and liability risks from unauthorized
7 insurers allowed for use by licensed Alaska surplus lines brokers.

8 * **Sec. 15.** AS 21.84.590(8) is amended to read:

9 (8) AS 21.35 [AS 21.33];

10 * **Sec. 16.** AS 21.90.900(19) is amended to read:

11 (19) "independently procured insurance" means insurance procured
12 directly from a nonadmitted insurer directly by an insured, but does not include
13 insurance lawfully procured through a surplus lines broker under AS 21.35 [AS 21.34];

14 * **Sec. 17.** AS 21.90.900(36) is amended to read:

15 (36) "surplus lines broker" means a person licensed under AS 21.27 to
16 place insurance in this state or relative to a subject resident, located, or to be
17 performed in this state with eligible surplus lines insurers under AS 21.35 [AS 21.34];

18 * **Sec. 18.** AS 21.90.900(37) is amended to read:

19 (37) "surplus lines insurance" means any insurance in this state or
20 relative to a subject resident, located, or to be performed in this state that is permitted
21 under AS 21.35.140 - 21.35.290 [AS 21.34] to be placed through a surplus lines broker
22 licensed under AS 21.27 with nonadmitted insurers eligible to accept insurance other
23 than reinsurance, wet marine and transportation insurance, insurance independently
24 procured, life insurance, and an annuity contract;

25 * **Sec. 19.** AS 21.33 and AS 21.34 are repealed.

26 * **Sec. 20.** Notwithstanding AS 21.35.180(a)(5), enacted in sec. 8 of this Act, an alien
27 insurer meeting the requirements to do a surplus lines business in this state on July 1, 1996,
28 shall, subject to a minimum of \$2,500,000 maintained in the United States, maintain a trust
29 fund as follows:

30 (1) as of January 1, 1997, a trust fund not less than 10 percent of its gross
31 United States surplus lines liabilities, not less than 50 percent of this amount maintained in

1 the United States, subject, at the discretion of the director, to a cap of \$20,000,000;

2 (2) as of January 1, 1998, a trust fund not less than 20 percent of its gross
3 United States surplus lines liabilities, not less than 50 percent of this amount maintained in
4 the United States, subject, at the discretion of the director, to a cap of \$40,000,000;

5 (3) as of January 1, 1999, a trust fund not less than 30 percent of its gross
6 United States surplus lines liabilities, not less than 50 percent of this amount maintained in
7 the United States, subject, at the discretion of the director, to a cap of \$60,000,000;

8 (4) as of January 1, 2000, a trust fund not less than 40 percent of its gross
9 United States surplus lines liabilities, not less than 50 percent of this amount maintained in
10 the United States, subject, at the discretion of the director, to a cap of \$80,000,000;

11 (5) as of January 1, 2001, a trust fund not less than 50 percent of its gross
12 United States surplus lines liabilities, not less than 50 percent of this amount maintained in
13 the United States, subject, at the discretion of the director, to a cap of \$100,000,000.

14 * **Sec. 21.** Notwithstanding AS 21.35.340(a)(5), enacted in sec. 8 of this Act, an insurer
15 meeting the requirements to do a surplus wet marine and transportation business in this state
16 on July 1, 1996, shall, subject to a minimum of \$2,500,000 maintained in the United States,
17 maintain a trust fund as follows:

18 (1) as of January 1, 1997, a trust fund not less than 10 percent of its gross
19 surplus wet marine and transportation liabilities in this state, not less than 50 percent of this
20 amount maintained in this state;

21 (2) as of January 1, 1998, a trust fund not less than 20 percent of its gross
22 surplus wet marine and transportation liabilities in this state, not less than 50 percent of this
23 amount maintained in this state;

24 (3) as of January 1, 1999, a trust fund not less than 30 percent of its gross
25 surplus wet marine and transportation liabilities in this state, not less than 50 percent of this
26 amount maintained in this state;

27 (4) as of January 1, 2000, a trust fund not less than 40 percent of its gross
28 surplus wet marine and transportation liabilities in this state, not less than 50 percent of this
29 amount maintained in this state;

30 (5) as of January 1, 2001, a trust fund not less than 50 percent of its gross
31 surplus wet marine and transportation liabilities in this state, not less than 50 percent of this

1 amount maintained in this state.

2 * **Sec. 22.** APPLICABILITY. This Act applies to a policy of insurance entered into or
3 renewed on or after the effective date of this Act.

4 * **Sec. 23.** This Act takes effect July 1, 1996.