

HOUSE BILL NO. 249

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTIETH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE KOTT

Introduced: 4/14/97

Referred: Labor and Commerce

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 requirement.** A
6 certificate of authority is not required of an insurer, not otherwise authorized in this
7 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 only
12 subjects of insurance not resident, located, or expressly to be performed in the state
13 at time of issuance, and which coverage was lawfully solicited, written, and delivered
14 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 21.35.240(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 other
4 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 21.35.260
17 [AS 21.34.180];

18 (11) evidence of insurance issued in compliance with AS 21.35.300
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 assuming
 30 insurance in this state, or relative to property, risks, or exposures located or to be
 31 performed in this state, is subject to this chapter.

1 **Sec. 21.35.030. Placement of insurance.** (a) A nonadmitted insurer may not
2 transact insurance unless authorized by a license issued under this title or exempted
3 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 21.35.610. 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 surplus lines
 3 insurance under AS 21.35.200 - 21.35.350, or surplus wet marine and transportation
 4 insurance under AS 21.35.400 - 21.35.520; in this paragraph, "material compliance"
 5 means compliance with AS 21.35.170 and 21.35.180 if the person is a surplus lines
 6 broker transacting surplus lines insurance, and compliance with AS 21.35.320 and
 7 21.35.330 if the person is an insurance producer or surplus lines broker transacting
 8 surplus wet marine and transportation insurance;

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

11 (3) insurance offered by a nonprofit educational insurer to a nonprofit
 12 educational institution and employees of the institution if the prior written approval of
 13 the director is obtained and no other insurance is offered;

14 (4) reinsurance if the assuming insurer

15 (A) is authorized by its domiciliary jurisdiction to do insurance
 16 or reinsurance business and is authorized to write the type of reinsurance in its
 17 domiciliary jurisdiction; and

18 (B) satisfies all legal requirements for the reinsurance in the
 19 state of domicile of the ceding insurer;

20 (5) insurance on the property and operation of railroads or aircraft
 21 engaged in interstate or foreign commerce;

22 (6) ocean marine insurance; or

23 (7) a person acting in material compliance with the insurance laws of
 24 this state in regard to transactions subsequent to issuance of a policy not covering
 25 properties, risks, or exposures located or to be performed in this state at the time of
 26 issuance, and lawfully solicited, written, or delivered outside this state.

27 **Sec. 21.35.040. Nonadmitted insurance premium tax.** (a) Except as to
 28 premiums on lawfully procured surplus lines insurance exported under AS 21.35.200 -
 29 21.35.350, surplus wet marine and transportation insurance exported under
 30 AS 21.35.400 - 21.35.520, and premiums on independently procured insurance on
 31 which a tax has been paid under this section, every nonadmitted insurer shall pay to

1 the director on or before March 1 following the calendar year in which the insurance
 2 was procured, continued, or renewed a premium receipts tax of three percent of gross
 3 premiums charged for the insurance on subjects resident, located, or to be performed
 4 in this state. The insurance on subjects resident, located, or to be performed in this
 5 state procured through negotiations or an application, in whole or in part occurring or
 6 made in or from inside or outside of this state, or for which premiums in whole or in
 7 part are remitted directly or indirectly from inside or outside of this state, shall be
 8 considered to be insurance procured, continued, or renewed in this state. The tax is
 9 in lieu of all taxes and fire department dues. On default of a nonadmitted insurer in
 10 the payment of the tax, the insured shall pay the tax within 30 days of written notice
 11 from the director of the default by the nonadmitted insurer. If the tax prescribed by
 12 this section is not paid by the nonadmitted insurer within the time stated or by the
 13 insured within the time stated after the director provides notice of default, the tax may
 14 be increased by

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

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

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

21 (b) In determining the amount of premiums taxable in this state, all premiums
 22 written, procured, or received in this state shall be considered written on property or
 23 a subject located or resident in this state, except premiums that are properly allocated
 24 or apportioned and reported as taxable premiums of another state. In determining the
 25 amount of gross premiums taxable in this state covering a subject resident, located, or
 26 to be performed both inside and outside the state, the tax due shall be computed on
 27 that portion of the policy premium that is attributable to the subject resident, located,
 28 or to be performed in this state and that relates to the type of insurance being placed
 29 as determined by reference to the allocation schedule set out in AS 21.35.260(f).

30 (c) A person licensed under AS 21.27 who maintains a fiduciary account under
 31 AS 21.27.360 or a deposit or surety bond under AS 21.27.365 may collect and transmit

1 to the director on behalf of the nonadmitted insurer or the insured the premium receipts
2 tax due and owing under this section.

3 (d) This section does not apply to insurance of risks of the state, a political
4 subdivision of the state, a nonprofit educational insurer insuring only nonprofit
5 educational institutions and their employees as permitted under AS 21.35.030(g),
6 railroads or aircraft regularly engaged in interstate or foreign commerce, life insurance,
7 health insurance, or annuity contracts.

8 **Sec. 21.35.050. Premium tax on independently procured insurance.** (a)
9 Except for lawfully procured surplus lines insurance exported under AS 21.35.200 -
10 21.35.350 or surplus wet marine and transportation insurance exported under
11 AS 21.35.400 - 21.35.520, an insured in this state who procures, causes to be procured,
12 continues, or renews insurance with a nonadmitted insurer, or an insured or self-
13 insured who procures or continues excess loss, catastrophe, or other insurance, on
14 properties, risks, or exposures located or to be performed in whole or in part in this
15 state shall, within 30 days after the date the insurance was procured, continued, or
16 renewed, file a written report with the director in a form prescribed by the director.
17 The report must show the name and address of the insured, name and address of the
18 insurer, the subject of the insurance, a general description of the coverage, the amount
19 of premium currently charged, and additional information required by the director.

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

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

30 (d) There is levied upon the obligation or right represented by the premium
31 charged for the insurance a premium receipts tax of three percent of gross premiums

1 charged for the insurance. The tax is in lieu of all taxes and fire department dues.
2 The insured shall, on or before March 1 following the calendar year in which the
3 insurance was procured, continued, or renewed, pay the amount of the tax to the
4 director. In event of cancellation and rewriting of the insurance contract, the additional
5 premium for premium receipts tax purposes is the premium in excess of the unearned
6 premium of the cancelled insurance contract. If the tax prescribed by this section is
7 not paid within the time stated, the tax may be increased by

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

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

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

14 (e) In determining the amount of premiums taxable in this state, all premiums
15 written, procured, or received in this state shall be considered written on property or
16 a subject located or resident in this state, except premiums that are properly allocated
17 or apportioned and reported as taxable premiums of another state. In determining the
18 amount of gross premiums taxable in this state, the tax due shall be computed on that
19 portion of the policy premium that is attributable to a subject resident, located, or to
20 be performed in this state and that relates to the type of insurance being placed as
21 determined by reference to the allocation schedule set out in AS 21.35.260(f).

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

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

30 **Sec. 21.35.060. Investigation and disclosure of insurance contracts; penalty.**

31 (a) When the director has reason to believe that insurance has been procured by or for

1 a person in this state with a nonadmitted insurer, the director may in writing order the
 2 person to produce for examination all insurance contracts and other documents
 3 evidencing the insurance and to disclose to the director the amount of insurance, name
 4 and address of each insurer, gross amount of premium paid or to be paid, the name
 5 and address of the person assisting or aiding in the solicitation, negotiation, or
 6 procurement of the insurance, and other information required by the director.

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

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

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

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

1 considered service upon the principal.

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

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

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

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

1 **Sec. 21.35.080. Appointment of attorney; service of process on lieutenant**
2 **governor.** (a) The transaction of insurance by an unauthorized person or nonadmitted
3 insurer constitutes an irrevocable appointment of the lieutenant governor to be the
4 lawful attorney of that person or insurer and is binding on the person or insurer; the
5 executor, administrator, or personal representative of the person or insurer; or the
6 successor in interest if the person or insurer is a corporation. The lieutenant governor
7 may be served all legal process in any action or proceeding in any court by the
8 director or by the state and may be served any notice, order, pleading, or process in
9 a proceeding before the director that arises out of the transaction of insurance in this
10 state or relative to a subject resident, located, or to be performed in this state by that
11 person or insurer. The transaction of insurance by an unauthorized person or
12 nonadmitted insurer is acceptance by that person or insurer that legal process in the
13 court action, suit, or proceeding and any notice, order, pleading, or process served in
14 an administrative proceeding before the director has the same legal force and validity
15 as personal service of process in this state upon the person or insurer, or upon the
16 executor, administrator, or personal representative of that person or insurer.

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

24 (c) The lieutenant governor shall immediately mail one copy of the process to
25 the defendant at the last known principal place of business of the defendant and shall
26 keep a record of all process served, including the day and hour of service. The service
27 is sufficient, provided notice of the service and a copy of the court process or the
28 notice, order, pleading, or process in the administrative proceeding are sent within 10
29 days after service by registered mail by the plaintiff or the attorney of the plaintiff in
30 the court proceeding or by the director in the administrative proceeding to the
31 defendant in the court proceeding or by whom the notice, order, pleading, or process

1 in the administrative proceeding is addressed or directed at the last known principal
 2 place of business of the defendant. The defendant's receipt, or receipt issued by the
 3 post office with which the letter is registered, showing the name of the sender of the
 4 letter and the name and address of the person or insurer to whom the letter is
 5 addressed, and the affidavit of the plaintiff or the attorney of the plaintiff in a court
 6 proceeding or of the director in an administrative proceeding, showing compliance
 7 must be filed with the clerk of the court in which the action, suit, or proceeding is
 8 pending, or with the director in administrative proceedings, on or before the date the
 9 defendant in the court or administrative proceedings is required to appear or respond,
 10 or within additional time that the court or director may allow.

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

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

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

21 **Sec. 21.35.090. Validity of noncomplying policy provisions.** (a)
 22 Notwithstanding conditions or stipulations in the policy or contract, a nonadmitted
 23 insurer may be sued upon any cause of action arising in this state or relative to
 24 property, risks, or exposures located or to be performed in this state under any
 25 insurance contract made by the nonadmitted insurer.

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

31 (c) A policy or contract issued or delivered by a nonadmitted insurer or

1 otherwise valid that contains a condition or provision not in compliance with the
 2 requirements of this chapter is not rendered invalid by the noncompliance, but shall
 3 be construed and applied in the manner that the conditions and provisions would have
 4 been applied had the policy or contract been in full compliance with this chapter.

5 **Sec. 21.35.100. Defendant's duties and rights.** (a) Before an unauthorized
 6 person or nonadmitted insurer files a pleading in court or a notice, order, pleading, or
 7 process in an administrative proceeding before the director, the person or insurer shall
 8 either

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

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

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

1 a defense in the court action or administrative proceeding.

2 (c) Nothing in (a) of this section may be construed to prevent an unauthorized
3 person or nonadmitted insurer from filing a motion to quash a writ or to set aside
4 service made as provided in AS 21.35.070 or 21.35.080 on the ground that the
5 unauthorized person or insurer has not transacted insurance in this state or relative to
6 a subject resident, located, or to be performed in this state or that the person on whom
7 service was made under AS 21.35.070(d) was not transacting insurance in this state,
8 or relative to a subject resident, located, or to be performed in this state.

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

19 **Sec. 21.35.120. Enforcement.** (a) The director may proceed in the
20 appropriate court to enforce an order or decision made by the director.

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

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

1 (d) Promptly upon the filing of a foreign decree and the affidavit required
2 under (c) of this section, the clerk shall mail notice of the filing of the foreign decree
3 to the defendant and to the director and shall make a note of the mailing in the docket.
4 In addition, the plaintiff may mail a notice of the filing of the foreign decree to the
5 defendant and to the director of this state and may file proof of mailing with the clerk.
6 Lack of mailing notice of filing by the clerk does not affect the enforcement
7 proceedings if proof of mailing by the plaintiff has been filed with the court.

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

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

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

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

23 **Sec. 21.35.130. Actions by nonadmitted insurers.** A nonadmitted insurer
24 may not commence or maintain an action, including arbitration or any other dispute
25 resolution mechanism, in this state to enforce any right arising out of an insurance
26 transaction, except with respect to

- 27 (1) claims under policies lawfully written in this state;
28 (2) liquidation of assets and liabilities of the insurer, other than
29 collection of new premiums, resulting from its former authorized operations in this
30 state;
31 (3) transactions subsequent to issuance of a policy not covering

1 domestic risks at the time of issuance, and lawfully procured under the laws of the
2 jurisdiction where the transaction took place;

3 (4) surplus lines insurance exported under AS 21.35.200 - 21.35.350
4 or surplus wet marine and transportation insurance exported under AS 21.35.400 -
5 21.35.520;

6 (5) reinsurance placed by reinsurance intermediaries under the authority
7 of AS 21.27 by reinsurance intermediaries or placed as authorized by other provisions
8 of this title;

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

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

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

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

20 **Article 2. Surplus Lines Insurance.**

21 **Sec. 21.35.200. Placement of surplus lines insurance.** (a) Except as
22 provided in (b) of this section, insurance other than reinsurance, wet marine and
23 transportation insurance, insurance independently procured, life insurance, health
24 insurance, and annuity contracts may be procured from nonadmitted insurers through
25 a surplus lines broker licensed under AS 21.27 if

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

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

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

31 (4) the producing broker has conducted and documented a diligent

1 search among insurers who are admitted to transact business in this state and are
 2 actually writing the particular kind or class of insurance required by the client in this
 3 state;

4 (5) the director authorizes an exception to (3) of this subsection by
 5 regulation or by written authorization for an individual placement upon written request
 6 by the broker; and

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

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

12 **Sec. 21.35.210. Subscription policies or joint underwriting in combination**
 13 **with admitted insurers.** Subscription policies or joint underwriting of insurance other
 14 than reinsurance, wet marine and transportation insurance, insurance independently
 15 procured, life insurance, health insurance, and annuity contracts by a combination of
 16 authorized insurers and nonadmitted insurers is a surplus lines insurance placement in
 17 its entirety, is subject to this chapter, is not subject to AS 21.39 or AS 21.42.120 -
 18 21.42.130, and losses or claims are not covered by AS 21.80 (Alaska Insurance
 19 Guaranty Association Act).

20 **Sec. 21.35.220. Workers' compensation insurance.** (a) Workers'
 21 compensation insurance may be placed in and written by a nonadmitted insurer if

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

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

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

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

30 (c) Insurance placed with or written by a nonadmitted insurer and the activities
 31 of the surplus lines broker relating to that transaction are subject to the applicable

1 provisions of this title.

2 (d) The minimum capital and surplus required of a nonadmitted insurer who
3 places or writes workers' compensation insurance is two times that required under
4 AS 21.35.240(a)(1).

5 **Sec. 21.35.230. Restrictions on surplus lines brokers.** A surplus lines broker
6 may not place coverage with a nonadmitted insurer, unless the surplus lines broker is
7 licensed under AS 21.27 and, at the time of placement, the surplus lines broker has
8 determined that the nonadmitted insurer

9 (1) has established satisfactory evidence of good repute and financial
10 integrity;

11 (2) has provided to the director a copy of its current annual statement
12 certified by the insurer and an actuarial opinion as to the adequacy of, and
13 methodology used to determine, the insurer's loss reserves; the statement shall be
14 provided at the same time it is provided to the regulatory authority of the insurer's
15 domicile, but in no event more than eight months after the close of the period reported
16 on, and shall be certified as a true and correct copy by an accounting or auditing firm
17 licensed in the jurisdiction of the insurer's domicile and certified by a senior officer
18 of the nonadmitted insurer as a true and correct copy of the statement filed with the
19 regulatory authority in the domicile of the nonadmitted insurer; in the case of an
20 insurance exchange qualifying under AS 21.35.240(a)(2), the statement may be an
21 aggregate combined statement of all underwriting syndicates operating during the
22 period reported; and

23 (3) qualifies under AS 21.35.240(a).

24 **Sec. 21.35.240. Surplus lines insurer capital and surplus requirements.** (a)
25 A nonadmitted insurer may be eligible to provide surplus lines coverage in this state
26 if it qualifies under one of the following:

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

31 (2) an individual syndicate of an insurance exchange created by the

1 laws of a state other than this state may qualify under this subsection if

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

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

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

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

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

24 (3) in the case of a Lloyd's plan or other similar group of insurers that
25 consists of unincorporated individual insurers or a combination of both unincorporated
26 and incorporated insurers

27 (A) the sponsoring syndicate maintains a trust fund consisting
28 of a trustee account representing at least 100 percent of the sponsoring
29 syndicate's gross liabilities attributable to surplus lines business written in the
30 United States; compliance with this subparagraph must be determined annually
31 on the basis of accounting practices and procedures substantially equivalent to

1 those enacted by this state, as of December 31 next preceding the date of
2 determination;

3 (B) the group of insurers maintains in trust a surplus in the
4 amount of at least \$100,000,000 that must be available for the benefit of United
5 States surplus lines policyholders of any member of the group;

6 (C) the incorporated members of the group are not engaged in
7 a business other than underwriting as a member of the group and are subject
8 to the same level of solvency regulation and control by the group's domiciliary
9 regulator as are the unincorporated members; and

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

19 (4) in the case of a group of incorporated insurers under common
20 administration that has continuously transacted an insurance business outside the
21 United States for at least three years immediately before January 1, 1997, and that
22 submits to this state's authority to examine its books and records and bears the expense
23 of the examination,

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

26 (B) the group must maintain in trust a surplus in the amount of
27 \$100,000,000; the surplus shall be available for the benefit of United States
28 surplus lines policyholders of any member of the group;

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

31 (D) the trust funds required by this paragraph shall be

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

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

12 (5) except for an exchange or plan complying with (3) or (4) of this
 13 subsection, an alien insurer

14 (A) must satisfy the capital and surplus requirements of (2) of
 15 this subsection;

16 (B) must have in force a trust fund of not less than the greater
 17 of \$5,400,000 or 30 percent of its United States surplus lines gross liabilities,
 18 subject, at the discretion of the director, to a cap of \$60,000,000; in order to
 19 comply with this subparagraph, the insurer

20 (i) shall determine its United States surplus lines gross
 21 liabilities annually on the basis of accounting practices and procedures
 22 substantially equivalent to those enacted by this state, as of
 23 December 31 next preceding the date of determination;

24 (ii) shall maintain surplus lines gross liabilities in an
 25 irrevocable trust account in the United States and in a qualified
 26 financial institution, on behalf of United States policyholders consisting
 27 of cash, securities, letters of credit, or investments of substantially the
 28 same character and quality as those that are eligible investments under
 29 AS 21.21 for the capital and statutory reserves of admitted insurers to
 30 write like kinds of insurance in this state; the trust account, which shall
 31 be included in any calculation of capital and surplus or its equivalent,

1 shall satisfy the requirements of the standard trust agreement required
 2 for listing with the National Association of Insurance Commissioners
 3 International Insurers Department;

4 (iii) shall be given credit in the calculation of the trust
 5 fund amount required by this paragraph for trust fund amounts in excess
 6 of \$5,400,000 for surplus lines deposits separately required and
 7 maintained for a particular state or United States territory, not to exceed
 8 the amount of the insurer's loss and loss adjustment reserves in the
 9 particular state or territory;

10 (iv) may request approval from the director to use the
 11 trust fund to pay valid surplus lines claims, provided that the balance
 12 of the trust fund is never less than \$5,400,000 or 30 percent of the
 13 insurer's current gross United States surplus lines liabilities, whichever
 14 is greater.

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

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

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

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

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

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

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

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

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

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

27 (f) If, after a review of a nonadmitted insurer and consideration of factors
28 including quality of management, capital and surplus of a parent company,
29 underwriting profit, investment income trends, trade practices, reserving practices,
30 company record, and reputation within the industry, the director finds the insurer to
31 be unacceptable, the director may declare the nonadmitted insurer to be ineligible. The

1 director may issue an order declaring a nonadmitted insurer ineligible and shall
 2 promptly mail notice of a declaration to each surplus lines broker licensed under
 3 AS 21.27 if at any time the director has reason to believe that the nonadmitted insurer

4 (1) is in unsound financial condition;

5 (2) has acted in an untrustworthy manner;

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

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

8 or

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

11 (g) In this section, "gross direct liabilities" does not include the property and
 12 operation of a railroad or aircraft engaged in interstate or foreign commerce, or wet
 13 marine and transportation insurance, except for that portion of the property or
 14 operation of the railroad or aircraft, or wet marine and transportation insurance defined
 15 as surplus lines liabilities by a particular state.

16 **Sec. 21.35.250. Validity of surplus lines contracts.** Insurance procured under
 17 AS 21.35.200 - 21.35.350 shall be valid and enforceable as to all parties.

18 **Sec. 21.35.260. Surplus lines tax.** (a) Gross premiums charged, less any
 19 return premium, for surplus lines insurance are subject to a premium receipts tax of
 20 2.7 percent that shall be collected by the surplus lines broker in addition to the full
 21 amount of the gross premium charged by the insurer for the insurance. The tax on any
 22 portion of the premium unearned at termination of the insurance that is credited by the
 23 state to the surplus lines broker shall be returned to the policyholder directly by the
 24 surplus broker or through the producing broker, if any. If a surplus lines policy
 25 procured through a surplus lines broker covers property or a subject resident, located,
 26 or to be performed both inside and outside of this state, the tax payable shall be
 27 computed on that portion of the gross premiums properly allocated to this state. The
 28 surplus lines broker may not absorb the tax or a part of the tax and may not rebate the
 29 tax or a part of the tax.

30 (b) The surplus lines tax is due and shall be paid to the director on or before
 31 March 1 following the calendar year in which the premium is written. The tax shall

1 be reported on forms prescribed by the director or, upon the director's order, paid to
2 and reported on forms prescribed by the surplus lines association.

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

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

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

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

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

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

28 (B) for any portion of the coverage not identified by a
29 classification on the allocation schedule, the tax shall be computed by using an
30 alternative equitable method of allocation for the property or subject;

31 (C) for any portion of the coverage where the premium is

1 indivisible, the tax shall be computed by using the method of allocation that
 2 pertains to the classification describing the predominant coverage;

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

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

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

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

22 **Sec. 21.35.270. Surplus lines filing fee.** (a) The fee for filing the forms
 23 under AS 21.35.260(b) is an amount equal to one percent on gross premiums charged
 24 less any return premiums during the preceding calendar year whether the premiums are
 25 subject to tax or exempt. The surplus lines broker shall pay the fee at the time of
 26 filing of the statement.

27 (b) If the filing fee is not paid when due, an additional late payment fee of
 28 \$250 plus two percent of the fee due per month, or part of a month, shall become due
 29 and payable by the surplus lines broker.

30 **Sec. 21.35.280. Collection of surplus lines taxes and fees.** (a) If the tax
 31 collectible under AS 21.35.260 or the fee collectible under AS 21.35.270 by a surplus

1 lines broker is not paid within the time prescribed, the tax, fee, or both, and late
 2 payment fees, along with appropriate penalties, may be collected by an action in court
 3 against the surplus lines licensee and the surety on the bond filed under AS 21.27.790.

4 (b) In addition to penalties provided in this chapter, failure to pay tax within
 5 the time prescribed is subject to penalties provided in AS 21.35.610.

6 **Sec. 21.35.290. Civil actions against surplus lines insurers.** (a) A person
 7 may bring a civil action in this state upon a cause of action arising in this state against
 8 a surplus lines insurer under a surplus lines insurance contract made by it or under
 9 other evidence of insurance issued or delivered by the surplus lines licensee. A policy
 10 issued by a surplus lines insurer shall contain a provision stating the substance of this
 11 section and designating the person to whom the director shall mail service of process.

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

14 **Sec. 21.35.300. Duty to file surplus lines evidence of insurance transactions**
 15 **and affidavits.** (a) A surplus lines broker shall execute and file with the monthly
 16 report required by AS 21.35.310 a written report, that shall be kept confidential,
 17 regarding each surplus lines insurance transaction occurring in the preceding calendar
 18 month. The 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;

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

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

25 (5) other information required by the director.

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

30 (c) A producing broker shall execute and deliver to the surplus lines broker not
 31 later than the end of each month on a form prescribed by the director, and a surplus

1 lines broker shall file with the director with the report required by (a) of this section
 2 or with the surplus lines association with the evidence of insurance required by (b) of
 3 this section, for surplus lines 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 broker that the insured was expressly
 7 informed in writing before placement of the surplus lines insurance that the surplus
 8 lines insurer with whom the insurance was to be placed is not licensed in this state,
 9 is not subject to this state's supervision, and, in the event of the insolvency of the
 10 surplus lines insurer, losses will not be covered under AS 21.80 (Alaska Insurance
 11 Guaranty Association Act).

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

14 **Sec. 21.35.310. Monthly reports; summary of exported surplus lines**
 15 **business.** (a) A surplus lines broker shall file with the director on or before the end
 16 of each month, on forms prescribed by the director, a verified report in duplicate of
 17 all surplus lines insurance by type of insurance as required to be reported in the annual
 18 statement that must be filed with the director by admitted insurers. The report must
 19 include all surplus lines insurance transactions during the preceding calendar month,
 20 whether taxable or tax exempt, showing the

21 (1) aggregate gross premiums written;

22 (2) aggregate return premiums;

23 (3) amount of aggregate tax remitted to this state; and

24 (4) amount of aggregate tax remitted to each other state for which an
 25 allocation is made under AS 21.35.260(f).

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

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

31 **Sec. 21.35.320. Duty to deliver evidence of surplus lines insurance and**

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

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

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

27 (d) The surplus lines broker shall deliver a copy of the policy or cover note
28 issued by the insurer as soon as reasonably possible after placement of the insurance
29 coverage. A certificate or policy of insurance shall contain or have attached a
30 complete record of all policy insuring agreements, conditions, exclusions, clauses,
31 endorsements, or other material facts that would regularly be included in the policy.

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

9 **Sec. 21.35.330. Effect of payment to surplus lines broker.** A payment of
 10 premium to a surplus lines broker acting for a person other than itself in negotiating,
 11 continuing, or reviewing a policy of insurance under this chapter is considered to be
 12 payment to the insurer, notwithstanding conditions or stipulations in the policy or
 13 contract to the contrary.

14 **Sec. 21.35.340. Surplus lines brokers may accept business from other**
 15 **brokers.** A surplus lines broker licensed by this state may originate surplus lines
 16 insurance or accept surplus lines insurance from another surplus lines broker licensed
 17 by this state or a producing broker licensed by this state as to the kind and class of
 18 insurance involved. The surplus lines broker may compensate the producing broker
 19 or surplus lines broker for the insurance.

20 **Sec. 21.35.350. Surplus lines advisory organizations.** (a) A nonprofit
 21 association of surplus lines brokers may be created and known as the Alaska Surplus
 22 Lines Association. The director may, by order, require that all surplus lines brokers,
 23 as a condition of continued licensure under this title, join the association. The
 24 association shall perform its functions under the plan or operation established under
 25 (c) of this section and exercise its powers through a board of directors established
 26 under (b) of this section. The association shall be supervised by the director and shall

27 (1) receive, record, and, subject to (2) of this subsection, stamp all
 28 surplus lines insurance documents that surplus lines brokers are required to file with
 29 the association under the plan of operation;

30 (2) refuse to stamp submitted insurance documents, if the association
 31 determines that a nonadmitted insurer does not meet minimum state financial standards

1 of eligibility, the producing broker or surplus lines broker is not licensed by this state,
2 or the director orders the association not to stamp insurance documents under (j) of
3 this section; the association shall notify the director and provide an explanation for a
4 refusal to stamp submitted insurance documents other than a refusal based upon the
5 order of the director;

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

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

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

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

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

20 (8) borrow money as necessary to carry out the purposes of the
21 association;

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

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

26 (b) The association shall function through a board of directors consisting of
27 seven members appointed by the director. A member of the board serves at the
28 pleasure of the director for a term of three years and may be reappointed to an
29 unlimited number of terms. In appointing directors to the board, the director shall
30 consider, among other things, whether members of the association are fairly
31 represented. No more than one board member may be from the same firm licensee or

1 other entity. Membership of the board shall include

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

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

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

14 (d) The association shall file with the director

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

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

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

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

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

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

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

26 (f) The association, its directors, officers, agents, or employees are not civilly
27 liable for any action taken or omitted by them in the performance of their powers and
28 duties under this section, except for a civil action based on gross negligence or wilful
29 misconduct.

30 (g) Within 30 days after a surplus lines coverage is procured, a licensee shall
31 submit to the association for recording and stamping all documents that surplus lines

1 brokers are required to file with the association. Each insurance document submitted
2 to the association under this subsection shall include the

- 3 (1) name and address of the insured;
- 4 (2) gross premium charged;
- 5 (3) name and address of the nonadmitted insurer;
- 6 (4) class of insurance procured; and
- 7 (5) name, address, phone number, and Alaska surplus lines license
8 number of the surplus lines broker.

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

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

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

19 **Article 3. Surplus Wet Marine and Transportation Insurance.**

20 **Sec. 21.35.400. Placement of surplus wet marine and transportation**
21 **insurance.** (a) Wet marine and transportation insurance, other than ocean marine
22 insurance, may be procured from nonadmitted insurers through an insurance producer
23 or a surplus lines broker that satisfies the requirements of (b) of this section if

- 24 (1) each insurer is an eligible surplus wet marine and transportation
25 insurer;
- 26 (2) each insurer is authorized to write the type of insurance in its
27 domiciliary jurisdiction;
- 28 (3) the full amount or type of insurance cannot be obtained from
29 insurers who are admitted to do business in this state;
- 30 (4) the insurance producer or a surplus lines broker has conducted and
31 documented a diligent search among insurers who are admitted to transact marine

1 business in this state and are actually writing the particular kind or class of insurance
2 required by the client in this state;

3 (5) the director authorizes an exception to (3) of this subsection by
4 regulation or by written authorization for an individual placement upon written request
5 by the insurance producer or a surplus lines broker; and

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

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

9 (1) be licensed under AS 21.27;

10 (2) have and maintain while transacting surplus wet marine and
11 transportation insurance a bond under AS 21.27.190 in the sum of not less than
12 \$100,000 aggregate liability and with the conditions that the insurance producer or
13 surplus lines broker conduct business under the provisions of this title, promptly remit
14 the taxes and fees provided by law, return premiums promptly when due, and pay
15 proper losses promptly; a surplus lines broker may satisfy this requirement if its bond
16 under AS 21.27.790(2) also covers surplus wet marine and transportation insurance;
17 and

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

20 **Sec. 21.35.410. Subscription policies or joint underwriting in combination**
21 **with admitted insurers.** Subscription policies or joint underwriting of insurance other
22 than reinsurance, ocean marine insurance, surplus lines insurance, insurance
23 independently procured, life insurance, health insurance, and annuity contracts by a
24 combination of authorized insurers and nonadmitted insurers is a surplus wet marine
25 and transportation insurance placement in its entirety, is subject to this chapter, is not
26 subject to AS 21.39 or AS 21.42.120 - 21.42.130, and losses or claims are not covered
27 by AS 21.80 (Alaska Insurance Guaranty Association Act).

28 **Sec. 21.35.420. Restrictions on surplus wet marine and transportation**
29 **brokers.** An insurance producer or a surplus lines broker may not place surplus wet
30 marine and transportation coverage with a nonadmitted insurer, unless the insurance
31 producer or surplus lines broker is licensed under AS 21.27 and, at the time of

1 placement, the insurance producer or surplus lines broker has determined that the
2 nonadmitted insurer

3 (1) is qualified to provide coverage under AS 21.35.240; and, if an
4 alien insurer subject to AS 21.35.240, includes surplus wet marine and transportation
5 gross liabilities in this state in its United States gross direct liabilities; or

6 (2) has

7 (A) established satisfactory evidence of good repute and
8 financial integrity;

9 (B) provided to the director a copy of its current annual
10 statement certified by the insurer and an actuarial opinion as to the adequacy
11 of, and methodology used to determine, the insurer's loss reserves; the
12 statement shall be provided at the same time it is provided to the regulatory
13 authority of the insurer's domicile, but in no event more than eight months
14 after the close of the period reported on, and shall be certified as a true and
15 correct copy by an accounting or auditing firm licensed in the jurisdiction of
16 the insurer's domicile and certified by a senior officer of the nonadmitted
17 insurer as a true and correct copy of the statement filed with the regulatory
18 authority in the domicile of the nonadmitted insurer; in the case of an insurance
19 exchange qualifying under AS 21.35.430(a)(2), the statement may be an
20 aggregate combined statement of all underwriting syndicates operating during
21 the period reported; and

22 (3) qualifies under AS 21.35.430(a).

23 **Sec. 21.35.430. Restrictions on surplus wet marine and transportation**
24 **coverage.** (a) A nonadmitted insurer may be eligible to provide surplus wet marine
25 and transportation coverage in this state if it qualifies under one of the following:

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

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

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

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

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

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

16 (ii) for insurance exchanges that do not maintain funds
17 in an amount of at least \$15,000,000 for the protection of all exchange
18 policyholders, the syndicate shall maintain under terms acceptable to the
19 director minimum capital and surplus, or its equivalent under the laws
20 of its domiciliary jurisdiction, of at least the minimum capital and
21 surplus requirements under the laws of its domiciliary jurisdiction or
22 \$15,000,000, whichever is greater;

23 (3) in the case of a Lloyd's plan or other similar group of insurers that
24 consists of unincorporated individual insurers or a combination of both unincorporated
25 and incorporated insurers

26 (A) the sponsoring syndicate maintains a trust fund consisting
27 of a trustee account representing at least 100 percent of the sponsoring
28 syndicate's gross liabilities attributable to the surplus wet marine and
29 transportation business in this state; compliance with this subparagraph must
30 be determined annually on the basis of accounting practices and procedures
31 substantially equivalent to those enacted by this state, as of December 31 next

1 preceding the date of determination;

2 (B) the group of insurers maintains in trust a surplus in the
3 amount of \$100,000,000 that must be available for the benefit of surplus wet
4 marine and transportation policyholders in this state who are policyholders of
5 any member of the group;

6 (C) the incorporated members of the group are not engaged in
7 a business other than underwriting as a member of the group and are subject
8 to the same level of solvency regulation and control by the group's domiciliary
9 regulator as are the unincorporated members; and

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

19 (4) in the case of a group of incorporated insurers under common
20 administration that has continuously transacted an insurance business outside the
21 United States for at least three years immediately before January 1, 1997, and that
22 submits to this state's authority to examine its books and records and bears the expense
23 of the examination,

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

26 (B) the group must maintain in trust a surplus in the amount of
27 \$100,000,000; the surplus shall be available for the benefit of surplus wet
28 marine and transportation policyholders in this state who are policyholders of
29 any member of the group;

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

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

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

13 (5) except for an exchange or plan complying with (3) or (4) of this
 14 subsection, an alien insurer

15 (A) must satisfy the capital and surplus requirements of (2) of
 16 this subsection;

17 (B) must have in force a trust fund of not less than the greater
 18 of \$5,400,000 or 30 percent of its surplus wet marine and transportation gross
 19 liabilities in this state, subject, at the discretion of the director, to a cap of
 20 \$10,000,000; in order to comply with this subparagraph this insurer

21 (i) shall determine surplus wet marine and transportation
 22 gross liabilities in this state annually on the basis of accounting
 23 practices and procedures substantially equivalent to those enacted by
 24 this state, as of December 31 next preceding the date of determination;

25 (ii) shall maintain the wet marine and transportation gross
 26 liabilities in an irrevocable trust account in this state in a qualified
 27 financial institution, on behalf of policyholders in this state consisting
 28 of cash, securities, letters of credit, or other investments of substantially
 29 the same character and quality as those that are eligible investments
 30 under AS 21.21 for the capital and statutory reserves of admitted
 31 insurers to write like kinds of insurance in this state; the trust account

1 shall be included in any calculation of capital and surplus or its
2 equivalent and shall satisfy the requirements of the standard trust
3 agreement required for listing with the National Association of
4 Insurance Commissioners International Insurers Department;

5 (iii) may request approval from the director to use the
6 trust fund to pay valid surplus lines claims, provided, however, that the
7 balance of the trust fund may never be less than \$5,400,000 or 30
8 percent of the insurer's United States gross direct liabilities, whichever
9 is greater.

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

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

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

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

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

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

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

29 (c) If after a review of a nonadmitted insurer providing or attempting to
30 provide wet marine and transportation coverage and consideration of factors including
31 quality of management, capital and surplus of a parent company, underwriting profit,

1 investment income trends, trade practices, reserving practices, company record, and
 2 reputation within the industry, the director finds the insurer to be unacceptable, the
 3 director may declare the nonadmitted insurer to be ineligible. The director may issue
 4 an order declaring a nonadmitted insurer ineligible and shall promptly mail notice of
 5 a declaration to each insurance producer or surplus lines broker licensed under
 6 AS 21.27 if at any time the director has reason to believe that the nonadmitted insurer

7 (1) is in unsound financial condition;

8 (2) has acted in an untrustworthy manner;

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

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

11 or

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

14 **Sec. 21.35.440. Validity of surplus wet marine and transportation**
 15 **contracts.** Insurance procured under AS 21.35.400 - 21.35.520 shall be valid and
 16 enforceable as to all parties.

17 **Sec. 21.35.450. Surplus wet marine and transportation tax.** (a) Gross
 18 premiums charged, less any return premium, for surplus wet marine and transportation
 19 insurance are subject to a premium receipts tax of 2.7 percent that shall be collected
 20 by the insurance producer or surplus lines broker in addition to the full amount of the
 21 gross premium charged by the insurer for the insurance. The tax on any portion of the
 22 premium unearned at termination of the insurance that is credited by the state to the
 23 insurance producer or surplus lines broker shall be returned to the policyholder directly
 24 by the insurance producer or surplus lines broker, if any. If a surplus wet marine and
 25 transportation policy procured through an insurance producer or surplus lines broker
 26 covers property or a subject resident, located, or to be performed both inside and
 27 outside of this state, this tax payable shall be computed on that portion of the gross
 28 premiums properly allocated to this state. The insurance producer or surplus lines
 29 broker may not absorb the tax or any part of it and may not rebate the tax or a part
 30 of the tax.

31 (b) This surplus wet marine and transportation tax is due and shall be paid to

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

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

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

21 (f) In determining the amount of gross premiums taxable in this state for a
 22 placement of surplus wet marine and transportation insurance covering property or a
 23 subject resident, located, or to be performed both inside and outside this state, the tax
 24 due shall be computed on that portion of the policy premium that is attributable to
 25 property or a subject resident, located, or to be performed in this state and that relates
 26 to the type of insurance being placed as determined by reference to an allocation
 27 schedule as set out in AS 21.35.260(f).

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

31 **Sec. 21.35.460. Surplus wet marine and transportation filing fee.** (a) The

1 fee for filing the forms required under AS 21.35.450(b) is an amount equal to one
 2 percent on gross premium charged less any return premiums during the preceding
 3 calendar year, whether the premium is subject to tax or exempt. The insurance
 4 producer or surplus lines broker shall pay the fee at the time of filing of the statement.

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

8 **Sec. 21.35.470. Collection of surplus wet marine and transportation taxes**
 9 **and fees.** (a) If the tax collectible under AS 21.35.450 or the fee collectible under
 10 AS 21.35.460 by an insurance producer or surplus lines broker is not paid within the
 11 time prescribed, the tax, fee, or both, and late payment fees, along with appropriate
 12 penalties may be collected by an action in court, against the insurance producer or
 13 surplus lines broker and the surety on the bond filed under AS 21.35.410(b)(2).

14 (b) In addition to penalties provided in this chapter, failure to pay tax within
 15 the time prescribed is subject to penalties provided in AS 21.35.610.

16 **Sec. 21.35.480. Civil actions against eligible surplus wet marine and**
 17 **transportation insurers.** (a) A person may bring a civil action in this state upon a
 18 cause of action arising in this state against a surplus wet marine and transportation
 19 insurer under any surplus wet marine and transportation insurance contract made by
 20 it or evidence of insurance issued or delivered by an insurance producer or surplus
 21 lines licensee. A policy issued by an eligible surplus wet marine and transportation
 22 insurer shall contain a provision stating the substance of this section and designating
 23 the person to whom the director shall mail service of process.

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

26 **Sec. 21.35.490. Duty to file evidence of insurance transactions and**
 27 **affidavits.** (a) An insurance producer or surplus lines broker shall execute and file
 28 with the monthly report required by AS 21.35.500 a written report that shall be kept
 29 confidential regarding each surplus wet marine and transportation insurance transaction
 30 occurring in the preceding calendar month. The report must include

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

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

4 (3) a complete description of the subject and location of the risk
 5 insured;

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

7 (5) other information required by the director.

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

12 (c) An insurance producer or surplus lines broker shall execute and deliver
 13 with the report required by (a) of this section to the director or with the evidence of
 14 insurance required by (b) of this section to the surplus lines association, for surplus
 15 wet marine and transportation insurance first placed or renewed in the preceding
 16 calendar month, an affidavit that shall be open to public inspection as to the diligent
 17 efforts to place the coverage with admitted insurers and the results of those efforts.
 18 The affidavit must contain a statement by the insurance producer or surplus lines
 19 broker that the insured was expressly informed in writing before placement of the
 20 surplus wet marine and transportation insurance that the surplus wet marine and
 21 transportation insurer with whom the insurance was to be placed is not licensed in this
 22 state and is not subject to this state's supervision, and, in the event of the insolvency
 23 of the surplus wet marine and transportation insurance, losses will not be covered
 24 under AS 21.80 (Alaska Insurance Guaranty Association Act).

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

27 **Sec. 21.35.500. Monthly reports; summary of exported surplus wet marine**
 28 **and transportation business.** (a) An insurance producer or surplus lines broker shall
 29 file with the director on or before the end of each month, on forms prescribed by the
 30 director, a verified report in duplicate of all surplus wet marine and transportation
 31 insurance. The report must include all surplus wet marine and transportation insurance

1 transactions during the preceding calendar month, showing the aggregate gross
 2 premiums written, the aggregate return premiums, the amount of aggregate tax remitted
 3 to this state, and the amount of aggregate tax remitted to each other state for which an
 4 allocation is made under AS 21.35.450(d).

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

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

10 **Sec. 21.35.510. Duty to deliver evidence of surplus wet marine and**
 11 **transportation insurance and subsequent changes to insurance.** (a) When surplus
 12 wet marine and transportation insurance is placed, the insurance producer or surplus
 13 lines broker shall, within 30 days after placing the coverage, deliver to the insured or
 14 the producing broker the policy, or if the policy is not then available, a certificate,
 15 cover note, binder, or other evidence of insurance. The certificate, cover note, binder,
 16 or other evidence of insurance shall be executed by the insurance producer or surplus
 17 lines broker and must contain a complete record of all policy insuring agreements,
 18 conditions, exclusions, clauses, endorsements, other material facts that would regularly
 19 be included in the policy, description, and location of the subject of insurance, a
 20 general description of the coverages of the insurance, the premium and rate charged
 21 and taxes to be collected from the insured, the name and address of the insured, and
 22 the name of each surplus wet marine and transportation insurer and the percentage of
 23 the entire risk assumed by each insurer. The policy, certificate, cover note, binder, or
 24 other evidence of insurance must contain the name, address, phone number, and license
 25 number of the insurance producer or surplus lines broker.

26 (b) An insurance producer or surplus lines broker may not issue or deliver
 27 evidence of insurance or purport to insure or represent that insurance will be or has
 28 been written by an eligible surplus wet marine and transportation insurer unless the
 29 insurance producer or surplus lines broker has authority from the insurer to insure the
 30 risk or has received information from the insurer in the regular course of business that
 31 the insurance has been granted.

1 (c) If after delivery of evidence of insurance there is a change in the identity
 2 of the insurers, or the percentage of the risk assumed by an insurer, or another material
 3 change in coverage from that stated in the insurance producer's or surplus lines
 4 broker's original evidence of insurance, the insurance producer or surplus lines broker
 5 shall promptly issue and deliver to the insured an appropriate substitute for, or
 6 endorsement of, the original document accurately showing the current status of the
 7 coverage and the insurer's responsibility.

8 (d) The insurance producer or surplus lines broker shall deliver a copy of the
 9 policy or cover note issued by the insurer as soon as reasonably possible after
 10 placement of the insurance coverage. A certificate or policy of insurance must contain
 11 or have attached a complete record of all policy insuring agreements, conditions,
 12 exclusions, clauses, endorsements, or other material facts that would regularly be
 13 included in the policy.

14 (e) A policy, certificate, cover note, binder, or other evidence of insurance
 15 negotiated, placed, or procured under the provisions of this chapter issued by an
 16 insurance producer or surplus lines broker shall bear the name, address, phone number,
 17 license number of the insurance producer or surplus lines broker, and the following
 18 legend in at least 10-point type:

19 This is evidence of insurance procured and developed
 20 under AS 21.35 (Alaska Surplus Wet Marine and Transportation
 21 Law). It is not covered by AS 21.80 (Alaska Insurance
 22 Guaranty Association Act).

23 **Sec. 21.35.520. Effect of payment to insurance producer or surplus lines**
 24 **broker.** A payment of premium for surplus wet marine and transportation insurance
 25 to an insurance producer or surplus lines broker, acting for a person other than itself
 26 in negotiating, continuing, or reviewing a policy of insurance under this chapter, is
 27 considered to be payment to the insurer, notwithstanding conditions or stipulations in
 28 the policy or contract to the contrary.

29 **Article 4. General Provisions.**

30 **Sec. 21.35.600. Licensee's duty to notify insured.** (a) Except as provided
 31 in (b) of this section, a contract of insurance placed by an insurance producer or

1 surplus lines broker under this chapter is not binding upon the insured, and a premium
 2 charged is not due and payable until the producing broker has notified the insured in
 3 writing that the insurer with which the insurance producer or surplus lines broker
 4 places the insurance does not hold a certificate of authority issued by this state and is
 5 not subject to state supervision, and, in the event of the insolvency of the surplus wet
 6 marine and transportation insurer, losses will not be covered under AS 21.80 (Alaska
 7 Insurance Guaranty Association Act). Nothing in this subsection shall nullify an
 8 agreement by an insurer to provide insurance. A copy of the notice required under this
 9 subsection shall be maintained by the licensee with the records of the contract and
 10 shall be available for examination.

11 (b) A contract of insurance placed by a surplus lines broker under this chapter
 12 with a risk retention group is not binding upon the insured, and a premium charged is
 13 not due and payable until the producing broker has provided the insured with the
 14 following federally mandated language in 10-point type:

15 This policy is issued by your risk retention group. Your
 16 risk retention group may not be subject to all of the insurance
 17 laws and regulations of your state. State insurance insolvency
 18 funds are not available for your risk retention group.

19 **Sec. 21.35.610. Penalties.** In addition to any other penalty provided by law,
 20 a person other than an insured that the director determines under AS 21.06.170 -
 21 21.06.240 has violated the provisions of this chapter, is subject to

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

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

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

29 **Sec. 21.35.620. Hearing and order on violation.** (a) On the complaint of
 30 a person or on the motion of the director, the director may conduct an investigation
 31 to determine whether a person has violated this chapter.

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

7 (c) If the director believes that a person has violated a cease and desist order
 8 issued under (b) of this section, the director may certify the relevant facts to the court
 9 for proceedings under AS 44.62.590. In addition to the penalties and remedies
 10 provided for in AS 44.62.590, the court, upon finding that the cease and desist order
 11 has been violated, may order the violator to comply with the order, pay a penalty of
 12 not more than \$100,000 for each violation, revoke or suspend the violator's license or
 13 certificate of authority, and bar the violator from transacting the business of insurance
 14 in the future.

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

19 **Sec. 21.35.630. Exception for certain insurance transactions.** The
 20 provisions of this chapter may not operate to prohibit employees, officers, directors,
 21 or partners of a commercial insured from acting in the capacity of an insurance
 22 manager or buyer in placing insurance on behalf of the employer, provided that the
 23 person's compensation is not based on buying insurance.

24 **Sec. 21.35.640. Venue for certain insurance transactions.** The venue of an
 25 insurance transaction committed by mail, electronic transmission, or otherwise is at the
 26 point where the matter transmitted by mail, electronic transmission, or otherwise is
 27 delivered, issued for delivery, or takes effect.

28 **Sec. 21.35.900. Definitions.** In this chapter,

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

31 (2) "eligible surplus lines insurer" means a nonadmitted insurer with

1 which a surplus lines broker may place surplus lines insurance under AS 21.35.200 -
2 21.35.350;

3 (3) "eligible surplus wet marine and transportation insurer" means a
4 nonadmitted insurer with which an insurance producer or surplus lines broker may
5 place surplus wet marine and transportation insurance under AS 21.35.400 - 21.35.520;

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

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

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

13 (A) solely engaged in interstate or foreign commerce;

14 (B) with a hull at the water line longer than 100 feet; or

15 (C) in excess of 100 gross registered tons;

16 (7) "producing broker" means the insurance producer or surplus lines
17 broker licensed under AS 21.27 dealing directly with the client seeking insurance;

18 (8) "reciprocal state" means a state that the director has determined has
19 enacted provisions substantially similar to AS 21.35.040, 21.35.050, 21.35.260, and
20 21.35.450;

21 (9) "surplus" means funds over and above liabilities and capital of the
22 company for the protection of policyholders;

23 (10) "transaction of insurance" means

24 (A) the solicitation, negotiation, procurement, effectuation, or
25 renewal of insurance; forwarding of applications; delivery of policies or
26 contracts; inspection of risks; fixing of rates; investigation or adjustment of
27 claims or losses; collection or forwarding of premiums; or transaction of
28 matters subsequent to effectuation of the contract of insurance and arising out
29 of it; and

30 (B) for purposes of this chapter, any of the following acts in
31 this state effected by mail, electronic transmission, or otherwise by a

1 nonadmitted insurer or by any person acting with the actual or apparent
2 authority of the insurer, on behalf of the insurer, constitutes the transaction of
3 an insurance business in or from this state:

4 (i) the making of or proposing to make, as an insurer,
5 an insurance contract;

6 (ii) the making of or proposing to make, as guarantor or
7 surety, any contract of guaranty or suretyship as a vocation and not
8 merely incidental to any other legitimate business or activity of the
9 guarantor or surety;

10 (iii) the taking or receiving of any application for
11 insurance;

12 (iv) the receiving or collection of a premium,
13 commission, membership fee, assessment, dues, or other consideration
14 for any insurance or any part of it;

15 (v) the issuance or delivery in this state of contracts of
16 insurance to residents of this state or to persons authorized to do
17 business in this state;

18 (vi) the solicitation, negotiation, procurement, or
19 effectuation of insurance or renewals of it;

20 (vii) the dissemination of information as to coverage or
21 rates, forwarding of applications, delivery of policies or contracts,
22 inspection of risks, the fixing of rates or investigation or adjustment of
23 claims or losses, the transaction of matters subsequent to effectuation
24 of the contract and arising out of it, or any other manner of representing
25 or assisting a person or insurer in the transaction of insurance with
26 respect to properties, risks, or exposures, located or to be performed in
27 this state;

28 (viii) the transaction of any kind of insurance business
29 specifically recognized as transacting an insurance business within the
30 meaning of the statutes relating to insurance;

31 (ix) the offering of any insurance or the transacting of

1 any insurance business; or
 2 (x) offering any agreement or contract that alters,
 3 amends, or voids coverage of an insurance contract;

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

6 (12) "unauthorized person" means a person

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

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

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

14 **Sec. 21.36.195. Surplus lines brokers and insurance producers; prohibited**
 15 **acts.** A surplus lines broker or an insurance producer may not fail to provide evidence
 16 of insurance, affidavits, filings, or reports, or fail to maintain the records, or fail to pay
 17 the taxes and fees, required under **AS 21.35** [AS 21.34].

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

19 (c) This section does not apply to workers' compensation insurance, **surplus**
 20 **lines insurance, or surplus wet marine and transportation insurance under**
 21 **AS 21.35.**

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

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

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

26 **Sec. 21.36.370. Exception for collection of certain charges.** For the purpose
 27 of AS 21.36.360, **if authorized under AS 21.35,** the charging and collection by
 28 **insurance producers and** surplus line brokers licensed under AS 21.27 of the amount
 29 of applicable state and federal taxes and filing fees under **AS 21.35** [AS 21.34] is not
 30 considered a premium or charge for insurance.

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

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

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

7 **Sec. 21.76.070. Excess insurance.** A cooperative agreement may authorize
 8 the board of directors to purchase excess or catastrophic insurance on behalf of the
 9 joint insurance arrangement. The cost of the insurance shall be apportioned in the
 10 manner specified in the joint insurance agreement. The board may purchase insurance
 11 under this section only from an insurer authorized to do business in the state, except
 12 that an arrangement formed by municipalities or school districts may purchase
 13 insurance under this section from a risk-sharing pool established by a national
 14 association of similar entities if the risk-sharing pool meets the qualifications for an
 15 unauthorized insurer under AS 21.35.230 [AS 21.34.040(b) AND (d) AND 21.34.220]
 16 and has capital and policyholders surplus in an amount at least as great as would be
 17 required if the association were a domestic multiple line insurer. An arrangement may
 18 purchase insurance under this section for property and liability risks from unauthorized
 19 insurers allowed for use by licensed Alaska surplus lines brokers.

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

21 (8) AS 21.35 [AS 21.33];

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

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

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

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

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

31 (37) "surplus lines insurance" means any insurance in this state or

1 relative to a subject resident, located, or to be performed in this state that is permitted
 2 under AS 21.35.200 - 21.35.350 [AS 21.34] to be placed through a surplus lines broker
 3 licensed under AS 21.27 with nonadmitted insurers eligible to accept insurance other
 4 than reinsurance, wet marine and transportation insurance, insurance independently
 5 procured, life insurance, and an annuity contract;

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

7 * **Sec. 20.** Notwithstanding AS 21.35.240(a)(5), enacted in sec. 8 of this Act, an alien
 8 insurer meeting the requirements to do a surplus lines business in this state on July 1, 1997,
 9 shall, subject to a minimum of \$5,400,000 maintained in the United States, maintain a trust
 10 fund as follows:

11 (1) as of January 1, 1998, a trust fund not less than 15 percent of its gross
 12 United States surplus lines liabilities, subject, at the discretion of the director, to a cap of
 13 \$30,000,000;

14 (2) as of January 1, 1999, a trust fund not less than 30 percent of its gross
 15 United States surplus lines liabilities, subject, at the discretion of the director, to a cap of
 16 \$60,000,000.

17 * **Sec. 21.** Notwithstanding AS 21.35.440(a)(5), enacted in sec. 8 of this Act, an insurer
 18 meeting the requirements to do a surplus wet marine and transportation business in this state
 19 on July 1, 1997, shall, subject to a minimum of \$5,400,000 maintained in the United States,
 20 maintain a trust fund as follows:

21 (1) as of January 1, 1998, a trust fund not less than 15 percent of its gross
 22 surplus wet marine and transportation liabilities in this state, subject, at the discretion of the
 23 director, to a cap of \$5,000,000;

24 (2) 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, subject, at the discretion of the
 26 director, to a cap of \$10,000,000.

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

29 * **Sec. 23.** This Act takes effect July 1, 1997.