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Chapter No.
72

AN ACT

Relating to the method of payment of fees and adoption of regulations under AS 21; relating to orders under AS 21 regarding risk based capital instructions; relating to accounting standards for insurance companies; amending the definitions of 'creditable coverage' and 'late enrollee' in AS 21.54; relating to requirements for small employer insurers; relating to requirements for issuance of new voting securities by an insurance company; requiring health care insurance coverage for reconstructive surgery following mastectomy; requiring guaranteed renewability of and certification of coverage regarding certain individual health insurance policies; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

Approved by the Governor: May 22, 2000

Actual Effective Date: Sections 4 - 9 and 20 take effect January 1, 2001; remainder of Act takes effect May 23, 2000

AN ACT

1 Relating to the method of payment of fees and adoption of regulations under AS 21; relating to
2 orders under AS 21 regarding risk based capital instructions; relating to accounting standards for
3 insurance companies; amending the definitions of 'creditable coverage' and 'late enrollee' in
4 AS 21.54; relating to requirements for small employer insurers; relating to requirements for
5 issuance of new voting securities by an insurance company; requiring health care insurance
6 coverage for reconstructive surgery following mastectomy; requiring guaranteed renewability of
7 and certification of coverage regarding certain individual health insurance policies; and providing
8 for an effective date.

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11 * **Section 1.** AS 21.06.250 is amended to read:

12 **Sec. 21.06.250. Fees and licenses.** The director shall collect in advance a fee

1 for each license and for services performed by the division of insurance. Fees may be
2 collected for but are not limited to applications, licenses and license renewals,
3 certificates of authority, service of process, printed or photocopied material, and
4 postage. The director shall adopt regulations setting the fees in an amount the director
5 determines to be sufficient to reimburse the state for the actual expense incurred in
6 providing a service. The director may require by regulation that an insurer or
7 other licensee pay a fee by electronic means.

8 * Sec. 2. AS 21.14.010(e) is amended to read:

9 (e) The director shall establish risk based capital instructions by order after
10 an open meeting as provided under AS 44.62.310 [REGULATION].

11 * Sec. 3. AS 21.14.200(18) is amended to read:

12 (18) "risk based capital instructions" means risk based capital
13 instructions for a life and health insurer or for a property and casualty insurer
14 [ADOPTED BY ORDER OF THE DIRECTOR AFTER AN OPEN MEETING
15 AS PROVIDED UNDER AS 44.62.310];

16 * Sec. 4. AS 21.18.010 is repealed and reenacted to read:

17 **Sec. 21.18.010. Allowable assets.** In a determination of the financial condition
18 of an insurer, the following assets are allowed:

19 (1) assets that are wholly and exclusively owned by the insurer and that
20 are registered, recorded, or held under the insurer's name;

21 (2) premiums, not more than three months past due, excluding
22 commissions payable on them, due from a controlling or controlled person, to the
23 extent that

24 (A) the premiums collected by the controlling or controlled
25 person and not remitted to the insurer are held in a trust account with a bank
26 or other depository approved by the division and may not be commingled with
27 other money of the controlling or controlled person; a disbursement from the
28 trust account may be made only to the insurer, the insured, or, for the purpose
29 of returning a premium, an entity that is entitled to returned premiums on
30 behalf of the insured; however, the investment income derived from the trust
31 may be allocated as the parties consider proper; a controlling or controlled

1 person shall deposit premiums collected into the trust account within five
2 working days after collection; the director shall disapprove a trust agreement
3 that, in the director's judgment, does not assure the safety of the premiums
4 collected;

5 (B) the controlling or controlled person has provided to the
6 insurer, and the insurer has maintained in its possession, an unexpired, clean,
7 irrevocable, and unconditional letter of credit, payable to the insurer, for a term
8 of not less than one year with automatic extension for one year, unless the
9 beneficiary has received in writing notification of intention not to renew 30
10 days before the original expiration date; the letter of credit must be issued in
11 conformity with the requirements set out in this subparagraph, and the amount
12 of the letter of credit must equal or exceed the liability of the controlling or
13 controlled person to the insurer, at all times during the period that the letter of
14 credit is in effect, for premiums collected by the controlling or controlled
15 person; a letter of credit must be issued under arrangements satisfactory to the
16 division and the letter must be issued by a banking institution that is a member
17 of the Federal Reserve System and that has a financial standing satisfactory to
18 the department; the director shall disapprove a letter of credit that, in the
19 director's judgment, does not assure the safety of the premiums;

20 (C) the controlling or controlled person has provided to the
21 insurer, and the insurer has maintained in its possession, evidence that the
22 controlling or controlled person has purchased and has currently in effect a
23 financial guaranty bond, payable to the insurer, issued for a continuous term,
24 cancelable only on 30-day written notice to the beneficiary of intention to
25 terminate with the bond continuing in effect for acts committed before the date
26 of termination, and that is in conformity with the requirements set out in (B)
27 of this paragraph; the amount of the bond must equal or exceed the liability of
28 the controlling or controlled person to the insurer, at all times during which the
29 financial guaranty bond is in effect, for the premium collected by the
30 controlling or controlled person; a financial guaranty bond must be issued
31 under an arrangement satisfactory to the division, by an insurer that is

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1 authorized to transact business in the state, that has financial standing
2 satisfactory to the division, and that is neither controlled nor controlling in
3 relation to either the insurer or the person for whom the bond is purchased; and

4 (D) a financial examination indicates that the controlling or
5 controlled person is solvent and has the ability to pay the premiums as they
6 become due; the financial examination, as scheduled by the director, shall be
7 based on a review of the books and records of the controlling or controlled
8 person;

9 (3) other assets considered by the director to be available for the
10 payment of losses and claims, at values to be determined by the director, with any
11 excess valuation reported as nonadmitted; and

12 (4) other assets that do not exceed limitations as given in AS 21.21;
13 any excess shall be reported as nonadmitted assets.

14 * Sec. 5. AS 21.18.030 is repealed and reenacted to read:

15 **Sec. 21.18.030. Assets not allowed.** In addition to assets excluded by the
16 application of AS 21.18.010, all nonadmitted assets and all other assets of doubtful
17 value or character included as ledger or nonledger assets in a statement by an insurer
18 to the director, or in an examiner's report to the director, shall also be reported, to the
19 extent of the value disallowed, as deductions from the gross assets of the insurer,
20 unless the director permits a reserve to be carried among the liabilities of the insurer
21 in place of a deduction.

22 * Sec. 6. AS 21.18.050 is amended to read:

23 **Sec. 21.18.050. Reserves and liabilities, in general.** In a determination of the
24 financial condition of an insurer, [CAPITAL STOCK AND] liabilities to be charged
25 against its assets shall include

26 (1) [THE AMOUNT OF ITS CAPITAL STOCK OUTSTANDING, IF
27 ANY;

28 (2)] the amount, estimated consistent with the provisions of this title,
29 necessary to pay all of its unpaid losses and claims incurred on or before the date of
30 statement, whether reported or unreported, together with the expenses of adjustment
31 or settlement;

1 (2) [(3)] with reference to life and health insurance and annuity
2 contracts,

3 (A) the amount of reserves on life insurance policies and
4 annuity contracts in force, valued according to the tables of mortality, rates of
5 interest, and methods adopted under this title that are applicable;

6 (B) reserves for disability benefits, for both active and disabled
7 lives;

8 (C) reserves for accidental death benefits;

9 (D) additional reserves that may be required by the director,
10 consistent with practice formulated or approved by the National Association of
11 Insurance Commissioners, on account of the insurance;

12 (3) [(4)] with reference to health insurance, the amount of reserves
13 required under AS 21.18.080 - 21.18.086;

14 (4) [(5)] with reference to insurance other than specified in (2) [(3)] and
15 (3) [(4)] of this section, and other than title insurance, the amount of reserves equal
16 to the unearned portions of the gross premiums charged on policies in force, computed
17 in accordance with this chapter;

18 (5) [(6) TAXES,] expenses [,] and other obligations due or accrued at
19 the date of the statement.

20 * Sec. 7. AS 21.18.073 is repealed and reenacted to read:

21 **Sec. 21.18.073. Unearned premium reserve for title insurance.** In addition
22 to an adequate reserve as to outstanding losses as required under AS 21.18.050, a title
23 insurer shall establish, segregate, and maintain an unearned premium reserve as
24 required by the director.

25 * Sec. 8. AS 21.18 is amended by adding a new section to read:

26 **Sec. 21.18.160. Regulations.** The director may adopt regulations to implement
27 this chapter.

28 * Sec. 9. AS 21.21.050 is amended to read:

29 **Sec. 21.21.050. Diversification of investments.** An insurer shall invest in or
30 hold as admitted assets categories of investments only within applicable limits as
31 follows:

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1 (1) an insurer may not, except with the consent of the director, have
2 a combination of investments in or loans upon the security of the obligations, property,
3 or securities of any one person, or insurer, aggregating an amount exceeding five
4 percent of the insurer's assets; this restriction does not apply to

5 (A) general obligations of the United States; or

6 (B) general obligations of a state of the United States that is not
7 insolvent and whose securities are not then in default; or

8 (C) policy loans made under AS 21.21.210;

9 (2) an insurer may not invest in or hold at any one time more than 10
10 percent of the outstanding voting stock of a corporation, except with the consent of the
11 director given with respect to voting rights of preference stock during default of
12 dividends; this paragraph does not apply to stock of a wholly-owned subsidiary of the
13 insurer or to controlling stock of an insurer acquired under AS 21.21.170;

14 (3) an insurer, other than title insurer, shall invest and maintain invested
15 funds in an amount not less than the higher of the minimum basic capital for stock
16 insurers or basic guarantee surplus for mutual insurers and additional surplus for both
17 stock and mutual insurers required under AS 21.09.070, or 50 percent of the total
18 capital and surplus shown on the most recent statement of the insurer's financial
19 condition as filed with the director under AS 21.09.200, but the insurer may not invest
20 or maintain funds except in

21 (A) cash;

22 (B) the fully insured portion of bank deposits when the
23 insurance is provided by a solvent agency of the United States government or
24 by collateral in the form of the securities provided for under AS 21.21.060 and
25 21.21.080;

26 (C) the securities provided for under AS 21.21.060 and
27 21.21.080; or

28 (D) the securities provided for under AS 21.21.090 issued by
29 this state or a political subdivision of this state, but only if rated Class 1 by the
30 securities valuation office for the period during which the securities are held
31 for the purposes of this section, and only if the insurer invests and maintains

1 not more than 15 percent of its total capital and surplus in the securities as
 2 shown on the most recent statement of the insurer's financial condition filed
 3 with the director under AS 21.09.200;

4 (4) a life insurer shall invest and keep invested its funds in an amount
 5 not less than the reserves under its life insurance policies and annuity contracts, other
 6 than variable annuities, in force, in cash or the securities or investments provided for
 7 under this chapter;

8 (5) except with the director's written consent, an insurer may not have
 9 invested at any one time more than 20 percent of its assets in the class of securities
 10 described in AS 21.21.140, exclusive of obligations of public utilities;

11 (6) an insurer may invest and have invested at any one time in
 12 aggregate amount not more than 10 percent of its assets in all stocks under
 13 AS 21.21.160, 21.21.170, and 21.21.200, except with the director's written consent;
 14 determination of the amount that an insurer has invested in common stocks for the
 15 purposes of this paragraph is based on the cost of the stocks to the insurer; this
 16 paragraph does not apply to stock of a controlled or subsidiary insurance corporation
 17 or other corporation held under AS 21.21.170 and 21.21.180;

18 (7) except with the director's written consent, an insurer may not have
 19 invested at any one time more than 10 percent of its assets in any one of the class of
 20 securities described in AS 21.21.100, 21.21.150, 21.21.190, 21.21.250(c), [OR]
 21 21.21.260, or 21.21.360.

22 * **Sec. 10.** AS 21.42 is amended by adding a new section to read:

23 **Sec. 21.42.400. Coverage for reconstructive surgery following mastectomy.**

24 A health care insurer that offers, issues for delivery, delivers, or renews in this state
 25 a health care insurance plan providing medical and surgical benefits for mastectomies
 26 shall comply with 42 U.S.C. 300gg-6 and 42 U.S.C. 300gg-52 regarding coverage for
 27 reconstructive surgery following mastectomies.

28 * **Sec. 11.** AS 21.51 is amended by adding new sections to read:

29 **Sec. 21.51.400. Renewability and certification.** A health care insurer that

30 offers a health care insurance plan in the individual market shall comply with the
 31 guaranteed renewability requirements established under 42 U.S.C. 300gg-42 and shall

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1 comply with the certification of coverage requirements established under 42 U.S.C.
2 300gg-43.

3 **Sec. 21.51.500. Definitions.** In this chapter,

4 (1) "health care insurance plan" has the meaning given in
5 AS 21.54.500;

6 (2) "health care insurer" has the meaning given in AS 21.54.500;

7 (3) "individual market" means the market for health care insurance
8 offered to individuals other than in connection with a health benefit plan as defined
9 in AS 21.54.500.

10 * **Sec. 12.** AS 21.54.500(7) is amended to read:

11 (7) "creditable coverage" means, with respect to an individual,
12 coverage, excluding excepted benefits, calculated as required under AS 21.54.120 and
13 applicable under

14 (A) a health care insurance plan [OFFERED IN THE GROUP
15 MARKET];

16 (B) a health benefit plan;

17 (C) 42 U.S.C. 1395c or 1395j (Part A or Part B of Title XVIII
18 of the Social Security Act); [:]

19 (D) 42 U.S.C. 1396 (Title XIX of the Social Security Act),
20 other than coverage consisting solely of benefits under 42 U.S.C. 1396s;

21 (E) 10 U.S.C. 1071 - 1090;

22 (F) a medical care program of the Indian Health Service or of
23 a tribal organization;

24 (G) AS 21.55 **or other state high risk pool;**

25 (H) 5 U.S.C. 8901 - 8914;

26 (I) a public health plan as defined under federal law; or

27 (J) a health benefit plan under 22 U.S.C. 2504(e) (Peace Corps
28 Act);

29 * **Sec. 13.** AS 21.54.500(20) is amended to read:

30 (20) "late enrollee" means a participant or beneficiary who requests
31 enrollment in an employer's health care insurance plan following the initial enrollment

1 period for which the participant or beneficiary was eligible to enroll under the terms
2 of a health care insurance plan, except that a participant or beneficiary may not be
3 considered a late enrollee if

4 (A) the individual requests enrollment within 30 days after the
5 termination of the creditable coverage or the exhaustion of coverage, was
6 covered under creditable coverage at the time of the initial enrollment, and

7 (i) [WAS COVERED UNDER CREDITABLE
8 COVERAGE AT THE TIME OF THE INITIAL ENROLLMENT];

9 (ii) has lost creditable coverage as a result of the
10 termination of employer contributions toward coverage or the
11 termination of eligibility, including death, divorce, dissolution of
12 marriage, legal separation, or a reduction in number of hours of
13 employment; or

14 (ii) [(iii)] had coverage under a federal continuation
15 provision and the coverage under that provision was exhausted;

16 (B) the individual is employed by an employer who offers
17 multiple health care insurance plans and the individual elects a different health
18 care insurance plan during an open enrollment period; or

19 (C) a court has ordered coverage to be provided for a spouse
20 or minor child under a covered employee's plan and request for enrollment is
21 made within 30 days after issuance of the court order;

22 * Sec. 14. AS 21.56.110 is amended by adding a new subsection to read:

23 (e) The requirements of this chapter continue to apply with respect to coverage
24 offered to a small employer until the plan anniversary following the date the employer
25 no longer meets the definition of a "small employer" in AS 21.54.500.

26 * Sec. 15. AS 21.56.140(b) is amended to read:

27 (b) A small employer insurer shall issue a health care insurance plan to a small
28 employer that applies for a plan and shall accept for enrollment under the health care
29 insurance [INSURER] coverage all eligible employees and their dependents who apply
30 for enrollment during the period in which the employee first becomes eligible to enroll
31 under the terms of the plan. A small employer insurer may not place a restriction on

1 an eligible employee or dependent with respect to being a participant or beneficiary
2 that is inconsistent with AS 21.54.100.

3 * Sec. 16. AS 21.56.140(c) is amended to read:

4 (c) A small employer insurer may not increase a requirement for minimum
5 employee participation or for minimum employer contribution applicable to a small
6 employer at any time after the small employer has been accepted for coverage, except
7 that a small employer insurer may vary application of minimum participation and
8 employer contribution requirements by the size of the small employer group. In
9 applying minimum employee participation requirements, a small employer insurer
10 may not consider employees or dependents who have similar existing coverage in
11 determining whether the minimum employee participation level is met.

12 * Sec. 17. AS 21.56.140(d) is amended to read:

13 (d) If a small employer insurer offers coverage to a small employer, the small
14 employer insurer shall offer coverage to all of the eligible employees of the small
15 employer and their dependents. A small employer insurer may not offer coverage to
16 only certain individuals in a small employer group or to only part of the group, except
17 in the case of late enrollees as provided in AS 21.54.110(d). For purposes of
18 complying with this subsection,

19 (1) a small employer insurer may issue a health care insurance plan
20 that covers only those employees that the small employer selects to be covered
21 under its plan, except that the small employer insurer shall initially offer a plan
22 to the small employer that covers all eligible employees as defined in AS 21.56.250
23 and their dependents;

24 (2) a small employer insurer, producer, or any other representative
25 of the small employer insurer may not directly or indirectly influence a small
26 employer in selecting which employees will be covered under the small employer's
27 health care insurance plan based on the factors concerning unfair discrimination
28 listed in AS 21.54.100; and

29 (3) a small employer insurer shall apply the minimum employee
30 participation and minimum employer contribution requirements to those
31 employees that the small employer selects to be covered under the small

1 **employer's health care insurance plan.**

2 * **Sec. 18.** AS 21.56.140(f) is amended to read:

3 (f) A small employer insurer may not, directly or indirectly, encourage or
4 direct small employers to refrain from filing an application for coverage with a small
5 employer insurer or to seek coverage from another insurer because of a health status
6 factor, the claims experience, the industry, the occupation, **the size**, or the geographic
7 location of the small employer.

8 * **Sec. 19.** AS 21.56.180(a) is amended to read:

9 (a) A small employer insurer may not, directly or indirectly, enter into a
10 contract, agreement, or arrangement with an insurance producer, a managing general
11 agent, or a third-party administrator that provides for or results in the compensation
12 paid to an insurance producer for the sale of a health care insurance plan to vary based
13 on the health status, claims experience, industry, occupation, **size**, or geographic
14 location of the small employer. This subsection does not apply to a compensation
15 arrangement that provides compensation to an insurance producer, a managing general
16 agent, or a third-party administrator on the basis of a percentage of premium that does
17 not vary based on the health status, claims experience, industry, occupation, **size**, or
18 geographic **location** [AREA] of the small employer.

19 * **Sec. 20.** AS 21.18.900(4); AS 21.21.360(b), 21.21.360(c), 21.21.360(d), 21.21.360(e), and
20 21.21.360(f) are repealed.

21 * **Sec. 21.** AS 21.22.010(g)(1) is repealed.

22 * **Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section
23 to read:

24 **TRANSITION: REGULATIONS.** Notwithstanding sec. 24 of this Act, the director of
25 the division of insurance in the Department of Community and Economic Development may
26 proceed to adopt regulations necessary to implement secs. 4 - 9 and 20 of this Act. The
27 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
28 effective date of secs. 4 - 9 and 20 of this Act.

29 * **Sec. 23.** Except as provided in sec. 24 of this Act, this Act takes effect immediately
30 under AS 01.10.070(c).

31 * **Sec. 24.** Sections 4 - 9 and 20 of this Act take effect January 1, 2001.