

SENATE CS FOR CS FOR HOUSE BILL NO. 147(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE FINANCE COMMITTEE

Offered: 5/6/05

Referred: Rules

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to notice of suspension or revocation of an insurer's certificate of**
2 **authority and the effect of the suspension or revocation upon the authority of agents and**
3 **managing general agents of the insurer; relating to certain deposits under AS 21;**
4 **relating to the yielding of assets and securities held on deposit; relating to third-party**
5 **administrators under AS 21; relating to insurance agents, managing general agents,**
6 **reinsurance intermediary managers, and insurance producers; requiring the director of**
7 **insurance to notify a licensee of a license renewal before the renewal date; defining the**
8 **term 'appointment' as used in part of AS 21; relating to the eligibility to provide**
9 **coverage by a nonadmitted insurer and alien insurer; relating to surplus lines insurance**
10 **and brokers; relating to misrepresentations and false advertising concerning insurance;**
11 **relating to health discount plans; providing for limitations on owner controlled and**
12 **contractor controlled insurance programs and limiting the coverage of those programs;**

1 **prohibiting excessive, inadequate, or unfairly discriminatory rate charges for health**
 2 **insurance; defining the term 'plan administrator' as used in part of AS 21; defining the**
 3 **term 'transact' as used in AS 21; authorizing the director of insurance to designate a**
 4 **person to receive annual reports from companies; reducing the period for filing a**
 5 **quarterly financial statement; and providing for an effective date."**

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

7 * **Section 1.** AS 21.06.130(a) is amended to read:

8 (a) To determine compliance with this title, the director may, as often as the
 9 director **has reasonable cause**, [CONSIDERS ADVISABLE] examine or require a
 10 written report from a person of the accounts, records, documents, and transactions
 11 pertaining to or affecting the insurance affairs or proposed insurance affairs of

12 (1) an insurance producer or independent adjuster; or

13 (2) a person engaged in or proposing to be engaged in or assisting in
 14 the promotion or formation of a domestic insurer or insurance holding corporation, or
 15 corporation to finance a domestic insurer or the production of its business.

16 * **Sec. 2.** AS 21.09.160 is amended to read:

17 **Sec. 21.09.160. Notice of suspension or revocation and effect upon agent's**
 18 **authority.** (a) Upon suspending or revoking an insurer's certificate of authority the
 19 director shall immediately give notice to the insurer and [TO ITS AGENTS OF
 20 RECORD IN THIS STATE IN THE DIRECTOR'S OFFICE. THE DIRECTOR] shall
 21 also publish notice of the revocation in one or more newspapers of general circulation
 22 in this state.

23 (b) The suspension or revocation shall automatically suspend or revoke, as the
 24 case may be, the authority of all its agents **and managing general agents** to act as
 25 agents **or managing general agents** of the insurer in this state, and the **insurer**
 26 [DIRECTOR] shall so state in the notice to agents **and managing general agents**
 27 provided for in **(c)** [(a)] of this section.

28 * **Sec. 3.** AS 21.09.160 is amended by adding a new subsection to read:

29 (c) Upon notification of suspension or revocation of an insurer's certificate of

1 authority, the insurer shall immediately give notice of the suspension or revocation to
2 its agents and managing general agents operating in this state.

3 * **Sec. 4.** AS 21.24.040(a) is amended to read:

4 (a) Deposits made in this state under this title shall be made through the office
5 of the director [IN SAFE DEPOSIT OR] under custodial arrangements as required or
6 approved by the director consistent with the purposes of the deposit, with an
7 established safe deposit institution, bank, or trust company located in this state
8 selected by the insurer with the director's approval.

9 * **Sec. 5.** AS 21.24.040(c) is amended to read:

10 (c) If of convenience to the insurer in the buying, selling, and exchange of
11 securities **making up** [COMPRISING] its deposit, and in the collection of interest and
12 other income currently accruing **on the securities** [THEREON], the insurer may, with
13 the director's advance written approval, deposit a portion of the securities under
14 custodial arrangements with an established bank or trust company located outside this
15 state, if receipts representing all the securities are issued by the custodial bank or trust
16 company and are held in [SAFE DEPOSIT OR] custody subject to the requirements of
17 (a) [AND (b)] of this section.

18 * **Sec. 6.** AS 21.24.130(d) is amended to read:

19 (d) If the insurer is subject to delinquency proceedings as defined in AS 21.78,
20 upon the order of a court of competent jurisdiction, the director shall yield the assets
21 and securities held on deposit **under AS 21.09.090(b)** to the receiver, conservator,
22 rehabilitator, or liquidator of the insurer, or to any other properly designated official or
23 officials who succeed to the management and control of the insurer's assets. **The**
24 **director may release the deposit directly to the guaranty fund of which the**
25 **insurer is a member if the right to receive all or a portion of the deposit is**
26 **assigned to the guaranty fund.**

27 * **Sec. 7.** AS 21.27.010(c) is amended to read:

28 (c) A **third-party administrator** [PERSON WHO FOR A RESIDENT OF
29 THIS STATE, OR FOR A RESIDENT OF ANOTHER JURISDICTION FROM A
30 PLACE OF BUSINESS IN THIS STATE, PERFORMS ADMINISTRATIVE
31 FUNCTIONS, INCLUDING CLAIMS ADMINISTRATION AND PAYMENT,

1 MARKETING ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING,
 2 PREMIUM BILLING, COVERAGE VERIFICATION, UNDERWRITING
 3 AUTHORITY, OR CERTIFICATE ISSUANCE ONLY IN REGARD TO LIFE
 4 INSURANCE, HEALTH INSURANCE, OR ANNUITIES] is not required to be
 5 licensed as a managing general agent if the **third-party administrator** [PERSON]

6 (1) is registered under **AS 21.27.630 - 21.27.660** [THIS CHAPTER
 7 AS A THIRD-PARTY ADMINISTRATOR]; or

8 (2) only investigates and adjusts claims and is licensed under this
 9 chapter as an independent adjuster.

10 * **Sec. 8.** AS 21.27.100 is repealed and reenacted to read:

11 **Sec. 21.27.100. Appointment of insurance producer, managing general**
 12 **agent, and reinsurance intermediary manager; acts of agent.** (a) An appointment
 13 is required to be made in accordance with this section when one or more of the
 14 following has occurred:

15 (1) an admitted insurer appoints a managing general agent in this state
 16 or relative to a subject resident, located, or to be performed in this state;

17 (2) a managing general agent appoints an insurance producer as its
 18 subagent in this state or relative to subjects resident, located, or to be performed in this
 19 state;

20 (3) a domestic reinsurer appoints a reinsurance intermediary manager;

21 (4) a reinsurance intermediary manager appoints an insurance producer
 22 as its subagent in this state.

23 (b) An admitted insurer shall appoint an insurance producer as its agent in this
 24 state or relative to a subject resident, located, or to be performed in this state not later
 25 than 30 days after the date that a written agency contract is executed or the first
 26 insurance application is submitted to the admitted insurer by the licensed insurance
 27 producer.

28 (c) An individual in a firm who acts solely on behalf of a firm that is
 29 appointed as an agent or a managing general agent on behalf of an admitted insurer
 30 under this section may not be required to also have an appointment under this section
 31 if the individual in the firm is licensed with that firm for a specific class of authority.

1 (d) The authorized or apparently authorized acts on behalf of an appointing
2 insurer of an insurance producer appointed under this section are considered the acts
3 of that insurer.

4 (e) An insurer and managing general agent shall maintain a current list of all
5 appointments made or required to be made under this section that identifies the
6 licensee's name, licensee's mailing address, license number, and effective date of
7 appointment.

8 (f) An insurance producer shall maintain a list of all appointments made or
9 required to be made under this section that identifies the insurer's name, insurer's
10 mailing address, and effective date of appointment.

11 (g) An insurer, managing general agent, or insurance producer shall reply in
12 writing within three working days to an inquiry of the director regarding an
13 appointment.

14 * **Sec. 9.** AS 21.27.110 is repealed and reenacted to read:

15 **Sec. 21.27.110. Term of appointment.** (a) An appointment under
16 AS 21.27.100 continues in force until the appointment is terminated in writing.

17 (b) If an insurer, reinsurer, or authorized representative discovers information
18 showing that the appointee whose appointment was terminated has engaged in an
19 activity identified in AS 21.27.410 during the period of the appointment, the insurer,
20 reinsurer, or authorized representative shall, on a form or in a format prescribed by the
21 director, promptly notify the director.

22 (c) Within 15 days after providing notification in accordance with (b) of this
23 section, the insurer, reinsurer, or authorized representative shall mail a copy of the
24 notification to the appointee at the last address on record with the insurer, reinsurer, or
25 authorized representative. The notice must be provided by certified mail, return
26 receipt requested, postage prepaid, or by overnight delivery using a nationally
27 recognized mail carrier.

28 (d) Within 30 days after the appointee receives notification in accordance with
29 (c) of this section, the appointee may file written comments concerning the substance
30 of the notification with the director and shall provide a copy of the written comments
31 to the insurer, reinsurer, or authorized representative. The written comments filed

1 with the director must be included with each report distributed or disclosed concerning
2 a reason about the termination of the appointment.

3 (e) If requested by the director, an insurer, a reinsurer, or an authorized
4 representative shall provide to the director additional information, documents, records,
5 or other data pertaining to a termination or activity of a licensee under this title.

6 (f) A notice of termination submitted to the director under this section must
7 include a statement of the reasons for the termination. A statement of the reasons for
8 termination is confidential and not subject to inspection and copying under
9 AS 40.25.110. A statement of reasons for the termination may not be admitted as
10 evidence in a civil action or an administrative proceeding against an insurer, reinsurer,
11 or authorized representative by or on behalf of a person affected by the termination,
12 except when the action or proceeding involves perjury, unsworn falsification, fraud, or
13 failure to comply with this subsection.

14 (g) If an insurer, a reinsurer, or an authorized representative fails to report as
15 required under this section or is found by a court to have knowingly or intentionally
16 falsely made that report, the director may, after notice and hearing, suspend or revoke
17 the license or certificate of authority of the insurer, reinsurer, or authorized
18 representative and may impose a penalty in accordance with AS 21.27.440.

19 * **Sec. 10.** AS 21.27.380(a) is amended to read:

20 (a) Except as provided in this title, the director may renew a license biennially
21 on a date set by the director if the licensee continues to be qualified under this chapter
22 and, on or before the close of business of the renewal date, meets all renewal
23 requirements established by regulation and pays the renewal license fees set under
24 AS 21.06.250 for each license to the director. A licensee is responsible for knowing
25 the date that a license lapses and for renewing a license before expiration. The
26 director shall **notify the licensee of the license renewal** [MAIL A RENEWAL
27 NOTICE TO THE LICENSEE'S CURRENT ADDRESS ON FILE WITH THE
28 DIRECTOR] 30 days before the renewal date.

29 * **Sec. 11.** AS 21.27.630(b) is amended to read:

30 (b) A third-party administrator may not transact business for a kind or class of
31 **authority** [INSURANCE] for which the person is not registered.

1 * **Sec. 12.** AS 21.27.630(c) is amended to read:

2 (c) **Except as otherwise provided in this chapter, a third-party**
 3 **administrator** [A PERSON WHO PERFORMS ADMINISTRATIVE FUNCTIONS,
 4 INCLUDING CLAIMS ADMINISTRATION AND PAYMENT, MARKETING
 5 ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING, PREMIUM
 6 BILLING, COVERAGE VERIFICATION, UNDERWRITING AUTHORITY, OR
 7 CERTIFICATE ISSUANCE IN REGARD TO INSURANCE AS A THIRD-PARTY
 8 ADMINISTRATOR] shall be registered **under AS 21.27.630 - 21.27.660** [AS A
 9 THIRD-PARTY ADMINISTRATOR] unless the **third-party administrator**
 10 [PERSON] only investigates and adjusts claims and is licensed under this chapter as
 11 an independent adjuster.

12 * **Sec. 13.** AS 21.27.630 is amended by adding new subsections to read:

13 (k) An insurer that holds a certificate of authority issued by the director and is
 14 in good standing under this title is not required to be registered as a third-party
 15 administrator in this state.

16 (l) A person that is not required to be registered as a third-party administrator
 17 under (e) - (k) of this section must file a certification with the director that the person
 18 meets the requirements for exemption.

19 * **Sec. 14.** AS 21.27.650(a) is amended to read:

20 (a) An insurer may not transact business with a third-party administrator
 21 unless

22 (1) the insurer holds a certificate of authority in this state, **if required**
 23 **under this title;**

24 (2) the third-party administrator is registered under this chapter or **the**
 25 **third-party administrator has filed a certification with the director certifying that**
 26 [, WHEN] the third-party administrator is operating only for a foreign insurer **other**
 27 **than a self-funded multiple employer welfare arrangement regulated under**
 28 **AS 21.85 and** [,] is registered as a third-party administrator by the third-party
 29 administrator's resident insurance regulator in a state that the director has determined
 30 has enacted provisions substantially similar to those contained in AS 21.27.630 -
 31 21.27.650 and that is accredited by the National Association of Insurance

1 Commissioners;

2 (3) the third-party administrator provides the director on January 1,
3 April 1, July 1, and October 1 of each year

4 (A) a list of current employees, identifying those transacting
5 business in this state or upon a subject resident, located or to be performed in
6 this state;

7 (B) a list of current insurers under contract; and

8 (C) other information the director may require;

9 (4) a written contract is in effect between the parties that establishes
10 the responsibilities of each party, indicates both parties' share of responsibility for a
11 particular function, and specifies the division of responsibilities;

12 (5) there is in effect a written contract between the insurer and third-
13 party administrator that contains the following provisions:

14 (A) the insurer may terminate the contract for cause upon
15 written notice sent by certified mail to the third-party administrator and may
16 suspend the underwriting authority of the third-party administrator during a
17 dispute regarding the cause for termination; but the insurer must fulfill all
18 lawful obligations with respect to policies affected by the written agreement,
19 regardless of any dispute between the insurer and the third-party administrator;

20 (B) the third-party administrator shall render accounts to the
21 insurer detailing all transactions and remit all money due under the contract to
22 the insurer at least monthly;

23 (C) all money collected for the account of an insurer shall be
24 held by the third-party administrator as a fiduciary;

25 (D) all payments on behalf of the insurer shall be held by the
26 third-party administrator as a fiduciary;

27 (E) the third-party administrator may not retain more than three
28 months estimated claims payments and allocated loss adjustment expenses;

29 (F) the third-party administrator shall maintain separate records
30 for each insurer in a form usable by the insurer; the insurer or its authorized
31 representative shall have the right to audit and the right to copy all accounts

1 and records related to the insurer's business; the director, in addition to other
 2 authority granted in this title, shall have access to all books, bank accounts, and
 3 records of the third-party administrator in a form usable to the director; any
 4 trade secrets contained in books and records reviewed by the director,
 5 including the identity and addresses of policyholders and certificate holders,
 6 shall be kept confidential, except that the director may use the information in a
 7 proceeding instituted against the third-party administrator or the insurer;

8 (G) the contract may not be assigned in whole or in part by the
 9 third-party administrator;

10 (H) if the contract permits the third-party administrator to do
 11 underwriting, the contract must include the following:

12 (i) the third-party administrator's maximum annual
 13 premium volume;

14 (ii) the rating system and basis of the rates to be
 15 charged;

16 (iii) the types of risks that may be written;

17 (iv) maximum limits of liability;

18 (v) applicable exclusions;

19 (vi) territorial limitations;

20 (vii) policy cancellation provisions;

21 (viii) the maximum policy term; and

22 (ix) that the insurer shall have the right to cancel or not
 23 renew a policy of insurance subject to applicable state law;

24 (I) if the contract permits the third-party administrator to
 25 administer claims on behalf of the insurer, the contract must include the
 26 following:

27 (i) written settlement authority must be provided by the
 28 insurer and may be terminated for cause upon the insurer's written
 29 notice sent by certified mail to the third-party administrator or upon the
 30 termination of the contract, but the insurer may suspend the settlement
 31 authority during a dispute regarding the cause of termination;

1 (ii) claims shall be reported to the insurer within 30
2 days;

3 (iii) a copy of the claim file shall be sent to the insurer
4 upon request or as soon as it becomes known that the claim has the
5 potential to exceed an amount determined by the director or exceeds the
6 limit set by the insurer, whichever is less, involves a coverage dispute,
7 may exceed the third-party administrator's claims settlement authority,
8 is open for more than six months, involves extra contractual
9 allegations, or is closed by payment in excess of an amount set by the
10 director or an amount set by the insurer, whichever is less;

11 (iv) each party to the contract shall comply with unfair
12 claims settlement statutes and regulations;

13 (v) transmission of electronic data must occur at least
14 monthly if electronic claim files are in existence; and

15 (vi) claim files shall be the sole property of the insurer;
16 upon an order of liquidation of the insurer, the third-party administrator
17 shall have reasonable access to and the right to copy the files on a
18 timely basis; and

19 (J) the contract may not provide for commissions, fees, or
20 charges contingent upon savings obtained in the adjustment, settlement, and
21 payment of losses covered by the insurer's obligations; but a third-party
22 administrator may receive performance-based compensation for providing
23 hospital or other auditing services or may receive compensation based on
24 premiums or charges collected or the number of claims paid or processed.

25 * **Sec. 15.** AS 21.27.650 is amended by adding a new subsection to read:

26 (q) The director may, without advance notice or hearing, immediately suspend
27 by order the registration of a third-party administrator if the director finds that one or
28 more of the following circumstances exist:

29 (1) the third-party administrator is insolvent or impaired;

30 (2) a proceeding for bankruptcy, receivership, conservatorship, or
31 rehabilitation, or another delinquency proceeding regarding the third-party

1 administrator has been commenced in any state or by a governmental agency of
2 another jurisdiction;

3 (3) the third-party administrator is in an unsound condition, or is in a
4 condition or using methods or practices that render its further transaction of insurance
5 injurious to policy holders or the public.

6 * **Sec. 16.** AS 21.27 is amended by adding a new section to article 4 to read:

7 **Sec. 21.27.660. Definitions.** In AS 21.27.630 - 21.27.660,

8 (1) "insurer" includes the Comprehensive Health Insurance
9 Association created under AS 21.55.010 and any person issued or required to obtain a
10 certificate of authority under this title to transact life insurance, annuities, and health
11 insurance or to provide coverage for the cost of medical care;

12 (2) "transact" has the meaning given in AS 21.90.900.

13 * **Sec. 17.** AS 21.27.900 is amended by adding a new paragraph to read:

14 (33) "appointment" means an act by a person evidencing a grant of
15 authority to another to act on the grantor's behalf.

16 * **Sec. 18.** AS 21.34.040(d) is amended to read:

17 (d) A nonadmitted insurer may be eligible to provide coverage in this state if it
18 furnishes to the director a copy of its current annual statement that has been certified
19 by the insurer. **Except in the case of an alien insurer, the** [THE] statement shall be
20 provided **not** [NO] more than six months after the close of the period reported upon
21 and that is either filed with and approved by the regulatory authority in the domicile of
22 the nonadmitted insurer, or certified by an accounting or auditing firm licensed in the
23 jurisdiction of the insurer's domicile. **An alien insurer shall provide the statement**
24 **not later than nine months after the close of the reporting period.** In the case of
25 an insurance exchange, the statement may be an aggregate combined statement of all
26 underwriting syndicates operating during the period reported upon.

27 * **Sec. 19.** AS 21.34.100(a) is amended to read:

28 (a) When surplus lines insurance is placed, the surplus lines broker shall
29 promptly deliver to the named insured or the producing broker the policy or, if the
30 policy is not then available, a [CERTIFICATE,] cover note, binder, or other evidence
31 of insurance. The [CERTIFICATE,] cover note, binder, or other evidence of

1 insurance for the named insured shall be executed by the surplus lines broker and must
 2 contain a summary of all material facts that would regularly be included in the policy,
 3 the description and location of the subject of insurance, a general description of the
 4 coverages of the insurance, the premium and rate charged and taxes to be collected
 5 from the insured, the name and address of the insured, the name of each surplus lines
 6 insurer and the percentage of the entire risk assumed by each, the name of the surplus
 7 lines broker, and the license number of the surplus lines broker.

8 * **Sec. 20.** AS 21.34.100(f) is amended to read:

9 (f) **A producing broker or other licensee may issue to a person, other than**
 10 **the named insured, a certificate** [EVERY CERTIFICATE ISSUED BY THE
 11 PRODUCING BROKER OR OTHER LICENSEE] as evidence of insurance
 12 negotiated, placed, or procured under this chapter. **The certificate** must bear the
 13 name of the surplus lines broker, which may not be covered, concealed, or obscured
 14 by the producing broker, and the following legend in at least 10-point type: "This is
 15 evidence of insurance procured and developed under the Alaska Surplus Lines Law,
 16 AS 21.34. It is not covered by the Alaska Insurance Guaranty Association Act,
 17 AS 21.80."

18 * **Sec. 21.** AS 21.36.030(a) is amended to read:

19 (a) A person may not make, issue, circulate, broadcast, or have made, issued,
 20 circulated, or broadcast an estimate, circular, statement, illustration, comparison,
 21 **assertion,** or other written, **electronic,** or oral presentation that

22 (1) misrepresents the benefits, advantages, conditions, sponsorship,
 23 source, or terms of an insurance policy;

24 (2) misrepresents the dividends or share of the surplus to be received
 25 on an insurance policy;

26 (3) misrepresents an insurance policy as being a share or shares of
 27 stock;

28 (4) makes a false or misleading statement as to the dividends or shares
 29 of the surplus previously paid on an insurance policy;

30 (5) misrepresents or makes a misleading statement as to the financial
 31 condition of an insurer or as to the legal reserve system upon which a life insurer

1 operates;

2 (6) uses a name or title of an insurance policy or class of insurance
3 policies misrepresenting its true nature;

4 (7) is a misrepresentation for the purpose of inducing, or that tends to
5 induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy;

6 (8) is a misrepresentation for the purpose of effecting or tending to
7 effect a pledge or assignment of or loan against an insurance policy;

8 (9) appears to be an actual policy for a named individual when it is
9 merely an advertisement;

10 (10) does not clearly designate the name of the insurer providing the
11 coverage or about which the statements are made; or

12 (11) is in any other way misleading, false, or deceptive.

13 * **Sec. 22.** AS 21.36.030(a) is amended to read:

14 (a) A person may not make, issue, circulate, broadcast, or have made, issued,
15 circulated, or broadcast an estimate, circular, statement, illustration, comparison,
16 assertion, or other written, electronic, or oral presentation that

17 (1) misrepresents the benefits, advantages, conditions, sponsorship,
18 source, or terms of an insurance policy **or a health discount plan**;

19 (2) misrepresents the dividends or share of the surplus to be received
20 on an insurance policy;

21 (3) misrepresents an insurance policy as being a share or shares of
22 stock;

23 (4) makes a false or misleading statement as to the dividends or shares
24 of the surplus previously paid on an insurance policy;

25 (5) misrepresents or makes a misleading statement as to the financial
26 condition of an insurer or as to the legal reserve system upon which a life insurer
27 operates;

28 (6) uses a name or title of an insurance policy or class of insurance
29 policies misrepresenting its true nature;

30 (7) is a misrepresentation for the purpose of inducing, or that tends to
31 induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy;

1 (8) is a misrepresentation for the purpose of effecting or tending to
2 effect a pledge or assignment of or loan against an insurance policy;

3 (9) appears to be an actual policy for a named individual when it is
4 merely an advertisement;

5 (10) does not clearly designate the name of the insurer providing the
6 coverage or about which the statements are made; [OR]

7 (11) is in any other way misleading, false, or deceptive;

8 **(12) misrepresents a health discount plan as a form or type of**
9 **insurance;**

10 **(13) describes a health discount plan using common insurance**
11 **terminology; or**

12 **(14) misrepresents that a health discount plan is underwritten by**
13 **or associated with an insurer.**

14 * **Sec. 23.** AS 21.36 is amended by adding a new section to read:

15 **Sec. 21.36.065. Limitation on owner controlled and contractor controlled**
16 **insurance programs.** (a) An owner controlled insurance program or a contractor
17 controlled insurance program is subject to both AS 21.39 and AS 21.42, must be
18 approved by the director, and shall be allowed only for a major construction project.
19 Owner controlled and contractor controlled insurance programs are limited to property
20 insurance as defined in AS 21.12.060 and casualty insurance as defined in
21 AS 21.12.070.

22 (b) In this section, an owner controlled or contractor controlled insured
23 program does not include

24 (1) builder's risk or course of construction insurance;

25 (2) insurance relating to the transportation of cargo or other property;

26 (3) insurance covering one or more affiliates, subsidiaries, partners, or
27 joint venture partners of a person; or

28 (4) insurance policies endorsed to name one or more persons as
29 additional insureds.

30 (c) In this section,

31 (1) "contractor" means a person who meets the definition of

1 "contractor" in AS 08.18.171 and who undertakes the performance of a construction
2 project for a project owner, its agent, or its representative;

3 (2) "contractor controlled insurance program" means an insurance
4 program where one or more insurance policies are procured on behalf of a contractor,
5 its agent, or its representative, by its insurance producer, as defined in AS 21.27.900,
6 for the purpose of insuring the contractor and one or more of the following:

7 (A) the project owner;

8 (B) a subcontractor;

9 (C) an architect;

10 (D) an engineer; or

11 (E) a person performing professional services;

12 (3) "major construction project" means the process of constructing a
13 structure, building, facility, or roadway or major renovation of more than 50 percent of
14 an existing structure, building, facility, or roadway having a contract cost of more than
15 \$50,000,000 of a definite term at a geographically defined project site;

16 (4) "owner controlled insurance program" means an insurance program
17 where one or more insurance policies are procured on behalf of a project owner, its
18 agent, or its representative, by its insurance producer, as defined in AS 21.27.900, for
19 the purpose of insuring the project owner and one or more of the following:

20 (A) the contractor;

21 (B) a subcontractor;

22 (C) an architect;

23 (D) an engineer; or

24 (E) a person performing professional services;

25 (5) "project owner" means a person who, in the course of the person's
26 business, engages the service of a contractor for the purpose of working on a
27 construction project;

28 (6) "subcontractor" means a person to whom a contractor sublets all or
29 part of a contractor's initial undertaking.

30 * **Sec. 24.** AS 21.36 is amended by adding a new section to read:

31 **Sec. 21.36.155. Health discount plans.** (a) A person may not sell, market,

1 promote, advertise, or otherwise distribute a health discount plan unless

2 (1) each advertisement, policy, document, information, statement, or
3 other communication regarding the health discount plan and the plan itself contain a
4 statement, in bold and prominent type, that the health discount plan is not insurance;

5 (2) the discounts offered under the health discount plan are specifically
6 authorized by a contract with each provider of the services or supplies listed in
7 conjunction with the plan;

8 (3) the health discount plan states the name, address, and telephone
9 number of the administrator of the plan;

10 (4) the person makes readily available to the consumer a complete,
11 accurate, and up-to-date list of providers participating in the plan that offer discounted
12 health care services or supplies in the consumer's local area and the discounts offered
13 by the providers;

14 (5) the person provides the consumer the right to cancel the health
15 discount plan within 30 days after purchase of the plan; and

16 (6) the person provides the consumer with a full refund of all payments
17 made, except for a nominal processing fee, within 30 days after notification of
18 cancellation of the plan under (5) of this subsection.

19 (b) The director may adopt regulations to implement this section and to
20 establish additional requirements intended to prohibit unfair or deceptive practices
21 relating to health discount plans.

22 * **Sec. 25.** AS 21.36.190 is amended by adding a new subsection to read:

23 (f) Except as provided in AS 21.36.065, an insurer, whether authorized or
24 unauthorized, may not underwrite an owner controlled insurance program or
25 contractor controlled insurance program. In this subsection, "owner controlled
26 insurance program" and "contractor controlled insurance program" have the meanings
27 given in AS 21.36.065.

28 * **Sec. 26.** AS 21.36.195 is amended to read:

29 **Sec. 21.36.195. Surplus lines brokers and insurance producers; prohibited**
30 **acts.** A surplus lines broker or an insurance producer may not fail to provide evidence
31 of insurance, [AFFIDAVITS,] filings, or reports, or fail to maintain the records, or fail

1 to pay the taxes and fees, required under AS 21.34.

2 * **Sec. 27.** AS 21.51 is amended by adding a new section to read:

3 **Sec. 21.51.405. Rate requirements.** Rates charged for a health insurance
4 policy may not be excessive, inadequate, or unfairly discriminatory.

5 * **Sec. 28.** AS 21.55.500(16) is amended to read:

6 (16) "plan administrator" means an [THE] eligible entity that is
7 licensed as a third-party administrator under AS 21.27 and is selected by the
8 board and approved by the director to administer a state plan;

9 * **Sec. 29.** AS 21.66.080(a) is amended to read:

10 (a) Every company, on or before March 1 of each year, shall furnish the
11 director or the director's designee a sworn statement of assets and liabilities, and of
12 all title premiums received by it during the preceding calendar year, setting out, among
13 other things, the amounts that have been set aside and held by it in an account required
14 under AS 21.18.073. The reporting format for a given year is the most recently
15 approved National Association of Insurance Commissioners Annual Financial
16 Statement blank form and instructions, supplemented for additional information as
17 required by the director. The director may require the statement to be filed on
18 electronic media. The statement must also show all unpaid losses and claims upon
19 title insurance policies of which the title insurance company has received due notice in
20 writing from or on behalf of the insured. With the filing of the statement, the title
21 insurance company shall pay a filing fee set under AS 21.06.250.

22 * **Sec. 30.** AS 21.66.085(b) is amended to read:

23 (b) A quarterly financial statement, if required, is due 45 [60] days after the
24 end of the quarter to which it applies.

25 * **Sec. 31.** AS 21.85 is amended by adding new sections to read:

26 **Article 2. Self-Funded Governmental Plans.**

27 **Sec. 21.85.205. Applicability.** A self-funded governmental plan that is
28 exempt from coverage under a group policy covering state employees and their
29 dependents under AS 39.30.090 and regulations adopted under that section shall
30 comply with the provisions of AS 21.85.210 - 21.85.230.

31 **Sec. 21.85.210. Filing requirements.** (a) A self-funded governmental plan

1 shall annually file

2 (1) an audited statement of financial condition and a statement of
3 change in financial condition for the fiscal year affirmed by a trustee of the plan;

4 (2) an actuarial memorandum from a qualified actuary that

5 (A) certifies to the adequacy of reserves, contribution rates and
6 stop-loss insurance coverage;

7 (B) describes the financial condition of the plan, including any
8 recommended actions the plan should take to improve the financial condition
9 of the plan if the qualified actuary believes the financial condition of the plan
10 needs to be improved to remain solvent;

11 (3) the name and contact information of each person providing
12 administrative and consulting services to the plan;

13 (b) A self-funded governmental plan shall file additional information as
14 requested by the director relating to the financial condition, transactions, and affairs of
15 the plan.

16 **Sec. 21.85.215. Minimum standards.** A self-funded governmental plan shall

17 (1) operate under a trust agreement under the governance of a board of
18 trustees that is responsible for all operations of the plan; a trustee may not be an
19 owner, officer, or employee of the administrator of the plan;

20 (2) maintain a fidelity bond issued by an authorized insurance
21 company covering each trustee of the plan in an amount not less than ten percent of
22 the benefits paid during the preceding fiscal year up to a maximum of \$500,000;

23 (3) establish and maintain stop-loss coverage, reserves and
24 contribution rates at a level recommended and certified to by a qualified actuary for
25 the plan to remain financially solvent;

26 (4) maintain adequate facilities and competent personnel, as
27 determined by the director, to service the plan or contract with a third-party
28 administrator registered under AS 21.27 to service the plan;

29 (5) provide each participant a summary plan description as described
30 in 29 U.S.C. 1022, 29 CFR 2520.102-2, 29 CFR 2520.102-3, and 29 CFR 2520.102-4.

31 **Sec. 21.85.225. Additional standards.** In addition to the provisions

1 contained or referred to in AS 21.85.205 - 21.85.230, the following chapters and
 2 provisions of this title also apply with respect to a self-funded governmental plan to
 3 the extent applicable and not in conflict with the express provisions of AS 21.85.205 -
 4 21.85.230 and the reasonable implications of the following chapters and provisions,
 5 and, for the purposes of the application, the plan shall be considered to be a mutual
 6 insurer:

- 7 (1) AS 21.03;
- 8 (2) AS 21.06;
- 9 (3) AS 21.07;
- 10 (4) AS 21.09.100, 21.09.300, and 21.09.320;
- 11 (5) AS 21.18.080 - 21.18.086, and 21.18.100;
- 12 (6) AS 21.36;
- 13 (7) AS 21.42.345 - 21.42.365, and 21.42.375 - 21.42.500;
- 14 (8) AS 21.54;
- 15 (9) AS 21.78;
- 16 (10) AS 21.90.

17 **Sec. 21.85.230. Regulations.** The director may adopt regulations to
 18 implement AS 21.85.205 - 21.85.225, including a requirement that a self-funded
 19 governmental plan includes coverages and standards that are required under this title
 20 for insurance policies of the same type of risk or risks that the self-funded
 21 governmental plan is intended to cover.

22 * **Sec. 32.** AS 21.85.500 is amended by adding a new paragraph to read:

23 (9) "self-funded governmental plan" means a governmental plan as
 24 defined under 29 U.S.C. 1002 (Employee Retirement Income Security Act of 1974),
 25 that

26 (A) is not a federal governmental plan as defined under
 27 AS 21.54.500; and

28 (B) does not provide for payment of benefits under the plan
 29 solely through a policy of insurance issued by one or more authorized
 30 insurance companies.

31 * **Sec. 33.** AS 21.90.900(42) is amended to read:

1 (42) "third-party administrator" means a person who, for residents of
 2 this state, or for residents of another jurisdiction from a place of business in this state,
 3 performs administrative functions including claims administration and payment,
 4 marketing administrative functions, premium accounting, premium billing, coverage
 5 verification, underwriting authority, or certificate issuance in **connection with life**
 6 **insurance, annuities, health insurance, or the provision of coverage for the cost of**
 7 **medical care** [REGARD TO LIFE INSURANCE, HEALTH INSURANCE, OR
 8 ANNUITIES];

9 * **Sec. 34.** AS 21.90.900(43) is amended to read:

10 (43) "transact," with respect to insurance **or the provision of coverage**
 11 **for medical care,** includes

12 (A) solicitation and inducement;

13 (B) preliminary negotiations;

14 (C) effectuation of a contract of insurance **or the provision of**
 15 **coverage for medical care;**

16 (D) transaction of matters subsequent to effectuation of the
 17 contract of insurance **or the provision of coverage for medical care** and
 18 arising out of it;

19 * **Sec. 35.** AS 21.90.900 is amended by adding a new paragraph to read:

20 (45) "health discount plan" means a card, program, device,
 21 arrangement, contract, or mechanism that purports to offer discounts or access to
 22 discounts on health care services or supplies and that is not insurance or that does not
 23 provide coverage for services or benefits regulated under AS 21.86 or AS 21.87.

24 * **Sec. 36.** AS 21.24.040(b); AS 21.27.330(b), and 21.27.650(p) are repealed.

25 * **Sec. 37.** The uncodified law of the State of Alaska is amended by adding a new section to
 26 read:

27 TRANSITION: REGULATIONS. The director of insurance may proceed to adopt
 28 regulations to implement the changes made by secs. 22, 24, and 35 of this Act. The
 29 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
 30 effective date of secs. 22, 24, and 35 of this Act.

31 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 REVISOR'S INSTRUCTIONS. (a) The revisor of statutes is instructed to change the
3 heading of AS 21.85 from "Regulation of Multiple Employer Welfare Arrangements" to
4 "Regulation of Self-Funded Employer Plans."

5 (b) The revisor of statutes is instructed to designate AS 21.85.010 - 21.85.100 as
6 "Article 1. Self-funded Multiple Employer Welfare Arrangements" and to designate
7 AS 21.85.500 as "Article 3. General Provisions."

8 * **Sec. 39.** Sections 22, 24, and 35 of this Act take effect July 1, 2005.

9 * **Sec. 40.** Except as provided in sec. 39 of this Act, this Act takes effect immediately under
10 AS 01.10.070(c).