

CS FOR SENATE BILL NO. 108(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered: 4/15/05

Referred: Finance

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

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the regulation of insurance, insurance licensing, surplus lines,
2 insurer deposits, owner-controlled and contractor-controlled insurance programs,
3 health discount plans, third-party administrators, and self-funded multiple employer
4 welfare arrangements and self-funded governmental plans; and providing for an
5 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

1 the promotion or formation of a domestic insurer or insurance holding corporation, or
2 corporation to finance a domestic insurer or the production of its business.

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

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

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

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

16 (c) Upon notification of suspension or revocation of an insurer's certificate of
17 authority, the insurer shall immediately give notice of the suspension or revocation to
18 its agents and managing general agents operating in this state.

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

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

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

26 (c) If of convenience to the insurer in the buying, selling, and exchange of
27 securities **making up** [COMPRISING] its deposit, and in the collection of interest and
28 other income currently accruing **on the securities** [THEREON], the insurer may, with
29 the director's advance written approval, deposit a portion of the securities under
30 custodial arrangements with an established bank or trust company located outside this
31 state, if receipts representing all the securities are issued by the custodial bank or trust

1 company and are held in [SAFE DEPOSIT OR] custody subject to the requirements of
2 (a) [AND (b)] of this section.

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

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

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

13 (c) A third-party administrator [PERSON WHO FOR A RESIDENT OF
14 THIS STATE, OR FOR A RESIDENT OF ANOTHER JURISDICTION FROM A
15 PLACE OF BUSINESS IN THIS STATE, PERFORMS ADMINISTRATIVE
16 FUNCTIONS, INCLUDING CLAIMS ADMINISTRATION AND PAYMENT,
17 MARKETING ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING,
18 PREMIUM BILLING, COVERAGE VERIFICATION, UNDERWRITING
19 AUTHORITY, OR CERTIFICATE ISSUANCE ONLY IN REGARD TO LIFE
20 INSURANCE, HEALTH INSURANCE, OR ANNUITIES] is not required to be
21 licensed as a managing general agent if the third-party administrator [PERSON]

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

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

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

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

31 (1) an admitted insurer appoints a managing general agent in this state

1 or relative to a subject resident, located, or to be performed in this state;

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

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

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

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

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

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

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

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

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

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

31 **Sec. 21.27.110. Term of appointment.** (a) An appointment under

1 AS 21.27.100 continues in force until the appointment is terminated in writing.

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

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

13 (d) Within 30 days after the appointee receives notification in accordance with
14 (c) of this section, the appointee shall file written comments concerning the substance
15 of the notification with the director and shall provide a copy of the written comments
16 to the insurer, reinsurer, or authorized representative. The written comments filed
17 with the director must be included with each report distributed or disclosed concerning
18 a reason about the termination of the appointment.

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

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

30 (g) If an insurer, a reinsurer, or an authorized representative fails to report as
31 required under this section or is found by a court to have knowingly or intentionally

1 falsely made that report, the director may, after notice and hearing, suspend or revoke
 2 the license or certificate of authority of the insurer, reinsurer, or authorized
 3 representative and may impose a penalty in accordance with AS 21.27.440.

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

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

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

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

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

18 (c) **Except as otherwise provided in this chapter, a third-party**
 19 **administrator** [A PERSON WHO PERFORMS ADMINISTRATIVE FUNCTIONS,
 20 INCLUDING CLAIMS ADMINISTRATION AND PAYMENT, MARKETING
 21 ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING, PREMIUM
 22 BILLING, COVERAGE VERIFICATION, UNDERWRITING AUTHORITY, OR
 23 CERTIFICATE ISSUANCE IN REGARD TO INSURANCE AS A THIRD-PARTY
 24 ADMINISTRATOR] shall be registered **under AS 21.27.630 - 21.27.660** [AS A
 25 THIRD-PARTY ADMINISTRATOR] unless the **third-party administrator**
 26 [PERSON] only investigates and adjusts claims and is licensed under this chapter as
 27 an independent adjuster.

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

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

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

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

5 (a) An insurer may not transact business with a third-party administrator
 6 unless

7 (1) the insurer holds a certificate of authority in this state **if required**
 8 **under this title;**

9 (2) the third-party administrator is registered under this chapter or **the**
 10 **third-party administrator has filed a certification with the director certifying that**
 11 **[, WHEN] the third-party administrator is operating only for a foreign insurer other**
 12 **than a self-funded multiple employer welfare arrangement or self-funded**
 13 **governmental plan regulated under AS 21.85, and** [,] is registered as a third-party
 14 administrator by the third-party administrator's resident insurance regulator in a state
 15 that the director has determined has enacted provisions substantially similar to those
 16 contained in AS 21.27.630 - 21.27.650 and that is accredited by the National
 17 Association of Insurance Commissioners;

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

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

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

24 (C) other information the director may require;

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

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

30 (A) the insurer may terminate the contract for cause upon
 31 written notice sent by certified mail to the third-party administrator and may

1 suspend the underwriting authority of the third-party administrator during a
2 dispute regarding the cause for termination; but the insurer must fulfill all
3 lawful obligations with respect to policies affected by the written agreement,
4 regardless of any dispute between the insurer and the third-party administrator;

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

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

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

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

14 (F) the third-party administrator shall maintain separate records
15 for each insurer in a form usable by the insurer; the insurer or its authorized
16 representative shall have the right to audit and the right to copy all accounts
17 and records related to the insurer's business; the director, in addition to other
18 authority granted in this title, shall have access to all books, bank accounts, and
19 records of the third-party administrator in a form usable to the director; any
20 trade secrets contained in books and records reviewed by the director,
21 including the identity and addresses of policyholders and certificate holders,
22 shall be kept confidential, except that the director may use the information in a
23 proceeding instituted against the third-party administrator or the insurer;

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

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

28 (i) the third-party administrator's maximum annual
29 premium volume;

30 (ii) the rating system and basis of the rates to be
31 charged;

- 1 (iii) the types of risks that may be written;
2 (iv) maximum limits of liability;
3 (v) applicable exclusions;
4 (vi) territorial limitations;
5 (vii) policy cancellation provisions;
6 (viii) the maximum policy term; and
7 (ix) that the insurer shall have the right to cancel or not
8 renew a policy of insurance subject to applicable state law;

9 (I) if the contract permits the third-party administrator to
10 administer claims on behalf of the insurer, the contract must include the
11 following:

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

17 (ii) claims shall be reported to the insurer within 30
18 days;

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

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

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

31 (vi) claim files shall be the sole property of the insurer;

1 upon an order of liquidation of the insurer, the third-party administrator
 2 shall have reasonable access to and the right to copy the files on a
 3 timely basis; and

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

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

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

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

15 (2) a proceeding for bankruptcy, receivership, conservatorship, or
 16 rehabilitation, or another delinquency proceeding regarding the third-party
 17 administrator has been commenced in any state or by a governmental agency of
 18 another jurisdiction;

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

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

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

24 (1) "insurer" includes the Comprehensive Health Insurance
 25 Association created under AS 21.55.010 and a self-funded multiple employer welfare
 26 arrangement or self-funded governmental plan regulated under AS 21.85;

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

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

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

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

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

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

12 (a) When surplus lines insurance is placed, the surplus lines broker shall
 13 promptly deliver to the named insured or the producing broker the policy or, if the
 14 policy is not then available, [A CERTIFICATE,] cover note, binder, or other evidence
 15 of insurance. The [CERTIFICATE,] cover note, binder, or other evidence of insurance
 16 for the named insured shall be executed by the surplus lines broker and must contain a
 17 summary of all material facts that would regularly be included in the policy, the
 18 description and location of the subject of insurance, a general description of the
 19 coverages of the insurance, the premium and rate charged and taxes to be collected
 20 from the insured, the name and address of the insured, the name of each surplus lines
 21 insurer and the percentage of the entire risk assumed by each, the name of the surplus
 22 lines broker, and the license number of the surplus lines broker.

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

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

1 AS 21.80."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 **(13) describes a health discount plan using common insurance**
26 **terminology; or**

27 **(14) states or implies that a health discount plan is underwritten**
28 **by or associated with an insurer.**

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

30 **Sec. 21.36.065. Limitation on owner controlled and contractor controlled**
31 **insurance programs.** (a) An owner controlled insurance program or a contractor

1 controlled insurance program must be approved by the director and shall be allowed
2 only for a major construction project. Owner controlled and contractor controlled
3 insurance programs are limited to property insurance as defined in AS 21.12.060 and
4 casualty insurance as defined in AS 21.12.070.

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

- 7 (1) builder's risk or course of construction insurance;
- 8 (2) insurance relating to the transportation of cargo or other property;
- 9 (3) insurance covering one or more affiliates, subsidiaries, partners, or
10 joint venture partners of a person; or
- 11 (4) insurance policies endorsed to name one or more persons as
12 additional insureds.

13 (c) In this section,

14 (1) "contractor" means a person who meets the definition of
15 "contractor" in AS 08.18.171 and who undertakes the performance of a construction
16 project for a project owner, its agent, or its representative;

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

- 21 (A) the project owner;
- 22 (B) a subcontractor;
- 23 (C) an architect;
- 24 (D) an engineer; or
- 25 (E) a person performing professional services;

26 (3) "major construction project" means the process of constructing a
27 structure, building, facility, or roadway or major renovation of more than 50 percent of
28 an existing structure, building, facility, or roadway having a contract cost of more than
29 \$50,000,000 of a definite term at a geographically defined project site;

30 (4) "owner controlled insurance program" means an insurance program
31 where one or more insurance policies are procured on behalf of a project owner, its

1 agent, or its representative, by its insurance producer, as defined in AS 21.27.900, for
2 the purpose of insuring the project owner and one or more of the following:

3 (A) the contractor;

4 (B) a subcontractor;

5 (C) an architect;

6 (D) an engineer; or

7 (E) a person performing professional services;

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

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

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

14 **Sec. 21.36.155. Health discount plans.** (a) A person may not sell, market,
15 promote, advertise, or otherwise distribute a health discount plan unless

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

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

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

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

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

30 (6) the person provides the consumer with a full refund of all payments
31 made within 30 days after notification of cancellation of the plan under (5) of this

1 subsection.

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

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

6 (f) Except as provided in AS 21.36.065, an insurer, whether an authorized or
7 unauthorized insurer, may not underwrite an owner-controlled insurance program or
8 contractor-controlled insurance program. In this subsection, "owner-controlled
9 insurance program" and "contractor-controlled insurance program" have the meanings
10 given in AS 21.36.065.

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

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

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

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

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

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

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

24 (a) Every company, on or before March 1 of each year, shall furnish the
25 director or the director's designee a sworn statement of assets and liabilities, and of
26 all title premiums received by it during the preceding calendar year, setting out, among
27 other things, the amounts that have been set aside and held by it in an account required
28 under AS 21.18.073. The reporting format for a given year is the most recently
29 approved National Association of Insurance Commissioners Annual Financial
30 Statement blank form and instructions, supplemented for additional information as
31 required by the director. The director may require the statement to be filed on

1 electronic media. The statement must also show all unpaid losses and claims upon title
 2 insurance policies of which the title insurance company has received due notice in
 3 writing from or on behalf of the insured. With the filing of the statement, the title
 4 insurance company shall pay a filing fee set under AS 21.06.250.

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

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

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

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

10 **Sec. 21.85.205. Applicability.** A self-funded governmental plan that is
 11 exempt from coverage under a group policy covering state employees and their
 12 dependents under AS 39.30.090 and regulations adopted under that section must
 13 comply with the provisions of AS 21.85.210 - 21.85.230.

14 **Sec. 21.85.210. Filing requirements.** (a) A self-funded governmental plan
 15 shall annually file

16 (1) at least 60 days before the end of the plan year

17 (A) the contribution rates and an actuarial opinion of the
 18 adequacy of the contribution rates for the next plan year;

19 (B) the summary plan description for the next plan year,
 20 highlighting any changes to plan benefits from the preceding year; and

21 (C) the name of and contact information for each person
 22 providing administrative services to the plan;

23 (2) within 120 days after the end of the plan's fiscal year

24 (A) a certification signed by a trustee of the plan that the plan
 25 complies with the requirements of AS 21.85.205 - 21.85.230;

26 (B) an audited statement of financial condition and a statement
 27 of change in financial condition for the plan's fiscal year, affirmed by a trustee
 28 of the plan;

29 (C) an actuarial memorandum that

30 (i) certifies to the adequacy of reserves and stop-loss
 31 insurance coverage;

1 (ii) describes the financial condition of the plan,
 2 including any recommended actions the plan should take to improve
 3 the financial condition of the plan; and

4 (D) a report showing the number of employees and number of
 5 dependents covered under the plan.

6 (b) Within 60 days after the end of each quarter, a self-funded governmental
 7 plan shall file a statement of financial condition and a statement of change in financial
 8 condition for the preceding quarter.

9 (c) A self-funded governmental plan shall file additional information as
 10 requested by the director relating to the financial condition, transactions, and affairs of
 11 the plan.

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

13 (1) operate in accordance with a trust agreement under the governance
 14 of a board of trustees that is responsible for all operations of the plan; a trustee may
 15 not be an owner, officer, or employee of the administrator of the plan;

16 (2) maintain a fidelity bond covering each trustee of the plan

17 (A) in an amount not less than 10 percent of the benefits paid
 18 during the preceding plan year;

19 (B) and issued by an authorized insurance company;

20 (3) establish and maintain a plan of operation that ensures that the plan
 21 will remain financially solvent as certified to by a qualified actuary;

22 (4) maintain stop-loss insurance coverage as recommended by a
 23 qualified actuary;

24 (5) establish and maintain reserves in an amount at least as great as the
 25 amount recommended and certified by a qualified actuary and in compliance with
 26 AS 21.18.080 - 21.18.086;

27 (6) establish and maintain contribution rates at a level recommended
 28 and certified to by a qualified actuary for the plan to remain financially solvent;

29 (7) maintain adequate facilities and competent personnel, as
 30 determined by the director, to service the plan or contract with a third-party
 31 administrator registered under AS 21.27 to service the plan;

1 (8) provide each participant a summary plan description that is
 2 consistent with the disclosure requirements in 29 U.S.C. 1022 (Employment
 3 Retirement Income Security Act of 1974) and 29 C.F.R. 2520.102-2, 29 C.F.R.
 4 2520.102-3, and 29 C.F.R. 2520.102-4 to the extent applicable and not in conflict with
 5 requirements of this title.

6 **Sec. 21.85.225. Additional standards.** In addition to the provisions
 7 contained or referred to in AS 21.85.205 - 21.85.230, the following chapters and
 8 provisions of this title also apply with respect to a self-funded governmental plan to
 9 the extent applicable and not in conflict with the express provisions of AS 21.85.205 -
 10 21.85.230 and the reasonable implications of the following chapters and provisions,
 11 and, for the purposes of the application, the plan shall be considered to be a mutual
 12 insurer:

- 13 (1) AS 21.03;
- 14 (2) AS 21.06;
- 15 (3) AS 21.07;
- 16 (4) AS 21.09.100, 21.09.300, and 21.09.320;
- 17 (5) AS 21.18.080 - 21.18.086 and 21.18.100;
- 18 (6) AS 21.36;
- 19 (7) AS 21.48;
- 20 (8) AS 21.42.345 - 21.42.365 and 21.42.375 - 21.42.500;
- 21 (9) AS 21.54;
- 22 (10) AS 21.78;
- 23 (11) AS 21.90.

24 **Sec. 21.85.230. Regulations.** The director may adopt regulations to
 25 implement AS 21.85.205 - 21.85.225, including a requirement that a self-funded
 26 governmental plan include coverages and standards that are required under this title
 27 for insurance policies of the same type of risk or risks that the self-funded
 28 governmental plan is intended to cover.

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

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

1 that

2 (A) is not a federal governmental plan, as defined in
3 AS 21.54.500; and

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

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

8 (42) "third-party administrator" means a person who, for residents of
9 this state, or for residents of another jurisdiction from a place of business in this state,
10 performs administrative functions including claims administration and payment,
11 marketing administrative functions, premium accounting, premium billing, coverage
12 verification, underwriting authority, or certificate issuance in **connection with life**
13 **insurance, annuities, or health insurance offered or provided by an insurer, or in**
14 **connection with coverage offered or provided by a multiple employer welfare**
15 **arrangement or self-funded governmental plan regulated under AS 21.85 or the**
16 **Comprehensive Health Insurance Association created under AS 21.55** [REGARD
17 TO LIFE INSURANCE, HEALTH INSURANCE, OR ANNUITIES];

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

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

21 (A) solicitation and inducement;

22 (B) preliminary negotiations;

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

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

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

29 (45) "health discount plan" means a card, program, device,
30 arrangement, contract, or mechanism that purports to offer discounts or access to
31 discounts on health care services or supplies and that is not insurance or that does not

1 provide coverage for services or benefits regulated under AS 21.86 or AS 21.87.

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

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

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

9 * **Sec. 38.** The uncodified law of the State of Alaska is amended by adding a new section to
10 read:

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

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

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

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