

**CS FOR HOUSE BILL NO. 170(FIN)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 4/23/07

Referred: Rules

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to annual audit reports by insurers, to custodians of insurer assets, to  
2 writing workers' compensation insurance by surplus lines insurers, to reports by surplus  
3 lines insurers, to the definition of 'wet marine and transportation insurance,' to false or  
4 misleading financial statements concerning insurance audits, to high deductible health  
5 plans, to retaliation for obligations, prohibitions, or restrictions imposed on Alaska  
6 insurers by other states or countries, and to the membership of the Alaska Life and  
7 Health Insurance Guaranty Association; and providing for an effective date."

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

9 \* **Section 1.** AS 21.09.200 is amended by adding new subsections to read:

10 (g) An insurer shall file with the director or the director's designee an annual  
11 audited financial report for the previous year by June 1 of each year unless, under a  
12 regulation adopted by the director, the director grants an exemption based on a finding

1 that filing an annual audited financial report would constitute a financial or  
2 organizational hardship on the insurer. The filing date for the annual audited financial  
3 report may be extended by the director upon showing that the standards established by  
4 regulation have been met. If the director gives the insurer 90 days' advance notice, and  
5 for good cause, the director may require an insurer to file an audited financial report  
6 earlier than June 1 of each year. The annual audited financial report must be prepared  
7 by a qualified independent certified public accountant. An insurer shall notify the  
8 director of the certified public accountant engaged to conduct the audit and issue the  
9 annual audited financial report.

10 (h) Within 60 days after filing the annual audited financial report under (g) of  
11 this section, the insurer shall file a written report on any unremediated material  
12 weakness in internal control over financial reporting noted during the audit.

13 (i) The director may adopt regulations that require the insurer to file a report  
14 from management describing internal control over financial reporting. An insurer shall  
15 file the report on internal control by the date specified by the director.

16 (j) If the director requires the submission of additional information, the insurer  
17 shall supplement the reports required by (h) and (i) of this section by the date specified  
18 by the director. The reports on internal control filed with the director under (h) and (i)  
19 of this section are confidential and subject to the provisions of AS 21.06.060.

20 (k) In accordance with regulations adopted by the director, an insurer shall  
21 designate an audit committee to engage a qualified independent certified public  
22 accountant to conduct the annual audit. The audit committee shall oversee services  
23 performed by the certified public accountant. If an insurer does not designate an audit  
24 committee, the entire governing board of the insurer is considered to be the audit  
25 committee for purposes of this subsection.

26 (l) The certified public accountant conducting the annual audit required by (g)  
27 of this section shall notify the governing board of the insurer or the audit committee in  
28 writing of a determination by the certified public accountant that the insurer has  
29 materially misstated its financial condition as reported to the director or that the  
30 insurer does not meet the minimum capital requirements and surplus requirements of  
31 this title as of the date of the balance sheet currently under audit. An insurer that has

1 received a report under this subsection shall forward a copy to the director. The  
2 certified public accountant shall also forward the report to the director unless the  
3 insurer provides evidence satisfactory to the certified public accountant that the report  
4 has been forwarded to the director.

5 \* **Sec. 2.** AS 21.09.270(f) is amended to read:

6 (f) For purposes of the application of (a) of this section, a health care insurer,  
7 as defined in AS 21.54.500, may not include taxes, assessments, or other similar  
8 obligations on health care insurance premiums received from the state, a municipality,  
9 a city or borough school district, a regional educational attendance area, the University  
10 of Alaska, or a community college operated by the University of Alaska. [IN THIS  
11 SUBSECTION, "HEALTH CARE INSURER" HAS THE MEANING GIVEN IN  
12 AS 21.54.500.]

13 \* **Sec. 3.** AS 21.21.410 is repealed and reenacted to read:

14 **Sec. 21.21.410. Custodian of insurer assets.** (a) The custodian for assets,  
15 securities, or investments of the insurer may be only a bank, trust company, securities  
16 firm, or clearing corporation that is properly authorized by the insurer and approved  
17 by the director.

18 (b) When securities are deposited with a clearing corporation, certificates  
19 representing securities of the same class of the same issuer may be merged and held in  
20 bulk in the name of the nominee of the clearing corporation with any other securities  
21 deposited with the clearing corporation by any person, regardless of the ownership of  
22 the securities, and certificates representing securities of small denominations may be  
23 merged into one or more certificates of larger denominations. The records of any  
24 custodian through which an insurer holds securities in a clearing corporation must  
25 show that the securities are held for the insurer and for which accounts of the insurer.  
26 Ownership of, and other interest in, the securities may be transferred by bookkeeping  
27 entry on the books of the clearing corporation without physical delivery of certificates  
28 representing the securities.

29 (c) A custodial agreement between an insurer and an institution holding the  
30 assets, securities, or investments of the insurer must be in writing and must be  
31 authorized by a resolution of the board of directors of the insurance company or of an

1 authorized committee of the board. The terms of the custodial agreement must comply  
2 with the requirements of the director.

3 \* **Sec. 4.** AS 21.34.030(a) is amended to read:

4 (a) Workers' compensation insurance may be placed in and written by a  
5 nonadmitted insurer if

6 (1) the director considers it in the best interest of the public and issues  
7 **an order** [A DIRECTIVE] to that effect;

8 (2) the insurance is written in accordance with this chapter; and

9 (3) all conditions established for writing workers' compensation  
10 insurance in a nonadmitted market receive compliance.

11 \* **Sec. 5.** AS 21.34.170(a) is amended to read:

12 (a) A surplus lines broker shall file with the director on or before the end of  
13 each month, on forms prescribed by the director, a [VERIFIED] report of all surplus  
14 lines insurance, by type of insurance as required to be reported in the annual statement  
15 that must be filed with the director by admitted insurers. The report must include all  
16 surplus lines insurance transactions during the preceding calendar month showing the  
17 aggregate gross premiums written, the aggregate return premiums, the amount of  
18 aggregate tax remitted to this state, and the amount of aggregate tax remitted to each  
19 other state for which an allocation is made under AS 21.34.180.

20 \* **Sec. 6.** AS 21.34.900(9) is amended to read:

21 (9) "wet marine and transportation insurance" means **one or more of**  
22 **the following:**

23 (A) insurance upon, of interest in, or relating to vessels, crafts,  
24 hulls, except vessels of 50 displacement tons or less;

25 (B) insurance of marine builders risks, marine war risks, and  
26 contracts of marine protection and indemnity insurance;

27 (C) insurance of freight and disbursements pertaining to a  
28 subject of insurance coming within this paragraph; **or** [AND]

29 (D) insurance of personal property and interests in personal  
30 property, in course of exportation from or importation into a country or in the  
31 course of coastal or inland water transportation, including transportation by

1 land, water, or air from point of origin to final destination in connection with  
 2 any and all risks or perils of navigation, transit, or transportation, and while  
 3 being repaired for and while awaiting shipment, and during any delays,  
 4 transshipment, or reshipment incident to them.

5 \* **Sec. 7.** AS 21.36.060 is amended by adding new subsections to read:

6 (c) A person may not, directly or indirectly, in connection with an audit,  
 7 review, or communication required under AS 21.09.200

8 (1) make or cause to be made a materially false or misleading  
 9 statement to an accountant; or

10 (2) omit to state or cause another person to omit to state any material  
 11 fact necessary in order to make other statements made not misleading to an  
 12 accountant.

13 (d) A person may not, directly or indirectly, take any action to coerce,  
 14 manipulate, mislead, or fraudulently influence any accountant engaged in the  
 15 performance of an audit under AS 21.09.200 if that person knew or should have  
 16 known that the action, if successful, could result in rendering the insurer's financial  
 17 statement materially misleading.

18 \* **Sec. 8.** AS 21.42 is amended by adding a new section to read:

19 **Sec. 21.42.405. High deductible health plan.** (a) A health care insurer that  
 20 offers, issues, delivers, or renews a health care insurance plan in this state may apply  
 21 deductible or copayment requirements to health care benefits and services that qualify  
 22 the health care insurance plan as a high deductible health plan.

23 (b) In this section, "high deductible health plan" has the meaning given in 26  
 24 U.S.C. 223 (Internal Revenue Code).

25 \* **Sec. 9.** AS 21.55.220(f) is amended to read:

26 (f) A member may offset 50 percent of the amount of the assessment under  
 27 this section as a premium tax credit reducing the premium tax payable by the member  
 28 under AS 21.09.210. The offset shall apply to the tax levied for the calendar year  
 29 following an annual determination of each member's liability under (d) of this section.  
 30 The offset may not reduce the premium tax payable by a member to less than zero or  
 31 create a premium tax credit for the member. An unused offset may be carried over to

1 the immediately following calendar year. **An offset made under this subsection is**  
 2 **not subject to AS 21.09.270.**

3 \* **Sec. 10.** AS 21.79.040(a) is amended to read:

4 (a) There is established as a nonprofit legal entity the Alaska Life and Health  
 5 Insurance Guaranty Association. **Each member insurer** [AN INSURER THAT  
 6 ISSUES AN INSURANCE POLICY DESCRIBED IN AS 21.79.020(b)] shall be a  
 7 member of the association as a condition of the insurer's authority to transact  
 8 insurance in this state. The association shall perform its functions under a plan of  
 9 operation established and approved under AS 21.79.080 and shall exercise its powers  
 10 through the Board of Governors established under AS 21.79.050. For purposes of  
 11 administration and assessment, the association shall maintain the following accounts:

12 (1) the health insurance account; and

13 (2) the life insurance and annuity account, including the following  
 14 subaccounts:

15 (A) life insurance account;

16 (B) annuity account that must include annuity contracts owned  
 17 by a governmental retirement benefit plan, or its trustee, qualified under 26  
 18 U.S.C. 401, 26 U.S.C. 403(b), or 26 U.S.C. 457 (Internal Revenue Code), but  
 19 that otherwise excludes unallocated annuities; **and**

20 (C) unallocated annuity account that must exclude contracts  
 21 owned by a governmental retirement benefit plan, or its trustee, qualified under  
 22 26 U.S.C. 401, 26 U.S.C. 403(b), or 26 U.S.C. 457 (Internal Revenue Code).

23 \* **Sec. 11.** AS 21.79.900(10) is amended to read:

24 (10) "member insurer" means an insurer licensed to transact insurance  
 25 in the state **for which coverage is provided** [THAT ISSUES A POLICY  
 26 DESCRIBED] in **AS 21.79.020** [AS 21.79.020(a) AND (b)], or a subscriber contract  
 27 providing benefits described in AS 21.87.120(a)(2) - (4) or 21.87.130(a)(2) and (3),  
 28 and includes an insurer whose license or certificate of authority in this state may have  
 29 been suspended, revoked, not renewed, or voluntarily withdrawn; "member insurer"  
 30 does not include

31 (A) a health maintenance organization licensed under

1 AS 21.86;

2 (B) a fraternal benefit society licensed under AS 21.84;

3 (C) a mandatory state pooling plan;

4 (D) a mutual assessment company or an entity that operates on  
5 an assessment basis;

6 (E) an insurance exchange licensed under AS 21.75;

7 (F) a hospital or medical service organization licensed under  
8 AS 21.87;

9 (G) an organization that has a license or certificate limited to  
10 the issuance of charitable gift annuities; or

11 (H) an entity similar to one described under (A) - (G) of this  
12 paragraph;

13 \* **Sec. 12.** AS 21.89.070 is amended by adding a new subsection to read:

14 (d) A contribution allowed as a tax credit under this section is not subject to  
15 AS 21.09.270.

16 \* **Sec. 13.** AS 21.89.075 is amended by adding a new subsection to read:

17 (e) A contribution allowed as a tax credit under this section is not subject to  
18 AS 21.09.270.

19 \* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to  
20 read:

21 TRANSITION: REGULATIONS. The director of insurance may immediately proceed  
22 to adopt regulations under AS 21.06.090 necessary to implement this Act. The regulations  
23 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date  
24 of the statutory changes.

25 \* **Sec. 15.** Sections 1 and 3 of this Act take effect January 1, 2008, except that  
26 AS 21.09.200(i), enacted by sec. 1 of this Act, takes effect on December 31, 2010, and  
27 AS 21.09.200(k), enacted by sec. 1 of this Act, takes effect on January 1, 2010.

28 \* **Sec. 16.** Section 14 of this Act takes effect immediately under AS 01.10.070(c).

29 \* **Sec. 17.** Except as provided in secs. 15 and 16 of this Act, this Act takes effect July 1,  
30 2007.