

**HOUSE BILL NO. 175**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 3/9/09

Referred: Labor and Commerce, Finance

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to insurance, including treating as confidential certain information  
2 submitted to the director of insurance by the National Association of Insurance  
3 Commissioners; clarifying conditions for the release of insurer deposits; defining travel  
4 insurance that may be sold under a travel insurance limited producer license;  
5 establishing criteria for licensing of nonresident independent adjusters as resident  
6 adjusters; exempting rewards under a wellness program from treatment as insurance  
7 discrimination or rebating; making certain insurance required of the Comprehensive  
8 Health Insurance Association permissive rather than mandatory; providing for the  
9 administration of loss reimbursement policies and payments to guaranty associations  
10 during insolvency proceedings; making certain provisions relating to statements on  
11 applications and guaranteed renewability for individual health insurance applicable to  
12 hospital and medical service corporations; making public certain forms and related

1 documents filed for approval by a hospital or medical service corporation after the filing  
 2 becomes effective; relating to deposits of self-funded multiple employer welfare  
 3 arrangements; repealing reasons that the director of insurance may use to deny or  
 4 revoke a license; and providing for an effective date."

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

6 \* **Section 1.** AS 21.06.060(f) is amended to read:

7 (f) The following information or records submitted to or obtained by the  
 8 director are confidential:

9 (1) personally identifiable consumer information; however, the director  
 10 may disclose the information or records for the purpose of attempting to resolve a  
 11 consumer complaint;

12 (2) information or records established by a showing satisfactory to the  
 13 director to be a trade secret or proprietary business information, including

14 (A) detailed health insurance claim cost data; and

15 (B) justification for usual, customary, and reasonable charge  
 16 determinations;

17 (3) information or records provided by a person not subject to this title  
 18 at the request of the director if the information or records are identified as confidential  
 19 by the director; and

20 (4) [FINANCIAL] analysis ratios and examination synopses  
 21 concerning insurance companies that are submitted to the director by the National  
 22 Association of Insurance Commissioners.

23 \* **Sec. 2.** AS 21.06.180(b) is amended to read:

24 (b) The office of administrative hearings (AS 44.64.010) shall conduct a  
 25 hearing on behalf of the director if required under AS 44.64.030. Otherwise, the  
 26 director shall conduct a hearing if required by a provision of this title, or upon written  
 27 demand to the director by a person aggrieved by an act, threatened act, or failure of the  
 28 director to act, or by a report, regulation, or order of the director (other than an order  
 29 for the holding of a hearing, or an order on hearing or under it). A demand must

1 specify the grounds to be relied upon at the hearing as a basis for the relief. **Except as**  
 2 **provided under AS 21.27.420(d), unless** [UNLESS] postponed by mutual consent or  
 3 for good cause shown, the hearing shall be held within 30 days after receipt by the  
 4 director of the written demand.

5 \* **Sec. 3.** AS 21.06.180(c) is amended to read:

6 (c) **Except as provided under AS 21.27.420(d), if,** [IF] within the 30-day  
 7 period, the director does not either (1) grant the hearing, or (2) issue an order refusing  
 8 the hearing, as to the previous report, regulation, or order as to which the person so  
 9 claims to be aggrieved, the hearing shall be considered to have been refused.

10 \* **Sec. 4.** AS 21.06.190(a) is amended to read:

11 (a) **Except as provided in AS 21.27.420(d), a** [A] demand for a hearing  
 12 received by the director before the effective date of an order issued or within 10 days  
 13 after an order is delivered stays the effectiveness of the order pending the hearing and  
 14 an order made thereon, except as to action taken or proposed under an order

15 (1) on hearing;

16 (2) under and supplemental to an order on hearing; or

17 (3) based upon impairment of assets or unsound financial condition of  
 18 an insurer.

19 \* **Sec. 5.** AS 21.24.130(d) is amended to read:

20 (d) If **a domestic** [THE] insurer is subject to delinquency proceedings **under**  
 21 [AS DEFINED IN] AS 21.78, [UPON THE ORDER OF A COURT OF  
 22 COMPETENT JURISDICTION,] the director shall yield the assets and securities held  
 23 on deposit under AS 21.09.090(b) to the receiver, conservator, rehabilitator, or  
 24 liquidator of the **domestic** insurer [, OR TO ANY OTHER PROPERLY  
 25 DESIGNATED OFFICIAL OR OFFICIALS WHO SUCCEED TO THE  
 26 MANAGEMENT AND CONTROL OF THE INSURER'S ASSETS]. The director  
 27 may release the deposit directly to the guaranty fund of which the insurer is a member  
 28 if the right to receive all or a portion of the deposit is assigned to the guaranty fund.

29 \* **Sec. 6.** AS 21.24.130(f) is amended to read:

30 (f) If **a foreign** [AN] insurer **that is a member of the Alaska Life and**  
 31 **Health Insurance Guaranty Association (AS 21.79) or the Alaska Insurance**

1 **Guaranty Association (AS 21.80)** is found to be insolvent by a proceeding under  
 2 AS 21.78 or by a court of competent jurisdiction in another state, the director shall  
 3 take control of the insurer's deposit made under AS 21.09.090(b). The deposit assets  
 4 shall be released [, AT THE DISCRETION OF THE DIRECTOR,] to the **applicable**  
 5 **guaranty association upon a showing to the director that the association paid**  
 6 [ALASKA INSURANCE GUARANTY ASSOCIATION (AS 21.80) TO  
 7 REIMBURSE FOR] a valid loss, [AND] loss expense, **or contractual obligation**  
 8 [CLAIM PAYMENT MADE BY THE ASSOCIATION] that is within the purpose of  
 9 the deposit. **After the director determines that all losses, loss expense liabilities, or**  
 10 **contractual obligations that were incurred on the insurer's policies written in this**  
 11 **state for which the deposit was required have been paid, the** [THE] director shall  
 12 pay the remaining deposit assets to the receiver, conservator, rehabilitator, or  
 13 liquidator of the insurer, or to another properly designated official who succeeds to the  
 14 management and control of the insurer's assets [, AFTER THE DIRECTOR  
 15 DETERMINES THAT ALL LOSS AND LOSS EXPENSE LIABILITIES HAVE  
 16 BEEN PAID THAT WERE INCURRED ON THE INSURER'S POLICIES  
 17 WRITTEN IN THIS STATE FOR WHICH THE DEPOSIT WAS REQUIRED].

18 \* **Sec. 7.** AS 21.24.130 is amended by adding a new subsection to read:

19 (g) If an insurer is not a member of the Alaska Life and Health Guaranty  
 20 Association established by AS 21.79 or the Alaska Insurance Guaranty Association  
 21 established by AS 21.80, the director shall take control of the insurer's deposit made  
 22 under AS 21.09.090(b) if the insurer is found to be insolvent by a proceeding under  
 23 AS 21.78 or by a court of competent jurisdiction in another state. The director shall  
 24 release the deposit assets to the receiver, conservator, rehabilitator, or liquidator of the  
 25 insurer, or to any other properly designated official who succeeds to the management  
 26 and control of the insurer's assets.

27 \* **Sec. 8.** AS 21.27.140(b) is amended to read:

28 (b) A firm may not be licensed as an insurance producer, managing general  
 29 agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus  
 30 lines broker, or independent adjuster, or transact insurance unless each individual  
 31 employed as an insurance producer, managing general agent, surplus lines broker,

1 trainee independent adjuster, or independent adjuster by the firm is licensed as an  
 2 individual in the firm. [EACH COMPLIANCE OFFICER OF THE FIRM SHALL BE  
 3 LICENSED AS AN INDIVIDUAL IN THE FIRM FOR A SPECIFIC LINE AND  
 4 CLASS OF AUTHORITY. IF THERE IS MORE THAN ONE COMPLIANCE  
 5 OFFICER, THE COMBINED AUTHORITY OF ALL COMPLIANCE OFFICERS  
 6 SHALL COVER ALL THE POWERS CONFERRED BY THE FIRM'S LICENSE.]

7 \* **Sec. 9.** AS 21.27.150(a) is amended to read:

8 (a) The director may issue a

9 (1) travel insurance limited producer license to a person who **is**  
 10 **appointed under AS 21.27.100 and who** sells **insurance connected with**  
 11 **transportation provided by a common carrier, and limited to a specific trip, that**  
 12 **covers**

13 **(A) trip cancellation;**

14 **(B) trip interruption; or**

15 **(C) life, health, disability, or personal effects**

16 [TRANSPORTATION TICKETS OF A COMMON CARRIER OF PERSONS  
 17 OR PROPERTY, WHO IS APPOINTED UNDER AS 21.27.100 FOR  
 18 TRANSPORTATION TICKET POLICIES OF HEALTH INSURANCE,  
 19 BAGGAGE INSURANCE ON PERSONAL EFFECTS, AND TRIP  
 20 CANCELLATION OR TRIP INTERRUPTION INSURANCE];

21 (2) title insurance limited producer license to a person whose place of  
 22 business is located in this state and whose sole purpose is to be appointed by and act  
 23 on behalf of a title insurer;

24 (3) bail bond limited producer license to a person who is appointed by  
 25 and acts on behalf of a surety insurer pertaining to bail bonds;

26 (4) motor vehicle rental agency limited producer license to a person  
 27 and, subject to the approval of the director, to employees of the person licensed that  
 28 the licensee authorizes to transact the business of insurance on the licensee's behalf if,  
 29 as to an employee, the licensee complies with (D) of this paragraph and if the licensee

30 (A) rents to others, without operators,

31 (i) private passenger motor vehicles, including

1 passenger vans, minivans, and sport utility vehicles; or

2 (ii) cargo motor vehicles, including cargo vans, pickup  
3 trucks, and trucks with a gross vehicle weight of less than 26,000  
4 pounds that do not require the operator to possess a commercial driver's  
5 license;

6 (B) rents motor vehicles only to persons under rental  
7 agreements that do not exceed a term of 90 days;

8 (C) transacts only the following kinds of insurance:

9 (i) motor vehicle liability insurance with respect to  
10 liability arising out of the use of a vehicle rented from the licensee  
11 during the term of the rental agreement;

12 (ii) uninsured or underinsured motorist coverage, with  
13 minimum limits described in AS 21.89.020(c) and (d) arising **from**  
14 [OUT OF] the use of a vehicle rented from the licensee during the term  
15 of the rental agreement;

16 (iii) insurance against medical, hospital, surgical, and  
17 disability benefits to an injured person and funeral and death benefits to  
18 dependents, beneficiaries, or personal representatives of a deceased  
19 person if the insurance is issued as incidental coverage with or  
20 supplemental to liability insurance and arises out of the use of a vehicle  
21 rented from the licensee during the term of the rental agreement;

22 (iv) personal effects insurance, including loss of use,  
23 with respect to damage to or loss of personal property of a person  
24 renting the vehicle and other vehicle occupants while that property is  
25 being loaded into, transported by, or unloaded from a vehicle rented  
26 from the licensee during the term of the rental agreement;

27 (v) towing and roadside assistance with respect to  
28 vehicles rented from the licensee during the term of the rental  
29 agreement; and

30 (vi) other insurance as may be authorized by regulation  
31 by the director;

1 (D) notifies the director in writing, within 30 days of  
 2 employment, of the name, date of birth, social security number, location of  
 3 employment, and home address of an employee authorized by the licensee to  
 4 transact insurance on the licensee's behalf; and

5 (E) provides other information as required by the director;

6 (5) nonresident limited producer license to a person; a license that the  
 7 director issues under this paragraph grants the same scope of authority as a limited  
 8 lines producer license issued to the person by the person's home state;

9 (6) credit insurance limited producer license to a person who sells  
 10 limited lines credit insurance;

11 (7) miscellaneous limited producer license to a person who transacts  
 12 insurance in this state that restricts the person's authority to less than the total authority  
 13 for a line of authority described in AS 21.27.115(1) - (6), (8), and (9).

14 \* **Sec. 10.** AS 21.27.270(b) is amended to read:

15 (b) Unless the director denies or refuses to renew a license under  
 16 AS 21.27.410, the director shall issue a nonresident producer, limited lines,  
 17 **independent adjuster**, surplus lines broker, managing general agent, reinsurance  
 18 intermediary broker, or reinsurance intermediary manager license to a person who is  
 19 not a resident of this state if

20 (1) the person is currently licensed and is in good standing in the  
 21 person's home state; the director may verify the person's licensing status through the  
 22 producer licensing database records maintained by the National Association of  
 23 Insurance Commissioners or its affiliates or subsidiaries **or, if an independent**  
 24 **adjuster's home state does not license independent adjusters, the independent**  
 25 **adjuster qualifies under AS 21.27.020;**

26 (2) the person has paid the fees required under AS 21.06.250 and has  
 27 submitted to the director

28 (A) the license application the person submitted to the person's  
 29 home state; or

30 (B) if the person is not a firm, a completed uniform application  
 31 or, if a firm, the uniform business entity application; and

1 (3) the person's home state awards nonresident producer, limited lines,  
 2 **independent adjuster**, surplus lines, managing general agent, reinsurance  
 3 intermediary broker, and reinsurance intermediary manager licenses to residents of  
 4 this state on the same basis as does this state.

5 \* **Sec. 11.** AS 21.27.420 is amended by adding a new subsection to read:

6 (d) Without prior hearing, the director may order summary suspension of a  
 7 license if the director finds that protection of the public requires emergency action and  
 8 incorporates that finding in an order. The suspension is effective on the date specified  
 9 in the order or on the date of mailing by first class mail to the licensee's business  
 10 address on record with the division, whichever is later. If the licensee requests a  
 11 hearing, the director shall conduct a hearing on the suspension within a reasonable  
 12 time but not later than 20 days after the effective date of the summary suspension  
 13 unless the person whose license is suspended requests a later date. At the hearing, the  
 14 director shall determine if the suspension should be continued or withdrawn and, if  
 15 proper notice is given, may determine if the license should be revoked. The director  
 16 shall issue a decision within 30 days after the conclusion of the hearing. If the director  
 17 decides to continue the suspension or revoke the license, the suspension or revocation  
 18 must be based on one or more grounds in AS 21.27.410. The summary suspension  
 19 continues until the decision is issued. AS 21.06.190 and AS 44.64.030 are not  
 20 applicable to a hearing under this subsection.

21 \* **Sec. 12.** AS 21.27.630 is amended by adding a new subsection to read:

22 (m) A person who is an employee of a third-party administrator and who acts  
 23 within the course and scope of that employment and within the scope of the written  
 24 contract required under AS 21.27.650(a)(4) is not required to be registered as a third-  
 25 party administrator under this section. The third-party administrator is responsible for  
 26 the acts of its employees regulated under this title.

27 \* **Sec. 13.** AS 21.27.900(11) is amended to read:

28 (11) "home state" means the District of Columbia or a state or territory  
 29 of the United States in which an insurance producer **or an independent adjuster**  
 30 maintains the producer's **or adjuster's** principal place of residence or principal place  
 31 of business and is licensed to act as an insurance producer **or independent adjuster**;

1 \* **Sec. 14.** AS 21.34.020 is amended by adding a new subsection to read:

2 (c) If a policy holder meets the standards of an exempt commercial  
3 policyholder under this title and regulations adopted by the director, insurance may be  
4 procured from a surplus lines broker without complying with (a)(2), (3), and (4) of this  
5 section.

6 \* **Sec. 15.** AS 21.34.040(d) is amended to read:

7 (d) A nonadmitted insurer may be eligible to provide coverage in this state if it  
8 **files with** [FURNISHES TO] the director **or the director's designee** a copy of its  
9 current annual **financial** statement that has been certified by the insurer. **The financial**  
10 **statement must be** [EXCEPT IN THE CASE OF AN ALIEN INSURER, THE  
11 STATEMENT SHALL BE PROVIDED NOT MORE THAN SIX MONTHS AFTER  
12 THE CLOSE OF THE PERIOD REPORTED UPON AND THAT IS EITHER] filed  
13 with and approved by the regulatory authority in the domicile of the nonadmitted  
14 insurer, or certified by an accounting or auditing firm licensed in the jurisdiction of the  
15 insurer's domicile. **A foreign insurer shall provide the approved or certified**  
16 **financial statement not more than six months after the close of the reporting**  
17 **period.** An alien insurer shall provide the **approved or certified financial** statement  
18 not **more** [LATER] than nine months after the close of the reporting period. In the  
19 case of an insurance exchange, the statement may be an aggregate combined statement  
20 of all underwriting syndicates operating during the period reported upon.

21 \* **Sec. 16.** AS 21.34.080(a) is amended to read:

22 (a) A surplus lines broker shall execute and file with the monthly report  
23 required by AS 21.34.170 a written report, which shall be kept confidential, regarding  
24 each surplus lines insurance transaction occurring in the preceding calendar month.  
25 The report must include

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

27 (2) the identity of each insurer including the National Association of  
28 Insurance Commissioners [GROUP AND] company [INSURER] number and the  
29 percentage of coverage provided by each;

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

31 (4) the amount of **gross** premium **written** [CHARGED] for the

1 insurance; and

2 (5) other information required by the director.

3 \* **Sec. 17.** AS 21.36.110 is amended to read:

4 **Sec. 21.36.110. Exceptions to discrimination and rebates.** Nothing in  
5 AS 21.36.090, [AND] 21.36.100, **and AS 21.54.100** may be construed as including  
6 within the definition of discrimination or rebates any of the following practices:

7 (1) in the case of a contract of life insurance or life annuity, paying  
8 bonuses to policyholders or otherwise abating their premiums in whole or in part out  
9 of surplus accumulated from nonparticipating insurance, if the bonuses [,] or  
10 abatement of premiums are fair and equitable to policyholders and for the best  
11 interests of the insurer;

12 (2) in the case of a life insurance **policy** [POLICIES] issued on [THE]  
13 industrial debit, preauthorized check, bank draft, or similar plans, making allowance to  
14 policyholders who have [CONTINUOUSLY FOR A SPECIFIED PERIOD] made  
15 premium payments directly to an office of the insurer or by preauthorized **debit,**  
16 check, bank draft, or similar plan, in an amount that fairly represents the saving in  
17 collection expense;

18 (3) readjustment of the rate of premium for a group insurance policy  
19 based on the loss or expense experience thereunder, at the end of the first or a  
20 subsequent policy year of insurance thereunder, which may be made retroactive only  
21 for that policy year;

22 (4) issuance of life or health insurance policies or annuity contracts at  
23 rates less than the usual rates of premiums for the policies or contracts, or modification  
24 of premium or rate based on amount of insurance; but the issuance or modification  
25 **may** [SHALL] not result in reduction in premium or rate in excess of savings in  
26 administration and issuance expenses reasonably attributable to the policies or  
27 contracts;

28 **(5) a reward under a wellness program established under a health**  
29 **care plan that favors an individual if the wellness program meets the following**  
30 **requirements:**

31 **(A) the wellness program is reasonably designed to promote**

1 health or prevent disease;

2 (B) an individual has an opportunity to qualify for the  
3 reward at least once a year;

4 (C) the reward is available for all similarly situated  
5 individuals;

6 (D) the wellness program has alternative standards for  
7 individuals who are unable to obtain the reward because of a health  
8 factor;

9 (E) alternate standards are available for an individual who  
10 is unable to participate in a reward program because of a health  
11 condition;

12 (F) the insurer provides information explaining the  
13 standard for achieving the reward and discloses the alternate standards;  
14 and

15 (G) the total rewards for all wellness programs under the  
16 health insurance policy do not exceed 20 percent of the cost of coverage.

17 \* **Sec. 18.** AS 21.36.355(a) is amended to read:

18 (a) A person who has a conviction for a felony involving dishonesty or a  
19 breach of trust may not engage or participate in the business of insurance without  
20 receiving prior written consent by the director or by the insurance regulatory  
21 official of the person's home state as required under 18 U.S.C. 1033 and 1034  
22 (Violent Crime Control and Law Enforcement Act of 1994).

23 \* **Sec. 19.** AS 21.42.120(d) is amended to read:

24 (d) The director may, by order, require that a form or document be filed for  
25 informational purposes or may exempt a form or document from the requirements  
26 of this section for a time determined by the director when, [AN INSURANCE  
27 DOCUMENT OR FORM OR TYPE THEREOF AS SPECIFIED IN THE ORDER,  
28 TO WHICH,] in the opinion of the director, this section may not practicably be  
29 applied, or the filing or [AND] approval of the form or document is [WHICH ARE],  
30 in the opinion of the director, not desirable or necessary for the protection of the  
31 public. [THE DIRECTOR SHALL, BY JULY 1, 2002, ADOPT REGULATIONS

1 CONSISTENT WITH THE NATIONAL ASSOCIATION OF INSURANCE  
 2 COMMISSIONERS PROPERTY AND CASUALTY MODEL RATE AND POLICY  
 3 FORM ACT AUTHORIZING A POLICY OF COMMERCIAL INSURANCE TO BE  
 4 FILED ON OR BEFORE THE DATE OF USE AND TO BE NOT SUBJECT TO  
 5 THE PRIOR APPROVAL OF THE DIRECTOR.]

6 \* **Sec. 20.** AS 21.42.160(d) is amended to read:

7 (d) Each policy and annuity contract issued by **an** [A DOMESTIC] insurer,  
 8 and the forms thereof filed with the director, must have printed on them an appropriate  
 9 designating letter or figure, or combination of letters or figures, or terms identifying  
 10 the respective forms of policies or contracts, together with the year of adoption of the  
 11 form. When a change is made in the form, the designating letters, figures, or terms and  
 12 year of adoption **must** [SHALL] be correspondingly changed.

13 \* **Sec. 21.** AS 21.42.385(b) is amended to read:

14 (b) The minimum coverage required under (a) of this section [MAY]

15 (1) **may** be provided under contract with another health care insurer;  
 16 [AND]

17 (2) **may** not be less than the dental, vision, and hearing coverage  
 18 provided on **July 1, 2009** [JANUARY 1, 1992], to an individual entitled to medical  
 19 benefits under AS 39.35.535 (public employees' retirement system of Alaska); **and**

20 **(3) shall be adjusted by the director on July 1, 2012, and every**  
 21 **three years thereafter to correspond to changes in coverage provided to**  
 22 **individuals entitled to medical benefits under AS 39.35.535.**

23 \* **Sec. 22.** AS 21.55.100(b) is amended to read:

24 (b) The association **may** [SHALL] make available to residents who are high  
 25 risks, eligible for and covered by Medicare, 65 years of age or older, and eligible  
 26 under this chapter [AT LEAST] one **or more** Medicare supplement **plans** [PLAN]  
 27 that **meet** [MEETS] the minimum policy standards and minimum benefit standards  
 28 established by regulations adopted by the director under AS 21.89.060.

29 \* **Sec. 23.** AS 21.55.500(19) is repealed and reenacted to read:

30 (19) "resident" means

31 (A) except for a federally defined eligible individual or TAA

1 eligible individual, an individual who meets the eligibility requirements in  
2 AS 43.23.005; or

3 (B) for a federally defined eligible individual or TAA eligible  
4 individual, an individual who is legally domiciled in this state.

5 \* **Sec. 24.** AS 21.78.010(b) is amended to read:

6 (b) **Except as provided under AS 21.24, delinquency** [DELINQUENCY]  
7 proceedings under this chapter constitute the sole and exclusive method of liquidating,  
8 rehabilitating, reorganizing, or conserving an insurer, and a court may not entertain a  
9 petition for the commencement of the proceedings unless it has been filed in the name  
10 of the state on the relation of the director.

11 \* **Sec. 25.** AS 21.78.260 is amended to read:

12 **Sec. 21.78.260. Priority of distribution. Except as provided under**  
13 **AS 21.78.327(a), the** [THE] priority of distribution of claims from an insurer's estate  
14 is in accordance with the order in which each class of claims is set out in this section.  
15 Every claim in each class must be paid in full, or adequate money retained for  
16 payment, before the members of the next class may receive payment. A subclass may  
17 not be established within a class. The order of distribution of claims is

18 (1) class 1: the costs and expenses of administration during  
19 rehabilitation and liquidation, including

20 (A) the actual and necessary costs preserving or recovering the  
21 assets of the insurer;

22 (B) compensation for all services rendered in the rehabilitation  
23 and liquidation;

24 (C) any necessary filing fees;

25 (D) the fees and mileage payable to witnesses;

26 (E) reasonable **attorney** [ATTORNEY'S] fees and other  
27 professional services rendered in the rehabilitation and liquidation;

28 (F) the reasonable expenses of a guaranty association or foreign  
29 guaranty association that is handling claims;

30 (2) class 2: reasonable compensation to employees for services  
31 performed, to the extent that the claim does not exceed two months of monetary

1 compensation and represents payment for services performed within one year before  
2 the filing of the petition for liquidation or, if rehabilitation preceded liquidation, within  
3 one year before the filing of the petition for rehabilitation; principal officers and  
4 directors of the insurer are not entitled to the benefit of this priority except as  
5 otherwise approved by the receiver and the court; the priority in this paragraph is in  
6 place of any other similar priority that might be authorized by law as to wages or  
7 compensation of employees;

8 (3) class 3: all claims under policies, including claims of the federal or  
9 a state or local government, for losses incurred, including third-party claims, and all  
10 claims of a guaranty association or foreign guaranty association; all claims under life  
11 insurance and annuity policies, whether for death proceeds, annuity proceeds, or  
12 investment values, shall be treated as loss claims; that portion of a loss for which  
13 indemnification is provided by other benefits or advantages recovered by the claimant,  
14 may not be included in this class, other than benefits or advantages recovered or  
15 recoverable in discharge of familial obligations or support, or by way of succession at  
16 death, or as proceeds of life insurance, or as gratuities; payment by an employer to an  
17 employee may not be treated as a gratuity;

18 (4) class 4: claims under nonassessable policies for unearned premium  
19 or other premium refunds and claims of general creditors, including claims of ceding  
20 and assuming companies under contracts of reinsurance;

21 (5) class 5: claims of the federal or a state or local government, other  
22 than claims under (3) of this section; claims, including those of a government body for  
23 a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary  
24 loss sustained from the act, transaction, or proceeding out of which the penalty or  
25 forfeiture arose, along with reasonable and actual costs attributable to it; the remaining  
26 portion of the claims are in the class of claims set out in (7) of this section;

27 (6) class 6: claims filed late, or any other claims other than claims  
28 under (7) and (8) of this section;

29 (7) class 7: surplus or contribution notes, or similar obligations, and  
30 premium refunds on assessable policies; payments to members of domestic mutual  
31 insurance companies shall be limited in accordance with law;

1 (8) class 8: the claims of shareholders or other owners, in their  
2 capacity as shareholders.

3 \* **Sec. 26.** AS 21.78 is amended by adding new sections to read:

4 **Sec. 21.78.327. Administration of loss reimbursement policies.** (a) Unless  
5 otherwise prohibited by law, under the authority given in AS 21.78.130 to administer  
6 assets, the receiver may enter into an agreement allowing an insured to fund or pay a  
7 loss reimbursement claim directly or through a third-party administrator. A payment  
8 made under those agreements is not considered a claim subject to priority of  
9 distribution under AS 21.78.260.

10 (b) Unless otherwise prohibited by law, if an insurer subject to a delinquency  
11 proceeding under this chapter entered into an agreement allowing the insured to fund  
12 or pay a loss reimbursement claim directly or through a third-party administrator, the  
13 insured shall continue to fulfill its obligations under the agreement, and the receiver  
14 may enforce the agreement.

15 (c) An agreement entered into or reaffirmed under (a) and (b) of this section  
16 may be terminated in the manner specified in the agreement.

17 (d) An insured's payment of a loss reimbursement claim in whole or in part,  
18 including a payment made by a third-party administrator on behalf of the insured,  
19 extinguishes the obligation, if any, of the receiver or guaranty association to pay that  
20 claim or a portion of that claim in a delinquency proceeding under this chapter. A  
21 third-party claimant's acceptance of the insured's payment of a loss reimbursement  
22 claim in full or final settlement of the claim bars recovery for that claim in a  
23 delinquency proceeding.

24 (e) For loss reimbursements owed by an insured,

25 (1) the receiver shall bill an insured for reimbursement of a loss  
26 reimbursement claim when

27 (A) the insurer paid the claim before the commencement of a  
28 delinquency proceeding;

29 (B) the receiver is notified that a guaranty association has paid  
30 a loss reimbursement claim;

31 (C) the receiver has paid a loss reimbursement claim; or

1 (D) a loss reimbursement claim is allowed in a liquidation  
2 proceeding;

3 (2) a loss reimbursement paid to the receiver is a general asset of the  
4 estate of an insurer subject to a delinquency proceeding under this chapter;

5 (3) the receiver shall, without court approval, distribute to a guaranty  
6 association, as an early access payment under AS 21.78.328, a loss reimbursement  
7 received by the receiver that is allocable to a claim paid by the guaranty association;

8 (4) if an insured does not pay a loss reimbursement within the time  
9 specified in the loss reimbursement policy, or within 60 days after receipt of the  
10 billing, the receiver may take all commercially reasonable actions necessary to collect  
11 a loss reimbursement owed; and

12 (5) the insolvency of an insurer, the receiver's inability to perform an  
13 insurer's obligations under a loss reimbursement policy, or an allegation of improper  
14 handling or payment of a loss reimbursement claim by the receiver or a guaranty  
15 association is not a defense to the insured's reimbursement obligation under the loss  
16 reimbursement policy.

17 (f) For collateral held under a loss reimbursement policy issued by an insurer  
18 subject to a delinquency proceeding under this chapter, the receiver shall

19 (1) maintain and administer the collateral in accordance with the loss  
20 reimbursement policy except where the loss reimbursement policy conflicts with this  
21 section;

22 (2) apply the collateral first to meet all early access distributions to a  
23 guaranty association under (e)(3) of this section if the loss reimbursement collateral,  
24 when combined with loss reimbursement payments that have been made by an  
25 insured, is insufficient to

26 (A) reimburse loss reimbursement claims already paid by the  
27 insurer, the receiver and guaranty associations; and

28 (B) discharge all currently due and past due loss reimbursement  
29 claims and other secured obligations.

30 (g) If the receiver does not seek or is unsuccessful in obtaining reimbursement  
31 from the insured for a loss reimbursement claim and collateral is not available,

1 (1) a guaranty association may, after notice to the receiver, seek to  
2 collect reimbursement owed from the insured on the same basis as the receiver and  
3 with the same rights and remedies, including the right to recover reasonable costs of  
4 collection from the insured;

5 (2) the guaranty association shall report to the receiver the  
6 reimbursements collected from each insured;

7 (3) the receiver shall provide the guaranty association with available  
8 information needed to collect a reimbursement owed from the insured;

9 (4) a guaranty association shall notify all other guaranty associations  
10 that have paid loss reimbursement claims on behalf of the same insured whenever it  
11 undertakes to collect reimbursements from an insured;

12 (5) the guaranty association shall treat the amounts collected as an  
13 early access payment subject to AS 21.78.328(h);

14 (6) the expenses incurred by a guaranty association in pursuing  
15 reimbursement may not be allowed as a claim in the delinquency proceeding;  
16 however, a guaranty association may deduct the expenses incurred in collecting  
17 reimbursement against a loss reimbursement recovered from an insured.

18 (h) The receiver may recover from the insured or from loss reimbursement  
19 collateral all reasonable expenses that the receiver incurs in fulfilling its  
20 responsibilities under this section. Those expenses are in addition to the insured's  
21 obligation to reimburse claims and related claims expenses and do not diminish the  
22 rights of third-party claimants.

23 (i) In this section,

24 (1) "loss reimbursement"

25 (A) means a payment made by an insured to or on behalf of an  
26 insurer for loss or loss adjustment expense under the terms of a loss  
27 reimbursement policy, and the insurer is responsible for payment regardless of  
28 whether the insured has met its obligations;

29 (B) includes a voluntary or involuntary application of loss  
30 reimbursement collateral to the obligations of the insured;

31 (C) does not include

1 (i) payments made by an insured under a deductible  
 2 arrangement under which an insurer does not have an obligation to pay  
 3 or advance the amount of the deductible on behalf of the insured;

4 (ii) payments made by an insured under a self-insurance  
 5 arrangement under which the insurer does not have a payment  
 6 obligation for the obligation of the self-insured;

7 (iii) retrospectively rated premium payments; or

8 (iv) reinsurance claim payments made by a captive  
 9 reinsurer or other reinsurer affiliated with or funded by the insured or  
 10 affiliated with the insurer;

11 (2) "loss reimbursement claim"

12 (A) means a claim that is reimbursable by the insured under the  
 13 terms of a loss reimbursement policy;

14 (B) includes loss adjustment expenses that are subject to  
 15 reimbursement by the terms of a loss reimbursement policy;

16 (3) "loss reimbursement collateral" means cash, a letter of credit, a  
 17 surety bond, or any other form of security provided by an insured to secure its loss  
 18 reimbursement obligations, regardless of whether the collateral is held by, for the  
 19 benefit of, or assigned to an insurer, and regardless of whether the collateral also  
 20 secures other obligations of the insured;

21 (4) "loss reimbursement policy" means a combination of one or more  
 22 policies, endorsements, contracts, or security agreements that may provide for a  
 23 specific dollar amount of loss reimbursement applicable to each claim, an aggregate  
 24 dollar amount applicable to all claims under the policy, or both and where the insured

25 (A) has agreed with the insurer to

26 (i) pay directly a portion of a loss or loss adjustment  
 27 expense owed by the insurer under the policy up to a specified dollar  
 28 amount; or

29 (ii) reimburse the insurer for its payment of loss and  
 30 loss adjustment expense under the policy up to a specified dollar  
 31 amount; and

1 (B) remains liable for payment of loss and loss adjustment  
 2 expense under the policy, regardless of whether the insured has met its  
 3 obligations;

4 (5) "other secured obligations" means an obligation, such as a  
 5 reinsurance or retrospective premium obligation, that is payable by an insured to an  
 6 insurer and that is secured by collateral that also secures a loss reimbursement  
 7 obligation.

8 **Sec. 21.78.328. Early access disbursements.** (a) Within 120 days after the  
 9 entry of an order of liquidation, and at least annually thereafter, the receiver shall  
 10 apply to the court for approval to make early access payments out of the general assets  
 11 of the insurer, in an amount consistent with the requirements of this section, to a  
 12 guaranty association having obligations arising in connection with the liquidation or  
 13 report to the court that the receiver has determined that there are no distributable assets  
 14 at that time. The receiver may apply to the court for approval to make early access  
 15 payments more frequently than annually based on additional information or the  
 16 recovery of material assets.

17 (b) An amount advanced to a guaranty association under this section must be  
 18 accounted for as an advance against a distribution to be made under AS 21.78.294.

19 (c) For purposes of (a) of this section, the distributable assets are the general  
 20 assets of the liquidation estate less amounts reserved, to the extent necessary and  
 21 appropriate, for

22 (1) costs, expenses, or compensation under AS 21.78.260(1), not  
 23 including the expenses of a guaranty association, and under AS 21.78.260(2) through  
 24 and after closure of the liquidation proceeding; and

25 (2) the class of claims under AS 21.78.260(3) other than a claim of a  
 26 guaranty association.

27 (d) If sufficient distributable assets are available, the amounts advanced need  
 28 not be limited to the claims and expenses paid to date by the guaranty associations;  
 29 however, the receiver may not distribute distributable assets to a guaranty association  
 30 in excess of the entire anticipated claims of a guaranty association falling within the  
 31 class of claims under AS 21.78.260(3).

1 (e) Within 60 days after the court's approval of an application filed under (a)  
2 of this section, the receiver shall make early access payments to the affected guaranty  
3 associations as indicated in the approved application.

4 (f) For each application for early access payments or any report to the court  
5 required under this section, the receiver shall give notice of the application or report to  
6 a guaranty association that may have obligations arising from a liquidation. The  
7 receiver shall provide the guaranty association with at least 30 days' actual notice of  
8 the filing of an application with a complete copy of the application before any action  
9 by the court. A guaranty association that may have obligations arising in connection  
10 with the liquidation shall have the right to

11 (1) request additional information from the receiver, who may not  
12 unreasonably deny the request; and

13 (2) file an objection with the court to any part of each application or to  
14 any report filed by the receiver under this section.

15 (g) In each application regarding early access payments, the receiver shall,  
16 based on the best information available to the receiver at the time, provide, at a  
17 minimum,

18 (1) to the extent necessary and appropriate, the amount reserved for the  
19 entire expenses of the liquidation through and after its closure and for distributions  
20 related to the class of claims under AS 21.78.260(2) and (3);

21 (2) the calculation of distributable assets and the amount and method  
22 of equitable allocation of early access payments to each guaranty association; and

23 (3) the most recent financial information of the insurer in liquidation.

24 (h) A guaranty association that receives payments under this section agrees,  
25 upon depositing the payment in an account to its benefit, to return to the receiver any  
26 amount of the payment that may be required to pay claims of secured creditors and  
27 claims falling within the class of claims under AS 21.78.260(1), (2), and (3). A  
28 guaranty association is not required to secure its obligations under this section with a  
29 bond.

30 (i) Without the consent of an affected guaranty association or an order of the  
31 receivership court, the receiver may not offset the amount to be disbursed to a

1 guaranty association by the amount of a special deposit or other statutory deposit or  
 2 asset of the insolvent insurer held in a state unless the association has actually received  
 3 the deposit or asset.

4 \* **Sec. 27.** AS 21.84.465(b) is amended to read:

5 (b) A society transacting business in this state shall annually, [ON OR] before  
 6 March 2, unless the time has been extended by the director for cause shown, file with  
 7 the director a true statement of the society's financial conditions, transactions, and  
 8 affairs for the preceding calendar year and pay the applicable fee under AS 21.06.250.  
 9 The statement shall be in the general form and content approved by the National  
 10 Association of Insurance Commissioners for fraternal benefit societies and  
 11 supplemented by additional information required by the director.

12 \* **Sec. 28.** AS 21.85.100 is amended to read:

13 **Sec. 21.85.100. Applicability of other provisions.** In addition to the  
 14 provisions contained or referred to in this chapter, the following chapters and  
 15 provisions of this title also apply with respect to self-funded multiple employer  
 16 welfare arrangements to the extent applicable and not in conflict with the express  
 17 provisions of this chapter and the reasonable implications of the express provisions,  
 18 and, for the purposes of the application, the arrangements shall be considered to be a  
 19 mutual insurer:

20 (1) AS 21.03;

21 (2) AS 21.06;

22 (3) AS 21.07;

23 (4) AS 21.09.100, 21.09.120, 21.09.130, 21.09.140 - 21.09.200,  
 24 21.09.210, 21.09.245 - 21.09.270, 21.09.300, and 21.09.320;

25 (5) AS 21.18.010 - 21.18.050, 21.18.080 - 21.18.086, and 21.18.100;

26 (6) **AS 21.24;**

27 **(7)** AS 21.33;

28 **(8)** [(7)] AS 21.36;

29 **(9)** [(8)] AS 21.42.120, 21.42.130, 21.42.345 - 21.42.365, and  
 30 21.42.375 - 21.42.500;

31 **(10)** [(9)] AS 21.48;

- 1                    **(11)** [(10)] AS 21.54;  
 2                    **(12)** [(11)] AS 21.55;  
 3                    **(13)** [(12)] AS 21.56;  
 4                    **(14)** [(13)] AS 21.78;  
 5                    **(15)** [(14)] AS 21.89.060;  
 6                    **(16)** [(15)] AS 21.90.

7        \* **Sec. 29.** AS 21.87.180 is amended by adding a new subsection to read:

8                    (e) A filing under this section is open to public inspection after the date the  
 9                    filing becomes effective.

10        \* **Sec. 30.** AS 21.87.340 is amended to read:

11                    **Sec. 21.87.340. Other provisions applicable.** In addition to the provisions  
 12                    contained or referred to previously in this chapter, the following chapters and  
 13                    provisions of this title also apply with respect to service corporations to the extent  
 14                    applicable and not in conflict with the express provisions of this chapter and the  
 15                    reasonable implications of the express provisions, and, for the purposes of the  
 16                    application, the corporations shall be considered to be mutual "insurers":

- 17                    (1) AS 21.03;  
 18                    (2) AS 21.06;  
 19                    (3) AS 21.07;  
 20                    (4) AS 21.09, except AS 21.09.090;  
 21                    (5) AS 21.18.010;  
 22                    (6) AS 21.18.030;  
 23                    (7) AS 21.18.040;  
 24                    (8) AS 21.18.080 - 21.18.086;  
 25                    (9) AS 21.36;  
 26                    (10) **AS 21.42.110, 21.42.345 - 21.42.365**, [AS 21.42.345 - 21.42.365]  
 27                    and 21.42.375 - 21.42.395;  
 28                    (11) AS 21.51.120 **and 21.51.400**;  
 29                    (12) AS 21.53;  
 30                    (13) AS 21.54;  
 31                    (14) AS 21.56;

- 1 (15) AS 21.69.400;  
2 (16) AS 21.69.520;  
3 (17) AS 21.69.600, 21.69.620, and 21.69.630;  
4 (18) AS 21.78;  
5 (19) AS 21.89.060;  
6 (20) AS 21.90.

7 \* **Sec. 31.** AS 21.90.900 is amended by adding a new paragraph to read:

8 (46) "working day" means a calendar day other than Saturday, Sunday,  
9 an official federal holiday, or an official holiday of this state.

10 \* **Sec. 32.** AS 44.64.030(a)(17) is amended to read:

11 (17) AS 21.09, AS 21.22.190, AS 21.27, **except under**  
12 **AS 21.27.420(d)**, AS 21.34, AS 21.36, AS 21.69, AS 21.86.200, AS 21.87, and  
13 AS 21.89 (insurance);

14 \* **Sec. 33.** AS 21.07.250(19); AS 21.27.410(a)(10), 21.27.410(a)(11), 21.27.410(a)(12); and  
15 AS 21.55.220(b) are repealed.

16 \* **Sec. 34.** This Act takes effect July 1, 2009.