

Introduced: 2/2/67
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY REQUEST

2

HOUSE BILL NO. 103

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to unauthorized insurers."

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

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* Section 1. AS 21.33 is amended by adding new sections to read:

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Sec. 21.33.011. PURPOSE. The purpose of this section is to subject certain persons and insurers to the jurisdiction of the director, of proceedings before the director, and of the courts of this state in suits by or on behalf of the state and insureds or beneficiaries under insurance contracts. The legislature declares that it is a subject of concern that many residents of this state hold policies of insurance issued by persons and insurers not authorized to do insurance business in this state, thus presenting to these residents the often insuperable obstacle of asserting their legal rights under such policies in forums foreign to them under laws and rules of practice with which they are not familiar. The legislature declares that it is also concerned with the protection of residents of this state against acts by persons and insurers not authorized to do an insurance business in this state by the maintenance of fair and honest insurance markets, by protecting the premium tax revenues of this state, by protecting authorized persons and insurers, which are subject to strict regulation, from unfair competition by unauthorized persons and insurers and by protecting against the evasion of the insurance regulatory laws of this state.

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1 and substitute service of any notice, order, pleading or process
2 upon such persons or insurers in any proceeding before the director
3 to enforce or effect full compliance with the insurance and tax
4 statutes of this state, and declares in so doing it exercises its
5 power to protect residents of this state and to define what constitutes
6 doing an insurance business in this state, and also exercises powers
7 and privileges available to this state by virtue of P.L. 79 - 15 (1945),
8 (Chapter 20, 1st Sess., S. 340), 59 Stat. 33, as amended, which declares
9 that the business of insurance and every person engaged in the
10 business of insurance shall be subject to the laws of the several
11 states.

12 Sec. 21.33.015. UNAUTHORIZED INSURANCE PROHIBITED. No person
13 or insurer may directly or indirectly do any of the acts of an
14 insurance business set out in sec. 71 of this chapter, except as
15 provided by and in accordance with the specific authorization of
16 statute.

17 Sec. 21.33.021. SERVICE OF PROCESS ON DIRECTOR. (a) An act
18 of doing an insurance business as set out in sec. 71 of this
19 chapter by an unauthorized person or insurer is equivalent to and
20 shall constitute an irrevocable appointment by that person or
21 insurer, binding upon him, his executor, administrator or personal
22 representative, or successor in interest if a corporation, of the
23 director, his successor or successors in office to be the true and
24 lawful attorney of that person or insurer upon whom may be served
25 all legal process in any action, suit or proceeding in any court
26 arising out of doing an insurance business in this state by such
27 person or insurer, except in an action, suit or proceeding by the
28 director or by the state. An act of doing an insurance business
29 as set out in sec. 71 of this chapter by an unauthorized person or

1 insurer shall be signification of its agreement that legal process
2 so served shall be of the same legal force and validity as personal
3 service of process in this state upon such person or insurer, or
4 upon his executor, administrator or personal representative, or its
5 successor in interest if a corporation.

6 (b) Service of process shall be made by leaving two copies
7 in the hands or office of the director and paying to him for the
8 use of the state the fee required by AS 21.06.250(15) for each person
9 or insurer. A certificate by the director showing the service
10 and attached to the original or third copy of the process presented
11 to him for that purpose shall be sufficient evidence of service.
12 Service upon the director as such attorney shall be service upon
13 the principal.

14 (c) The director shall immediately mail one copy of the process
15 to the defendant at its last known principal place of business and
16 shall keep a record of all process so served upon him which shall
17 show the day and hour of service. Such service of process is
18 sufficient, provided notice of the service and a copy of the process
19 are sent within 10 days by registered mail by plaintiff or plaintiff's
20 attorney to the defendant at the last known principal place of
21 business of the defendant and the defendant's receipt, or receipt
22 issued by the post office with which the letter is registered,
23 showing the name of the sender of the letter and the name and
24 address of the person or insurer to whom the letter is addressed,
25 and the affidavit of the plaintiff or plaintiff's attorney showing
26 compliance herewith are filed with the clerk of the court in which
27 such action is pending on or before the date the defendant is
28 required to appear, or within further time which the court may
29 allow.

1 (d) Service of process in any such action, suit or proceeding,
2 in addition to the manner provided in (b) and (c) of this section,
3 shall be valid if served upon any person in this state who on behalf of
4 such unauthorized person or insurer is doing any act of an insurance
5 business as set out in sec. 71 of this chapter, and if a copy of the
6 process is sent within 10 days by registered mail by plaintiff or
7 plaintiff's attorney to the defendant at the last known principal
8 place of business of the defendant and the defendant's receipt, or re-
9 ceipt issued by the post office with which the letter is registered,
10 showing the name of the sender of the letter and the name and address
11 of the person or insurer to whom the letter is addressed and the affi-
12 davit of the plaintiff or plaintiff's attorney showing compliance here-
13 with are filed with the clerk of the court in which the action is
14 pending on or before the date the defendant is required to appear, or
15 within further time which the court may allow.

16 (e) No plaintiff or complainant is entitled to a judgment by
17 default in an action, suit or proceeding in which the process is
18 served under this section unless the rules of civil procedure are met.

19 (f) Nothing contained in this section limits or abridges the
20 right to serve a process, notice or demand upon a person or insurer
21 in any other manner now or hereafter permitted by law.

22 Sec. 21.33.025. SERVICE OF PROCESS ON SECRETARY OF STATE. (a)
23 An act of doing an insurance business as set out in sec. 71 of this
24 chapter by an unauthorized person or insurer is equivalent to and
25 constitutes an irrevocable appointment by that person or insurer, bind-
26 ing upon him, his executor, administrator or personal representative,
27 or successor in interest if a corporation, of the secretary of state,
28 his successor or successors in office to be the true and lawful
29 attorney of that person or insurers upon whom may be served all legal

1 process in any action, suit or proceeding in any court by the director
2 or by the state and upon whom may be served any notice, order, pleading
3 or process in any proceeding before the director and which arises out
4 of doing an insurance business in this state by that person or insurer.
5 An act of doing an insurance business as set out in sec. 71 of this
6 chapter by an unauthorized person or insurer shall be signification
7 of its agreement that legal process in such court action, suit or pro-
8 ceeding and any such notice, order, pleading or process in such adminis-
9 trative proceeding before the director so served shall be of the same
10 legal force and validity as personal service of process in this state
11 upon such person or insurer, or upon his executor, administrator or
12 personal representative, or its successor in interest if a corporation.

13 (b) The service of process in the action, suit or proceeding in
14 any court or the notice, order, pleading or process in the administra-
15 tive proceeding authorized by (a) of this section shall be made by
16 leaving two copies in the hands or office of the secretary of state.
17 A certificate by the secretary of state showing the service and at-
18 tached to the original or third copy of the process presented to him
19 for that purpose shall be sufficient evidence of service. Service upon
20 the secretary of state as such attorney shall be service upon the princi-
21 pal.

22 (c) The secretary of state shall immediately mail one copy of the
23 court process or notice, order, pleading or process in proceedings
24 before the director to the defendant in the court proceeding or to whom
25 the notice, order, pleading or process in the administrative proceeding
26 is addressed or directed at its last known principal place of business
27 and shall keep a record of all process so served on him which shall
28 show the day and hour of service. The service is sufficient, provided
29 notice of the service and a copy of the court process or the notice,

1 order, pleading or process in the administrative proceeding are sent
2 within 10 days after service by registered mail by the plaintiff or the
3 plaintiff's attorney in the court proceeding or by the director in the
4 administrative proceeding to the defendant in the court proceeding or by
5 whom the notice, order, pleading or process in the administrative pro-
6 ceeding is addressed or directed at its last known principal place of
7 business of the defendant in the court or administrative proceeding,
8 and the defendant's receipt, or receipt issued by the post office with
9 which the letter is registered, showing the name of the sender of the
10 letter and the name and address of the person or insurer to whom the
11 letter is addressed, and the affidavit of the plaintiff or plaintiff's
12 attorney in court proceeding or of the director in administrative pro-
13 ceeding, showing compliance are filed with the clerk of the court in
14 which the action, suit or proceeding is pending or with the director in
15 administrative proceedings, on or before the date the defendant in the
16 court or administrative proceeding is required to appear or respond, or
17 within further time which the court or director may allow.

18 (d) No plaintiff or complainant may be entitled to a judgment or
19 determination by default in a court or administrative proceeding in
20 which court process or notice, order, pleading, or process in proceed-
21 ings before the director is served under this section until the rules
22 of civil procedure regarding default judgments are met.

23 (e) This section does not limit or abridge the right to serve a
24 process, notice, order, pleading or demand upon a person or insurer in
25 any other manner now or hereafter permitted by law.

26 (f) The attorney general upon request of the director is authorized
27 to proceed in the courts of this or another state or in a federal court
28 or agency to enforce an order or decision in a court proceeding or in an
29 administrative proceeding before the director.

1 **Sec. 21.33.031. UNAUTHORIZED PERSON OR INSURER DEFENSE OF ACTION.**

2 **(a) Before an unauthorized person or insurer files or causes to be**
3 **filed a pleading in a court action, suit or proceeding or in a notice,**
4 **order, pleading or process in an administrative proceeding before the**
5 **director instituted against the person or insurer, by service made as**
6 **provided in secs. 21 and 25 of this chapter, the person or insurer shall**
7 **either:**

8 **(1) deposit with the clerk of the court in which the action,**
9 **suit or proceeding is pending, or with the director in administrative**
10 **proceedings before the director, cash or securities or bond with good**
11 **and sufficient sureties to be approved by the court, or the director,**
12 **in an amount to be fixed by the court or the director sufficient to**
13 **secure the payment of a final judgment which may be rendered in the**
14 **court proceeding or in the administrative proceeding before the director,**
15 **provided that the court or the director in administrative proceedings**
16 **before the director may in its or his discretion make an order dispens-**
17 **ing with the deposit or bond where the insurer makes a showing satis-**
18 **factory to the court or the director that it maintains in a state of**
19 **the United States funds or securities, in trust or otherwise, suffi-**
20 **cient and available to satisfy a final judgment which may be entered**
21 **in the court action, suit or proceeding or in an administrative pro-**
22 **ceeding before the director; or**

23 **(2) procure proper authorization to do an insurance business**
24 **in this state.**

25 **(b) The court in an action, suit or proceeding in which service is**
26 **made as provided in sec. 21 of this chapter, or the director in an ad-**
27 **ministrative proceeding before the director in which service is made as**
28 **provided in sec. 25 of this chapter, may, in his discretion, order post-**
29 **ponement which may be necessary to afford the defendant reasonable**

1 opportunity to comply with (a) of this section and to defend the court
2 action or administrative proceeding.

3 (c) Nothing in (a) of this section is to be construed to prevent
4 an unauthorized person or insurer from filing a motion to quash a writ
5 or to set aside service made as provided in secs. 21 or 25 of this
6 chapter on the ground that the unauthorized person or insurer has not
7 done any of the acts enumerated in sec. 71 of this chapter or that the
8 person on whom service was made under sec. 21(d) of this chapter was
9 not doing any of the acts enumerated in sec. 71 of this chapter.

10 Sec. 21.33.035. ATTORNEY FEES. In an action against an unautho-
11 rized person or insurer upon a contract of insurance issued or delivered
12 in this state to a resident or to a corporation authorized to do business
13 in this state, if the person or insurer has failed for 30 days after
14 demand before the commencement of the action to make payment in accor-
15 dance with the terms of the contract, and it appears to the court that
16 the refusal was vexatious and without reasonable cause, the court may
17 allow to the plaintiff a reasonable attorney fee and include the fee
18 in the judgment that may be rendered in the action. Failure of the
19 person or insurer to defend the action shall be considered prima facie
20 evidence that its failure to make payment was vexatious and without
21 reasonable cause.

22 Sec. 21.33.041. VALIDITY OF INSURANCE CONTRACTS. Except for
23 lawfully procured surplus lines insurance and contracts of insurance
24 independently procured through negotiations occurring entirely outside
25 this state which are reported and on which premium tax is paid in
26 accordance with sec. 61 of this chapter, a contract of insurance ef-
27 fective in this state and entered into by an unauthorized insurer is
28 unenforceable by such insurer. In event of failure of the unauthorized
29 insurer to pay a claim or loss within the provisions of the insurance

1 contract, a person who assisted or in any manner aided directly or
2 indirectly in the procurement of the insurance contract shall be liable
3 to the insured for the full amount under the provisions of the insurance
4 contract.

5 Sec. 21.33.045. INVESTIGATION AND DISCLOSURE OF INSURANCE CON-
6 TRACTS. (a) When the director has reason to believe that insurance
7 has been effectuated by or for a person in this state with an unautho-
8 rized insurer the director shall in writing order the person to produce
9 for examination all insurance contracts and other documents evidencing
10 insurance with both authorized and unauthorized insurers and to dis-
11 close to the director the amount of insurance, name and address of each
12 insurer, gross amount of premium paid or to be paid and the name and
13 address of the person or persons assisting or aiding in the sollicita-
14 tion, negotiation or effectuation of the insurance.

15 (b) Every person who, for 30 days after the written order under
16 (a) of this section neglects to comply with the requirements of the
17 order or who wilfully makes a disclosure that is untrue, deceptive or
18 misleading shall forfeit \$50 and an additional \$50 for each day of
19 neglect after expiration of the 30 days.

20 Sec. 21.33.051. REPORTING OF UNAUTHORIZED INSURANCE. (a) Every
21 person investigating or adjusting a loss or claim on a subject of
22 insurance in this state shall immediately report to the director every
23 insurance policy or contract which has been entered into by an insurer
24 not authorized to transact the insurance in this state.

25 (b) Every person, firm or corporation acting in the capacity of
26 an insurance adviser, counselor or analyst and as such serving a
27 person, firm or corporation not engaged in the insurance business for
28 compensation paid or to be paid by the person served, shall report to
29 the director every insurance policy or contract covering a subject of

1 insurance in this state which has been entered into by an insurer not
2 authorized to transact insurance in this state.

3 (c) This section does not apply to transactions in this state
4 involving a policy lawfully solicited, written, and delivered outside
5 this state covering only subjects of insurance not resident, located
6 or expressly to be performed in this state at the time of issuance,
7 and which transactions are subsequent to the issuance of the policy.

8 Sec. 21.33.055. UNAUTHORIZED INSURANCE PREMIUM TAX. (a) Except
9 as to premiums on lawfully procured surplus lines insurance and premiums
10 on independently procured insurance on which a tax has been paid under
11 sec. 61 of this chapter, every unauthorized insurer shall pay to the
12 director before April 1 following the calendar year in which the in-
13 surance was so effectuated, continued or renewed a premium receipts
14 tax of three per cent of gross premiums charged for the insurance other
15 than marine insurance and a premium receipts tax of three-fourths of
16 one per cent of gross premiums charged for the marine insurance on
17 subjects resident, located or to be performed in this state. The in-
18 surance on subjects resident, located or to be performed in this state
19 procured through negotiations or an application, in whole or in part
20 occurring or made in or from in or out of this state, or for which
21 premiums in whole or in part are remitted directly or indirectly from
22 in or out of this state, shall be considered to be insurance procured,
23 or continued or renewed in this state. The term "premium" includes
24 all premiums, membership fees, assessments, dues and any other con-
25 sideration for insurance. The tax shall be in lieu of all taxes and
26 fire department dues. On default of an unauthorized insurer in the
27 payment of the tax the insured shall pay the tax. If the tax pres-
28 scribed by this section is not paid within the time stated, the tax
29 shall be increased by a penalty of 25 per cent and by the amount of an

1 additional penalty computed at the rate of one per cent per month or
2 any part of a month from the date the payment was due to the date paid.

3 (b) If a policy covers risks or exposures only partially in this
4 state, the tax payable shall be computed on the portions of the premium
5 which are properly allocable to the risks or exposures located in this
6 state. In determining the amount of premiums taxable in this state,
7 all premiums written, procured, or received in this state and all
8 premiums on policies negotiated in this state shall be considered
9 written on property or risks located or resident in this state, except
10 premiums which are properly allocated or apportioned and reported as
11 taxable premiums of another state.

12 Sec. 21.33.061. INDEPENDENTLY PROCURED INSURANCE. (a) Every
13 insured who procures or causes to be procured or continues or renews
14 insurance with an unauthorized insurer, or an insured or self-insurer
15 who so procures or continues excess loss, catastrophe or other insurance,
16 upon a subject of insurance resident, located or to be performed in
17 this state, other than insurance procured through a surplus lines agent
18 under the surplus lines law of this state shall, within 60 days after
19 the date the insurance was procured, continued, or renewed, file a
20 report with the director in writing and upon forms designated by the
21 director and furnished to the insured upon request. The report shall
22 show the name and address of the insured or insureds, name and address
23 of the insurer, the subject of the insurance, a general description of
24 the coverage, the amount of premium currently charged, and additional
25 pertinent information which is reasonably requested by the director.

26 (b) Insurance in an unauthorized insurer of a subject of insur-
27 ance resident, located or to be performed in this state procured through
28 negotiations or an application, in whole or in part occurring or made
29 in or from in or out of this state, or for which premiums in whole or

1 in part are remitted directly or indirectly from in or out of this state,
2 shall be considered to be insurance procured, or continued or renewed
3 in this state within the intent of (a) of this section.

4 (c) There is levied upon the obligation, chose in action, or right
5 represented by the premium charged for the insurance, a premium receipts
6 tax of three per cent of gross premiums charged for the insurance other
7 than marine insurance and a premium receipts tax of three-fourths of
8 one per cent of gross premiums charged for the marine insurance. The
9 term "premium" shall include all premiums, membership fees, assessments,
10 dues and any other consideration for insurance. The tax shall be in
11 lieu of all taxes and fire department dues. The insured shall, before
12 April 1 following the calendar year in which the insurance was procured,
13 continued or renewed, pay the amount of the tax to the director. In
14 event of cancellation and rewriting of the insurance contract the
15 additional premium for premium receipts tax purposes shall be the
16 premium in excess of the unearned premium of the canceled insurance
17 contract.

18 (d) If a policy covers risks or exposures only partially in this
19 state, the tax payable shall be computed on the portions of the premium
20 which are properly allocable to the risks or exposures located in this
21 state. In determining the amount of premiums taxable in this state, all
22 premiums written, procured or received in this state and all premiums
23 on policies negotiated in this state shall be considered written on
24 property or risks located or resident in this state, except premiums
25 which are properly allocated or apportioned and reported as taxable
26 premiums of another state.

27 (e) If the insured fails to withhold from the premium the amount
28 of tax levied, the insured shall be liable for the amount and shall
29 pay the tax to the director within the time stated in (c) of this

1 section. If the tax prescribed by this section is not paid within the
2 time stated in (c) of this section, the tax shall be increased by a
3 penalty of 25 per cent and by the amount of an additional penalty
4 computed at the rate of one per cent per month or any part of a month
5 from the date the payment was due to the date paid.

6 (f) The attorney general, upon request of the director, shall
7 proceed in the courts of this or another state or in a federal court
8 or agency to recover the tax not paid within the time prescribed in
9 this section.

10 (g) This section does not apply to individual life or individual
11 disability insurance.

12 Sec. 21.33.065. PENALTY FOR UNAUTHORIZED INSURANCE. (a) An un-
13 authorized insurer who does an unauthorized act of an insurance business
14 as set forth in sec. 71 of this chapter shall be fined not more than
15 \$5,000.

16 (b) In addition to any other penalty provided for in secs. 11 -
17 71 of this chapter or otherwise provided by law, a person or insurer
18 violating this section shall forfeit to the people of this state the
19 sum of \$500 for the first offense and an additional sum of \$500 for each
20 month during which the person or insurer continues the violation.

21 Sec. 21.33.071. INSURANCE BUSINESS DEFINED. (a) Any of the
22 following acts in this state effected by mail or otherwise is defined
23 to be doing an insurance business in this state. The venue of an
24 act committed by mail is at the point where the matter transmitted by
25 mail is delivered and takes effect. Unless otherwise indicated, the
26 term "insurer" as used in this section includes all corporations, as-
27 sociations, partnerships, and individuals engaged as principals in the
28 business of insurance and also includes interinsurance exchanges and
29 mutual benefit societies.

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(1) the making of or proposing to make, as an insurer, an insurance contract;

(2) the making of or proposing to make, as guarantor or surety, a contract of guaranty or suretyship as a vocation and not merely incidental to another legitimate business or activity of the guarantor or surety;

(3) the taking or receiving of an application for insurance;

(4) the receiving or collection of a premium, commission, membership fees, assessments, dues or other consideration for insurance or any part of insurance;

(5) the issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state;

(6) directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another a person or insurer in the solicitation, negotiation, procurement, or effectuation of insurance or renewals of insurance or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, a fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state; this subsection does not operate to prohibit a full-time salaried employee of a corporate insured from acting in the capacity of an insurance manager or buyer in placing insurance in behalf of his employer;

(7) the doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within

1 the meaning of the statutes relating to insurance;

2 (8) the doing or proposing to do any insurance business in
3 substance equivalent to any of the actions in (1) - (7) of this sub-
4 section in a manner designed to evade the provisions of the statutes;

5 (9) any other transactions of business in this state by an
6 insurer.

7 (b) This section does not apply to:

8 (1) the lawful transaction of surplus lines insurance;

9 (2) the lawful transaction of reinsurance by insurers;

10 (3) transactions in this state involving a policy lawfully
11 solicited, written, and delivered outside this state covering only
12 subjects of insurance not resident, located, or expressly to be per-
13 formed in this state at the time of issuance, and which transactions
14 are subsequent to the issuance of the policy;

15 (4) transactions involving contracts of insurance inde-
16 pendently procured through negotiations occurring entirely outside
17 of this state which are reported and on which premium tax is paid in
18 accordance with sec. 65 of this chapter;

19 (5) attorneys acting in the ordinary relation of attorney
20 and client in the adjustment of claims or losses;

21 (6) wet marine and transportation, except pipeline,
22 insurance;

23 (7) insurance on aircraft or cargo of aircraft, or against
24 liability, other than employer's liability, arising out of the owner-
25 ship, maintenance or use of the aircraft;

26 (8) transactions in this state involving group or blanket
27 insurance and group annuities where the master policy of such groups
28 were lawfully issued and delivered in a state in which the insurer
29 was authorized to do an insurance business;

1 (9) any insurance company or underwriter issuing contracts
2 of insurance to industrial insureds, nor shall it apply to contracts
3 of insurance issued to an industrial insured, nor shall it apply to
4 industrial insureds, except for the purposes of sec. 021 of this
5 chapter, and provided the tax provisions of sec. 061 of this chapter
6 are complied with. For the purposes of this section, an industrial
7 insured is

8 (A) an insured who procures insurance in whole or in
9 part for any risk or risks, or who assumes any risk or risks,
10 and who used the services of an employee acting as an insurance
11 manager or buyer, or the services of a regularly retained,
12 qualified insurance consultant, which consultant shall comply
13 with AS 21.33.210 through 21.33.250, but in no case shall the
14 Alaska tax be paid twice; and

15 (B) an insured whose aggregate annual premiums for
16 insurance on all risks total at least \$25,000; and

17 (C) an insured having at least fifteen (15) full-time
18 employees.

19 (10) This title does not apply to a life insurance or
20 annuity company organized and operated without profit to any private
21 shareholder or individual exclusively for the purpose of aiding and
22 strengthening educational institutions by issuing insurance and annuity
23 contracts only to or for the benefit of the institutions and individual
24 engaged in the service of such institutions, provided, however, that all
25 policies and contracts issued by such organization provide for
26 acceptance of service of process within this state.

27 * Sec. 2. AS 21.03.020 and 21.33.010 - 21.33.070 are repealed.
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