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1 IN THE HOUSE

2 SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 506
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurance; and providing for an
7 effective date."

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

9 * Section 1. AS 21 is amended by adding a new chapter to read:

10 CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

11 Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGE-
12 MENTS. (a) Municipalities, school districts, and regional educa-
13 tional attendance areas may enter into cooperative agreements with
14 each other for the purpose of establishing, operating, or participat-
15 ing in joint insurance arrangements through which the participating
16 members agree to pool contributions and

17 (1) assume risks from losses on a group basis; or

18 (2) purchase coverage on a group basis.

19 (b) A joint insurance arrangement may be for any kind of insur-
20 ance defined by this title except for life insurance and title insur-
21 ance.

22 (c) A joint insurance arrangement shall be considered an alter-
23 native or supplement to any other policy or contract of insurance
24 authorized or required by law, including insurance under AS 21.75.

25 Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint
26 insurance arrangement may not be considered insurance for the purpose
27 of any other law of the state and is not subject to regulations of the
28 director except as expressly provided in this chapter.

29 Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A

1 cooperative agreement shall provide for the proper operation of the
2 joint insurance arrangement, and include provisions for

3 (1) administration of the arrangement by a board of direc-
4 tors, specifying the number of members of the board and other require-
5 ments necessary for the proper functioning of the board;

6 (2) appointment of an administrator and other persons as
7 necessary for the proper functioning of the arrangement;

8 (3) organization of the arrangement, including a roster of
9 participating members and the names of the members of the board of
10 directors;

11 (4) procedures to establish and promote an aggressive risk
12 management and program among the members of the arrangement, including
13 procedures for identifying and reducing the risks that can be reduced
14 through implementing better safety technologies and improved work
15 techniques and procedures;

16 (5) enforcing the collection of contributions or payments
17 in default from members of the arrangement;

18 (6) the addition of new members to the arrangement or the
19 withdrawal of members from the arrangement;

20 (7) the method of apportioning costs and disposition of
21 excess contributions;

22 (8) transmission of financial statements and audit reports
23 of the arrangement to participating members;

24 (9) terminating the arrangement and disposing of its as-
25 sets; and

26 (10) establishing and administering a joint insurance fund.

27 Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A
28 cooperative agreement must include a provision requiring an annual
29 determination by a casualty actuary who is a member of the American

1 Academy of Actuaries that procedures for establishing reserves for
2 losses of the joint insurance arrangement are actuarially sound.

3 (b) A joint insurance arrangement shall be subject to an annual
4 independent audit. The audit shall be conducted in accordance with
5 generally accepted auditing standards and must include a review of the
6 actuarial assumptions used for establishing the reserves under (a) of
7 this section. The audit report must include certification from a
8 casualty actuary who is a member of the American Academy of Actuaries
9 that the actuarial assumptions continue to be sound and the level of
10 the reserves are adequate.

11 (c) A joint insurance arrangement shall use a method of account-
12 ing that conforms with generally accepted government accounting prin-
13 ciples.

14 Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A
15 cooperative agreement may authorize the board of directors to enter
16 into contracts for services necessary to perform the functions of a
17 joint insurance arrangement. The person contracting to perform the
18 functions must be appropriately licensed under this title if this
19 title so requires.

20 Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooper-
21 ative agreement may delegate to the board of directors, or authorize
22 delegation by the board to another person or group, the power to
23 compromise, arbitrate, or otherwise settle claims on behalf of the
24 arrangement.

25 Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may
26 authorize the board of directors to purchase excess or catastrophic
27 insurance on behalf of the joint insurance arrangement. The cost of
28 the insurance shall be apportioned in the manner specified in the
29 joint insurance agreement. The board may purchase insurance under

1 this section only from an insurer authorized to do business in the
2 state or from an unauthorized insurer if the insurance is placed
3 through a licensed surplus lines broker.

4 Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance
5 arrangement shall establish a joint insurance fund. The fund consists
6 of money

7 (1) contributed by members of the joint insurance arrange-
8 ment through budgetary appropriations or transfers from a self-
9 insurance reserve;

10 (2) contributed by officers and employees of members of the
11 joint insurance arrangement under an employee benefit plan; and

12 (3) collected by the joint insurance arrangement through
13 subrogation of a claim paid from the fund to a member of the arrange-
14 ment.

15 (b) An expenditure may be made from a joint insurance fund only
16 to pay claims, losses, or benefits, including interest on them, and
17 the administrative and adjustment expenses incurred in connection with
18 them, involving the types of protection for which the fund provides
19 coverage as specified in the joint insurance agreement.

20 (c) The administrator shall keep the fund separate from other
21 funds of a member of a joint insurance arrangement.

22 (d) For each type of protection offered by the joint insurance
23 arrangement, the method of accounting must show the order, source,
24 date, and amount of each payment from the fund.

25 (e) Within 60 days of the end of the fiscal year, the adminis-
26 trator shall furnish a detailed report of the operation and condition
27 of the fund to the board of directors and the director of insurance.
28 The report furnished to the director of insurance shall be available
29 for public inspection.

1 (f) Money held by a fund as reserves and money not needed for
2 daily operations may be invested by the board of directors.

3 (g) A fund may not be terminated unless the administrator certi-
4 fies that an amount of money sufficient to pay accrued and contingent
5 expenditures has been placed in a fully collateralized escrow account.

6 Sec. 21.76.090. FILING OF AGREEMENT. The board of directors
7 shall file a copy of the cooperative agreement with the director of
8 insurance at least 60 days before the effective date of the agreement.
9 The agreement shall be available for public inspection.

10 Sec. 21.76.100. REGULATIONS. A cooperative agreement may au-
11 thorize the board of directors to adopt regulations not inconsistent
12 with law for the fair and equitable administration of the joint insur-
13 ance arrangement and the joint insurance fund.

14 Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has
15 a cause of action for reimbursement of money paid to a participating
16 member for a loss or injury if the participating member recovers money
17 for the loss or injury from a third party. The joint insurance
18 arrangement also has a direct cause of action for reimbursement
19 against a third party responsible for loss or injuries sustained by a
20 participating member if the joint arrangement has paid money to the
21 participating member for the loss or injuries.

22 Sec. 21.76.900. DEFINITIONS. In this chapter

23 (1) "adjustment expenses" means expenses for investigative,
24 processing, legal, actuarial, arbitration, and settlement services
25 incurred in the adjustment of losses, claims, or benefits;

26 (2) "administrator" means a person or group appointed by
27 the board of directors to administer a joint insurance arrangement or
28 a joint insurance fund;

29 (3) "board" or "board of directors" means the board of

1 directors provided for in a cooperative agreement;

2 (4) "cooperative agreement" means a written agreement
3 entered into by two or more entities described in AS 21.76.010 for the
4 purpose of establishing, operating, or participating in a joint insur-
5 ance arrangement;

6 (5) "fund" or "joint insurance fund" means a fund estab-
7 lished under AS 21.76.080;

8 (6) "joint insurance arrangement" means a joint insurance
9 arrangement authorized under AS 21.76.010.

10 * Sec. 2. AS 21 is amended by adding a new chapter to read:

11 CHAPTER 79. ALASKA REINSURANCE FUND.

12 Sec. 21.79.010. REINSURANCE FUND ESTABLISHED. (a) The Alaska
13 reinsurance fund is established as an account in the general fund.
14 The fund consists of appropriations made to it by law for the purposes
15 of this chapter.

16 (b) Money in the fund may be used to

17 (1) make loans to domestic reciprocal insurers, domestic
18 cooperative insurers, and joint underwriting associations;

19 (2) pay reinsurance claims under the reinsurance coverage
20 provided under AS 21.79.050; and

21 (3) pay administrative expenses of the division of insur-
22 ance that are necessary or appropriate to carry out the purposes of
23 this chapter.

24 Sec. 21.79.020. HEARINGS ON AVAILABILITY OF INSURANCE. (a)
25 Within 30 days after receiving an application by a manufacturer,
26 service provider, a group or association representing manufacturers or
27 service providers, an Alaska domestic reciprocal insurer, domestic
28 cooperative insurer, or the Medical Indemnity Corporation of Alaska,
29 the division shall hold a hearing on the availability and rate

1 structures of adequate commercial general liability insurance and
2 other lines of liability and property insurance for the applicant or
3 members of the applicant group or association.

4 (b) In addition to hearings under (a) of this section, the divi-
5 sion may hold a hearing on the availability and rate structure of
6 adequate commercial general liability insurance and other lines of
7 liability and property insurance after a finding by the director that
8 the line of insurance has become unavailable or that rates in the
9 state are excessive.

10 Sec. 21.79.030. DETERMINATION OF AVAILABILITY OF INSURANCE. (a)
11 Within 30 days after a hearing under AS 21.79.020, the director shall
12 determine in writing, by order, based on the hearing record, whether
13 the insurance at issue in the hearing is, and will be, reasonably
14 available at rates neither excessive nor inadequate to cover antici-
15 pated claims of the applicant or applicants.

16 (b) If the director determines under (a) of this section that a
17 line of insurance is not, or will not be available at rates neither
18 excessive nor inadequate, the director may implement the provisions of
19 AS 21.79.040.

20 Sec. 21.79.040. INSURANCE JOINT UNDERWRITING ASSOCIATIONS. (a)
21 After a determination of unavailability or inadequate or excessive
22 rates under AS 21.79.030(b), the director may encourage and assist
23 insurers licensed to operate in the state to join together in joint
24 underwriting associations for the purpose of assuming, on the terms
25 and conditions they agree to, a reasonable portion of responsibility
26 for the adjustment and payment of claims arising from product, ser-
27 vice, or operationally related property damage, injuries, disabili-
28 ties, illnesses, and deaths.

29 (b) The director, in accordance with appropriate standards of

1 financial responsibility, accounting, operation, risk of loss, loss
2 control and underwriting, on application of a party or parties listed
3 in AS 21.79.020(a) may authorize modification of the capital and
4 surplus provisions of AS 21.75.010 - 21.75.340, relating to domestic
5 reciprocal insurers and cooperative insurers.

6 (c) Money from the joint underwriting associations established
7 under (a) of this section may be used only to pay claims resulting
8 from product, service, operations, or related actions in excess of
9 amounts that are established each year by the director as capital and
10 surplus. The director may establish different amounts for each in-
11 surer or joint underwriting association based on the needs of the
12 insureds and joint underwriting association members, and other rele-
13 vant factors.

14 (d) Joint underwriting associations established under this
15 section may be funded by premiums paid by those entities listed in
16 AS 21.79.020(a) to insurers or to their attorney in fact approved by
17 the director. If the director finds, after notice and hearing, that
18 the premiums charged by the insurers or joint underwriting associa-
19 tions make the insurance from the joint underwriting associations
20 unavailable or available at a rate excessive for manufacturers, ser-
21 vice providers or other entities listed in AS 21.79.020(a), the direc-
22 tor may amend the terms and conditions of reinsurance under AS 21.79.-
23 050 to decrease the premiums to be paid, approve loans from AS 21.79.-
24 010 funds to joint underwriting associations, or take other actions
25 authorized by law.

26 Sec. 21.79.050. REINSURANCE COVERAGE. (a) After a finding
27 under AS 21.79.030(b) of unavailability or availability only at exces-
28 sive rates, the director may take necessary action to make reinsurance
29 coverage available to the joint underwriting associations formed under

1 AS 21.79.040 or to Alaska domestic reciprocal insurers, Alaska domes-
2 tic cooperative insurers, or the Medical Indemnity Corporation of
3 Alaska. The director may also make reinsurance available directly to
4 insurers that participate in joint underwriting associations estab-
5 lished under AS 21.79.040 for the portion of their business that is
6 related to a line of insurance that the director determines is un-
7 available or available only at excessive rates under AS 21.79.040.
8 Action authorized under this subsection includes the authority to
9 enter into a contract with a reciprocal insurer, cooperative insurer,
10 the Medical Indemnity Corporation of Alaska, or joint underwriting
11 association for reinsurance coverage based on a premium, fee, or other
12 charge set by the director, and to approve loans from the reinsurance
13 fund.

14 (b) The director shall include in a contract or arrangement
15 under this section the terms the director considers necessary to carry
16 out the purposes of this chapter and to protect state funds loaned or
17 entrusted. The reinsurance may be subject to deductibles and other
18 restrictions and limitations determined by the director to be prudent.
19 Premiums collected shall be paid into the general fund.

20 (c) The director may not provide reinsurance under this section
21 to a manufacturer, service provider, insurer, Medical Indemnity Corpo-
22 ration of Alaska, or joint underwriting association that

23 (1) the director determines to have assets below acceptable
24 limits of capital or surplus; or

25 (2) has not adopted reasonable protective measures to
26 prevent loss, consistent with standards adopted by the director under
27 AS 21.79.100(a).

28 (d) Reinsurance offered under this section shall reimburse an
29 insurer or joint underwriting association for its total proved and

1 approved claims for covered losses resulting from product, service, or
2 operationally related property damage, injuries, disabilities, ill-
3 nesses, and deaths during the term of the reinsurance contract or
4 other agreement, above the amount of the insurer's or joint underwrit-
5 ing association's retention of the losses as provided in the reinsur-
6 ance contract.

7 (e) Reinsurance claims under this section shall be paid from the
8 fund established in AS 21.79.010 within 90 days of receipt by the
9 director of proof of loss.

10 Sec. 21.79.060. CONTRACTING WITH INSURANCE COMPANIES. The
11 director may contract with a licensed insurer, agent, broker, or
12 insurance service organization to administer a program or programs
13 established under this chapter, except that the director may not
14 delegate the responsibilities described in AS 21.79.020.

15 Sec. 21.79.100. GENERAL RESTRICTIONS ON PROGRAMS UNDER THIS
16 CHAPTER. (a) The director shall ensure that programs operated under
17 this chapter

18 (1) do not act as disincentives for improvements in product
19 safety, safe service delivery, or safe operating practices;

20 (2) promote product safety, safe service delivery, and safe
21 operating practices through the establishment of models and programs
22 for risk management and loss control that are agreed on by the direc-
23 tor, joint underwriting associations, insurers, and insureds and
24 approved by the director as a prerequisite for eligibility for the
25 programs under this chapter.

26 (b) A manufacturer, service provider, or other entity listed in
27 AS 21.79.020 that benefits from a program under this chapter, shall
28 agree that the relevant product or service will remain available to
29 the public during the period in which the manufacturer, service

1 provider, or other entity participates in the programs.

2 (c) An insurer that benefits from programs under this chapter
3 shall agree that insurance that is written during the period in which
4 the insurer or its insured manufacturer, service provider, or other
5 entity listed in AS 21.79.020, participates in the programs will
6 charge premiums that are based on an experience rate and that are not
7 excessive or inadequate when based on reasonable assumptions and
8 probabilities.

9 Sec. 21.79.110. ENFORCEMENT OF THIS CHAPTER. (a) At the re-
10 quest of the director, the attorney general shall bring an action in
11 the appropriate court to recover from a person the amount of an unpaid
12 reinsurance premium lawfully payable by the insurer to the director or
13 to the manager selected under AS 21.79.060.

14 (b) An action under this section must be brought within five
15 years of the date the right to payment accrued. If false or fraudu-
16 lent conduct warrants, the claim is not considered to have accrued
17 until its discovery.

18 (c) A recovery under this section shall be deposited in the
19 general fund.

20 Sec. 21.79.200. PERIODIC REVIEW OF PROGRAMS. The director shall
21 periodically review the programs operating under this chapter and
22 annually report to the legislature within the first 10 days of each
23 regular session, beginning with the Second Session of the Fifteenth
24 Legislature, concerning

25 (1) whether the programs are effectively making commercial
26 general liability and other essential lines of liability insurance
27 readily available to the entities listed in AS 21.79.020;

28 (2) the director's recommendations for revising this chap-
29 ter in order that it may more effectively achieve its purposes.

1 * Sec. 3. AS 21.39.155(a) is amended to read:

2 (a) The director may require carriers, except a reciprocal
3 insurer formed by and insuring only a group of municipalities or
4 nonprofit public utilities under AS 21.75 or a joint insurance ar-
5 rangement formed under AS 21.76, as a condition of writing a line of
6 insurance dealing with workers' compensation, to participate in an
7 assigned risk pool if the director finds that mandatory carrier part-
8 icipation is in the public interest.

9 * Sec. 4. AS 21.80.180(5) is amended to read:

10 (5) "insolvent insurer" means an insurer

11 (A) authorized to transact insurance in this state,
12 except an assessable reciprocal insurer formed by and insuring
13 only municipalities or nonprofit public utilities, a joint insur-
14 ance arrangement formed under AS 21.76, the Medical Indemnity
15 Corporation of Alaska, and the Health Care Providers Joint Under-
16 writing Association established under AS 21.88, either at the
17 time the policy was issued or when the insured event occurred,
18 and

19 (B) determined to be insolvent by a court of compe-
20 tent jurisdiction;

21 * Sec. 5. AS 21.80.180(6) is amended to read:

22 (6) "member insurer" means a person, except an assessable
23 reciprocal insurer formed by and insuring only municipalities or
24 nonprofit public utilities, a joint insurance arrangement formed under
25 AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health
26 Care Providers Joint Underwriting Association established under
27 AS 21.88, who

28 (A) writes any kind of insurance to which this chap-
29 ter applies under AS 21.80.020 including the exchange of

1 reciprocal or interinsurance contracts, and

2 (B) is licensed to transact insurance in this state;

3 * Sec. 6. By the fifth day of the First Session of the Fifteenth Legis-
4 lature, the commissioner of commerce and economic development shall report
5 to the legislature concerning

6 (1) the nature and extent of anticipated use of the insurance
7 industry in the delivery of reinsurance under sec. 2 of this Act to
8 manufacturers, service providers, insurers, and joint underwriting
9 associations;

10 (2) anticipated costs of providing reinsurance under sec. 2 of
11 this Act;

12 (3) the identity of applicants that have contacted the depart-
13 ment about the programs that would be authorized under this Act; and

14 (4) the identity of affected parties that might benefit from
15 participation in the programs authorized under this Act.

16 * Sec. 7. AS 21.36.190 is repealed.

17 * Sec. 8. Sections 1 and 3 - 7 of this Act take effect immediately in
18 accordance with AS 01.10.070(c).

19 * Sec. 9. Section 2 of this Act takes effect March 1, 1987.