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BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2

SENATE CS FOR CS FOR HOUSE BILL NO. 522 (L&C)

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 an insurance broker's receipt of  
7 premium payments, the cancellation or nonrenewal of  
8 insurance policies, and the provision of medical  
9 malpractice insurance for nurses and nurse midwives."

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

11 \* Section 1. AS 21.27.200(a) is amended read:

12 (a) Except as provided in (c) of this section,

13 (1) a [A] broker, as such, is not an agent or other rep-  
14 resentative of an insurer, and does not have power as a broker to bind  
15 the insurer upon any risk or with reference to any insurance contract;  
16 and

17 (2) nothing [. NOTHING] in this section is intended to  
18 alter the common law of agency as applied to transactions under this  
19 title.

20 \* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

21 (c) For purposes of determining an insured's entitlement to  
22 coverage, a premium paid to the broker is considered to be received by  
23 the insurer, if the payment to the broker is designated for specific  
24 coverage from a specifically named insurer and is supported by compe-  
25 tent evidence.

26 \* Sec. 3. AS 21.36.210(a) is amended to read:

27 (a) An insurer may not exercise its right to cancel a policy of  
28 personal [AN] automobile insurance [POLICY] except for the following  
29 reasons:

- 1 (1) nonpayment of premium; or  
2 (2) the driver's license or motor vehicle registration of  
3 either the named insured or of an operator who resides in the same  
4 household as the named insured or who customarily operates a motor  
5 vehicle insured under the policy has been under suspension or revoca-  
6 tion during the policy period or, if the policy is a renewal, during  
7 its policy period or the 180 days immediately preceding its effective  
8 date.

9 \* Sec. 4. AS 21.36.210(d) is amended to read:

10 (d) This section does not apply to

11 (1) the failure to renew a policy, except as to coverage in  
12 force for less than 12 months;

13 (2) a policy that has been in effect less than 60 days at  
14 the time notice of cancellation is mailed or delivered by the insurer,  
15 unless it is a renewal policy;

16 (3) a policy issued under an automobile assigned risk plan  
17 or automobile insurance plan;

18 (4) a policy insuring more than four motor vehicles;

19 (5) a policy covering the operation of a garage; automobile  
20 sales agency, repair shop, or service station; or public parking  
21 place;

22 (6) a policy providing insurance only on an excess basis;

23 (7) any other contract providing insurance to the named  
24 insured, even though the contract may incidentally provide insurance  
25 with respect to motor vehicles.

26 \* Sec. 5. AS 21.36.210(f) is amended to read:

27 (f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not  
28 exercise its right to cancel a policy of personal insurance other than  
29 personal automobile insurance, except for the following reasons [THE

1 TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDI-  
2 TIONS OR CIRCUMSTANCES ARISES]:

3 (1) nonpayment of premiums, including nonpayment of addi-  
4 tional premiums, calculated in accordance with the current rating  
5 manual of the insurer, justified by a physical change in the insured  
6 property or a change in its occupancy or use;

7 (2) conviction of the insured of a crime having as one of  
8 its necessary elements an act increasing a hazard insured against;

9 (3) discovery of fraud or material misrepresentation made  
10 by the insured or a representative of the insured in obtaining the  
11 insurance or by the insured in pursuing a claim under the policy;

12 (4) discovery of a grossly negligent act or omission by the  
13 insured that substantially increases the hazards insured against; or

14 (5) physical changes in the insured property that result in  
15 the property becoming uninsurable.

16 \* Sec. 6. AS 21.36 is amended by adding a new section to read:

17 Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COM-  
18 Mercial INSURANCE POLICES. (a) Except as allowed by the director  
19 under (b) of this section, an insurer may exercise its right to cancel  
20 a policy of business or commercial insurance only for the following  
21 reasons:

22 (1) nonpayment of premiums, including nonpayment of addi-  
23 tional premiums, calculated in accordance with the current rating  
24 manual of the insurer, justified by a physical change in the insured  
25 property or a change in its occupancy or use;

26 (2) conviction of the insured of a crime having as one of  
27 its necessary elements an act increasing a hazard insured against;

28 (3) discovery of fraud or material misrepresentation made  
29 by the insured or a representative of the insured in obtaining the

- 1 insurance or by the insured in pursuing a claim under the policy;
- 2 (4) discovery of a grossly negligent act or omission by the  
3 insured that substantially increases the hazards insured against;
- 4 (5) physical changes in the insured property that result in  
5 the property becoming uninsurable;
- 6 (6) physical changes in the operations of the insured that  
7 result in the property becoming uninsurable;
- 8 (7) changes in the reinsurance program of the insurer that  
9 results in an increase of the insurer's retention of risk on a subject  
10 of insurance;
- 11 (8) changes in the financial condition of the insurer  
12 resulting in a violation of AS 21.12.010;
- 13 (9) a material change in the law that affects the coverage  
14 provided under the policy;
- 15 (10) an excessive number of claims by the insured; or  
16 (11) a change in the characteristics of the risk that change  
17 the degree of hazard.

18 (b) Before issuing a notice of cancellation, an insurer may  
19 request the director to determine in a particular case whether a  
20 reason for cancellation not specified in (a) of this section is a  
21 valid reason for cancellation. The director may allow the insurer to  
22 exercise its right to cancel if the director finds that the cancella-  
23 tion is justified. The insurer may not implement the requested can-  
24 cellation before receiving the approval of the director.

25 \* Sec. 7. AS 21.36.220 is amended to read:

26 Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not  
27 exercise its right to cancel a personal insurance policy unless a  
28 written notice of cancellation is mailed or delivered to the named  
29 insured, at the address shown in the policy, at least 60 [20] days

1 before the effective date of cancellation. However, if [, EXCEPT THAT  
2 WHEN] cancellation is for nonpayment of premium, the notice must  
3 [SHALL] be mailed or delivered to the named insured at the address  
4 shown in the policy at least 10 days before the effective date of  
5 cancellation, and must [SHALL] include or be accompanied by a state-  
6 ment of the reason for the cancellation. [THIS SECTION DOES NOT APPLY  
7 TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR  
8 LESS THAN 12 MONTHS.]

9 \* Sec. 8. AS 21.36.220 is amended by adding new subsections to read:

10 (b) An insurer may not exercise its right to cancel a policy of  
11 business or commercial insurance unless a written notice of cancella-  
12 tion is mailed or delivered to the named insured, at the address shown  
13 in the policy, and to the agent or broker of record, at least 45 days  
14 before the effective date of cancellation. However, if cancellation  
15 is for nonpayment of premium, the notice must be mailed or delivered  
16 to the named insured at the address shown in the policy and to the  
17 agent or broker of record at least 10 days before the effective date  
18 of cancellation, and must include or be accompanied by a statement of  
19 the reason for the cancellation.

20 (c) If an insurer cancels a policy under (b) of this section, it  
21 shall return or credit any unearned premium to the agent or broker of  
22 record or directly to the insured or premium finance company, if  
23 applicable, before the effective date of cancellation, except that

24 (1) if cancellation is for nonpayment of premium, any  
25 unearned premium must be returned or credited within 45 days after the  
26 notice of cancellation is given;

27 (2) if the policy premium is subject to audit the insurer  
28 shall perform an audit within 30 days of the effective date of the  
29 cancellation and return or credit any unearned premium within 30 days

1 of the completion of the audit.

2 \* Sec. 9. AS 21.36.240 is amended to read:

3 Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to  
4 renew a personal insurance policy in force for less than 12 months.  
5 An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR  
6 MORE] unless a written notice of nonrenewal is mailed or delivered to  
7 the named insured, at the address shown in the policy, at least 20  
8 days for a personal insurance policy, and at least 45 days for a  
9 business or commercial insurance policy, before the expiration date of  
10 the policy [,] or of the anniversary date of a policy written for a  
11 term longer than one year or with no fixed expiration date. This  
12 section does not apply

13 (1) if the insurer has in good faith manifested in any way  
14 its willingness to renew;

15 (2) in case of nonpayment of premium for the expiring  
16 policy; or

17 (3) if the insured fails to pay the premium as required by  
18 the insurer for renewal.

19 \* Sec. 10. AS 21.36.240 is amended by adding a new subsection to read:

20 (b) The transfer of a policy between companies within the same  
21 insurance group is not a refusal to renew. For the purposes of this  
22 subsection, an "insurance group" includes all companies that are  
23 affiliated with each other through common ownership or management,  
24 including parent companies, subsidiary companies, or parallel sub-  
25 sidiaries of a common parent company.

26 \* Sec. 11. AS 21.36.250 is amended to read:

27 Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automo-  
28 bile liability insurance is cancelled, other than for nonpayment of  
29 premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A

1 POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [AP-  
2 PLIES], the insurer shall notify the named insured of possible eligi-  
3 bility for automobile insurance through the automobile assigned risk  
4 plan, or automobile insurance plan. The notification must [SHALL]  
5 accompany or be included in the notice of cancellation or nonrenewal  
6 required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

7 \* Sec. 12. AS 21.36.310 is amended to read:

8 Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

9 (1) "business or commercial insurance" means insurance  
10 other than personal insurance, life insurance, disability insurance,  
11 fidelity and surety insurance, title insurance, or an annuity con-  
12 tract;

13 (2) "nonpayment of premium" means failure of the named  
14 insured to discharge when due any obligations of the named insured in  
15 connection with the payment of premium on a policy, or any installment  
16 of the premium, whether the premium is payable directly to the insurer  
17 or its agent or indirectly under any premium finance plan or extension  
18 of credit;

19 (3) "personal automobile insurance" means insurance not  
20 related to business or commercial activities, covering [(2) "POLICY"  
21 MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN  
22 AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile  
23 liability, uninsured/underinsured motorists [COVERAGE, UNINSURED  
24 MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automo-  
25 bile physical damage [COVERAGE], that is delivered or issued for  
26 delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL  
27 OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which  
28 the insured vehicles are of the following types only:

29 (A) a motor vehicle of the private passenger or

1 station wagon type that is not used as a public or livery convey-  
2 ance, nor rented to others; or

3 (B) any other four-wheel motor vehicle with a load  
4 capacity of 1,500 pounds or less that is not used in the occupa-  
5 tion, profession, or business of the insured, nor used as a  
6 public or livery conveyance, nor rented to others;

7 (4) "personal insurance" does not include an annuity con-  
8 tract or a policy of life insurance, disability insurance, or title  
9 insurance; the term means personal automobile insurance, or insurance  
10 covering

11 (A) loss of or damage to real property that is used  
12 predominantly for residential purposes and that does not consist  
13 of more than four dwelling units;

14 (B) loss of or damage to personal property, including  
15 personal effects, household furniture, fixtures and equipment  
16 located in not more than four dwelling units; or

17 (C) legal liability of natural persons for loss of,  
18 damage to or injury to persons or property if the insurance does  
19 not cover liability arising from or in connection with business  
20 or commercial activities;

21 (5) [(3)] "renewal" or "renew" means

22 (A) the issuance and delivery by an insurer of a  
23 policy replacing at the end of the policy period a policy previ-  
24 ously issued and delivered by the same insurer,

25 (B) the issuance and delivery of a certificate or  
26 notice extending the term of a policy beyond its policy period or  
27 term, or

28 (C) the extension of the term of a policy beyond its  
29 policy period or term under a provision for extending the policy

1 by payment of a continuation premium.

2 \* Sec. 13. AS 21.88.050 is amended to read:

3 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The  
4 corporation shall

5 (1) in the form approved by the director, issue to all  
6 physicians, nurses, nurse midwives, and hospitals who are found to be  
7 acceptable risks under standards developed under (5) of this subsec-  
8 tion, and who pay the premiums for it, a contract or contracts indem-  
9 nifying physicians, nurses, nurse midwives, and hospitals and their  
10 employees who are health care providers against loss by reason of  
11 liability for covered claims for an act or omission in the delivery of  
12 professional health care in this state, and agreeing to tender on  
13 behalf of the physicians, nurses, nurse midwives, and hospitals and  
14 their employees who are health care providers a defense to a covered  
15 claim in a proceeding brought under AS 09.55.530 - 09.55.560; the  
16 limits of liability for policies issued by the corporation shall be  
17 approved by the director; the contract shall cover the defense against  
18 but need not indemnify liability for punitive damages arising from a  
19 covered claim; at the option of the corporation, if approved by the  
20 director, and for an additional premium the contract may cover claims  
21 against the physician, nurse, nurse midwife, or hospital that arise  
22 out of professional services performed by the physician, nurse, nurse  
23 midwife, or hospital for any period before the contract is issued,  
24 except that coverage will not be provided for a claim already filed or  
25 of which the physician, nurse, nurse midwife, or hospital had or  
26 reasonably should have had notice at the time the retroactive insur-  
27 ance was purchased;

28 (2) charge a premium for the protection provided by the  
29 contracts issued by the corporation which shall be determined by the

1 board of governors in accordance with AS 21.88.080 and subject to the  
2 approval of the director;

3 (3) comply with or be subject to AS 21.06.090, 21.06.120,  
4 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,  
5 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and  
6 AS 21.36; and shall be exempt from participation as a member insurer  
7 in the Alaska Insurance Guaranty Corporation;

8 (4) carry out the obligations of the contracts issued by  
9 the corporation by defending all covered claims made against insured  
10 health care providers and by paying all liabilities that [WHICH] are  
11 finally adjudicated against the insured health care provider or that  
12 [WHICH] may in the opinion of the corporation reasonably be expected  
13 to be finally adjudicated against the health care provider to the  
14 extent of the contract obligation;

15 (5) establish standards for the acceptability of risks; in  
16 establishing these standards the corporation may exclude an applicant  
17 for insurance based on individual risk selection factors, but may not  
18 exclude an applicant based only on the classification of the appli-  
19 cant.

20 (b) The corporation may

21 (1) employ or retain persons, individual or corporate, to  
22 discharge its obligations and pay reasonable compensation for these  
23 services; employees of the corporation are not considered state em-  
24 ployees;

25 (2) negotiate for and procure reinsurance from private  
26 casualty insurers or reinsurers for any and all liability incurred by  
27 contracts issued by it;

28 (3) provide coverage to insureds for other hazards custom-  
29 arily included in medical malpractice insurance policies when there is

1 a finding by the director that this coverage is not available to  
2 insureds of the Medical Indemnity Corporation of Alaska in the private  
3 insurance market at a competitive price;

4 (4) borrow or advance funds necessary to carry out the  
5 purposes of the corporation;

6 (5) negotiate and become a party to those contracts as are  
7 necessary to carry out the purposes of the corporation;

8 (6) sue or be sued in the name of the corporation;

9 (7) provide risk management advice and services to hospi-  
10 tals;

11 (8) negotiate and become a party to contracts for manage-  
12 ment services for the corporation;

13 (9) perform all other acts necessary and proper to carry  
14 out the duties of the corporation;

15 (10) in a form approved by the director and for an addition-  
16 al premium determined under AS 21.88.080, issue endorsements which  
17 provide indemnity for claims not yet reported which arise out of  
18 professional services rendered during a period of continuous coverage  
19 under the originally issued contract, to physicians, nurses, nurse  
20 midwives, and hospitals who pay the premium for it and who are termi-  
21 nating their original covered claims contract with the corporation for  
22 a period of not less than one year;

23 (11) subject to approval by the director, extend coverage  
24 to a person, entity, or facility that renders health care services in  
25 the state under the supervision of a physician.

26 \* Sec. 14. AS 21.88.900 is amended by adding new paragraphs to read:

27 (17) "nurse" means a nurse licensed under AS 08.68;

28 (18) "nurse midwife" means a registered professional nurse  
29 who is certified as an advanced nurse practitioner under

- 1 AS 08.68.410(1) and authorized to practice as a nurse midwife under
- 2 regulations adopted under AS 08.68.
- 3 \* Sec. 15. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.