

Offered: 3/18/86  
Referred: Finance

Original sponsor: Josephson

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE BILL NO. 404 (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 cancellation and nonrenewal of  
7 insurance; authorizing joint insurance arrangements;  
8 and providing for an effective date."

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

10 \* Section 1. AS 21.36.190(d) is amended to read:

11 (d) This section does not apply to workers' compensation insur-  
12 ance when issued to an association of employers formed for purposes  
13 other than the purchase of insurance and that

14 (1) has a constitution and bylaws; the requirement of this  
15 paragraph does not apply to municipalities, school districts, and  
16 regional educational attendance areas;

17 (2) incorporates a safety program;

18 (3) as a group has preferred characteristics over similar  
19 risks written on an individual basis; and

20 (4) has filed and received approval from the director for  
21 the rating program to be applied to the group.

22 \* Sec. 2. AS 21.36.190 is amended by adding a new subsection to read:

23 (e) The provisions of (a) and (b) of this section do not apply  
24 to coverage purchased through a joint insurance arrangement formed  
25 under AS 21.76.

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 21.36.220 is amended to read:

17 Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not  
18 exercise its right to cancel a personal insurance policy unless a  
19 written notice of cancellation is mailed or delivered to the named  
20 insured, at the address shown in the policy, at least 20 days before  
21 the effective date of cancellation. However, if [, EXCEPT THAT WHEN]  
22 cancellation is for nonpayment of premium, the notice shall be mailed  
23 or delivered to the named insured at the address shown in the policy  
24 at least 10 days before the effective date of cancellation, and must  
25 [SHALL] include or be accompanied by a statement of the reason for the  
26 cancellation. [THIS SECTION DOES NOT APPLY TO THE FAILURE TO RENEW A  
27 POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR LESS THAN 12 MONTHS.]

28 \* Sec. 7. AS 21.36.220 is amended by adding a new subsection to read:

29 (b) An insurer may not exercise its right to cancel a policy of

1 business or commercial insurance unless a written notice of cancella-  
2 tion is mailed or delivered to the named insured, at the address shown  
3 in the policy, and to the agent or broker of record, at least 60 days  
4 before the effective date of cancellation. However, if cancellation  
5 is for nonpayment of premium, the notice shall be mailed or delivered  
6 to the named insured at the address shown in the policy and to the  
7 agent or broker of record at least 10 days before the effective date  
8 of cancellation, and must include or be accompanied by a statement of  
9 the reason for the cancellation.

10 \* Sec. 8. AS 21.36 is amended by adding a new section to read:

11 Sec. 21.36.235. RETURN OF PREMIUM UPON CANCELLATION. If an  
12 insurer cancels a policy under AS 21.36.220(b), it shall return any  
13 unearned premium to the agent or broker of record or directly to the  
14 insured or premium finance company, if applicable, by the effective  
15 date of cancellation, except that if cancellation is for nonpayment of  
16 premium, any unearned premium shall be returned within 30 days after  
17 the notice of cancellation is given. If the unearned premium is  
18 returned by the insurer to a person other than the insured, that  
19 person shall promptly return the unearned premium to the insured  
20 unless otherwise provided by agreement between the person and the  
21 insured.

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

23 Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to  
24 renew a personal insurance policy in force for less than 12 months.  
25 An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR  
26 MORE] unless a written notice of nonrenewal is mailed or delivered to  
27 the named insured, at the address shown in the policy, at least 20  
28 days for a personal insurance policy, and at least 60 days for a  
29 business or commercial insurance policy, before the expiration date of

1 the policy [,] or of the anniversary date of a policy written for a  
2 term longer than one year or with no fixed expiration date. This  
3 section does not apply

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

6 (2) in case of nonpayment of premium for the expiring  
7 policy; or

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

10 \* Sec. 10. AS 21.36.250 is amended to read:

11 Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automo-  
12 bile liability insurance is cancelled, other than for nonpayment of  
13 premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A  
14 POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [AP-  
15 PLIES], the insurer shall notify the named insured of possible eligi-  
16 bility for automobile insurance through the automobile assigned risk  
17 plan, or automobile insurance plan. The notification must [SHALL]  
18 accompany or be included in the notice of cancellation or nonrenewal  
19 required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

20 \* Sec. 11. AS 21.36.310 is amended to read:

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

22 (1) "business or commercial insurance" means insurance  
23 other than personal insurance, life insurance, disability insurance,  
24 title insurance, or an annuity contract;

25 (2) "nonpayment of premium" means failure of the named  
26 insured to discharge when due any obligations of the named insured in  
27 connection with the payment of premium on a policy, or any installment  
28 of the premium, whether the premium is payable directly to the insurer  
29 or its agent or indirectly under any premium finance plan or extension

1 of credit;

2 (3) "personal automobile insurance" means insurance not  
3 related to business or commercial activities, covering [(2) "POLICY"  
4 MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN  
5 AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile  
6 liability [COVERAGE], uninsured or underinsured motorists [MOTORIST  
7 COVERAGE], automobile medical payments [COVERAGE], or automobile  
8 physical damage [COVERAGE], that is delivered or issued for delivery  
9 in this state, [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL OR HUS-  
10 BAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD,] and under which the  
11 insured vehicles are of the following types only:

12 (A) a motor vehicle of the private passenger or sta-  
13 tion wagon type that is not used as a public or livery convey-  
14 ance, nor rented to others, or

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

19 (4) "personal insurance" does not include an annuity con-  
20 tract or a policy of life insurance, disability insurance, or title  
21 insurance; the term means personal automobile insurance, or insurance  
22 covering

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

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

29 (C) legal liability of natural persons for loss of,

1 damage to, or injury to, persons or property if the insurance  
2 does not cover liability arising from or in connection with  
3 business or commercial activities;

4 (5) [(3)] "renewal" or "renew" means

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

8 (B) the issuance and delivery of a certificate or  
9 notice extending the term of a policy beyond its policy period or  
10 term, or

11 (C) the extension of the term of a policy beyond its  
12 policy period or term under a provision for extending the policy  
13 by payment of a continuation premium.

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

15 CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

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

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

23 (2) purchase coverage on a group basis.

24 (b) A joint insurance arrangement under (a)(1) of this section  
25 may be only for property insurance.

26 (c) A joint insurance arrangement under (a)(2) of this section  
27 may be for any kind of insurance defined by this title except for

28 (1) life, annuity, disability, and title insurance; and

29 (2) surety.

1 (d) A joint insurance arrangement shall be considered an alter-  
2 native or supplement to any other policy or contract of insurance  
3 authorized or required by law, including insurance under AS 21.75.

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

8 Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A  
9 cooperative agreement shall provide for the proper operation of the  
10 joint insurance arrangement, and include provisions for

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

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

16 (3) organization of the arrangement, including a roster of  
17 participating members and the names of the members of the board of  
18 directors;

19 (4) procedures to establish and promote an aggressive risk  
20 management and program among the members of the arrangement, including  
21 procedures for identifying and reducing the risks that can be reduced  
22 through implementing better safety technologies and improved work  
23 techniques and procedures;

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

26 (6) the addition of new members to the arrangement or the  
27 withdrawal of members from the arrangement;

28 (7) the method of apportioning costs and disposition of  
29 excess contributions;

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

3 (9) terminating the arrangement and disposing of its as-  
4 sets; and

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

6 Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A  
7 cooperative agreement must include a provision requiring an annual  
8 determination by a casualty actuary who is a member of the American  
9 Academy of Actuaries that procedures for establishing reserves for  
10 losses of the joint insurance arrangement are actuarially sound.

11 (b) A joint insurance arrangement shall be subject to an annual  
12 independent audit. The audit shall be conducted in accordance with  
13 generally accepted auditing standards and must include a review of the  
14 actuarial assumptions used for establishing the reserves under (a) of  
15 this section. The audit report must include certification from a  
16 casualty actuary who is a member of the American Academy of Actuaries  
17 that the actuarial assumptions continue to be sound and the level of  
18 the reserves are adequate.

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

22 Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A  
23 cooperative agreement may authorize the board of directors to enter  
24 into contracts for services necessary to perform the functions of a  
25 joint insurance arrangement. The person contracting to perform the  
26 functions must be appropriately licensed under this title if this  
27 title so requires.

28 Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooper-  
29 ative agreement may delegate to the board of directors, or authorize

1 delegation by the board to another person or group, the power to  
2 compromise, arbitrate, or otherwise settle claims on behalf of the  
3 arrangement.

4 Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may  
5 authorize the board of directors to purchase excess or catastrophic  
6 insurance on behalf of the joint insurance arrangement. The cost of  
7 the insurance shall be apportioned in the manner specified in the  
8 joint insurance agreement. The board may purchase insurance under  
9 this section only from an insurer authorized to do business in the  
10 state or from an unauthorized insurer if the insurance is placed  
11 through a licensed surplus lines broker.

12 Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance  
13 arrangement shall establish a joint insurance fund. The fund consists  
14 of money

15 (1) contributed by members of the joint insurance arrange-  
16 ment through budgetary appropriations or transfers from a self-insur-  
17 ance reserve; and

18 (2) collected by the joint insurance arrangement through  
19 subrogation of a claim paid from the fund to a member of the arrange-  
20 ment.

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

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

28 (d) For each type of protection offered by the joint insurance  
29 arrangement, the method of accounting must show the order, source,

1 date, and amount of each payment from the fund.

2 (e) Within 60 days of the end of the fiscal year, the adminis-  
3 trator shall furnish a detailed report of the operation and condition  
4 of the fund to the board of directors and the director of insurance.  
5 The report furnished to the director of insurance shall be available  
6 for public inspection.

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

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

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

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

20 Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has  
21 a cause of action for reimbursement of money paid to a participating  
22 member for a loss or injury if the participating member recovers money  
23 for the loss or injury from a third party. The joint insurance ar-  
24 rangement also has a direct cause of action for reimbursement against  
25 a third party responsible for loss or injuries sustained by a partic-  
26 ipating member if the joint arrangement has paid money to the partic-  
27 ipating member for the loss or injuries.

28 Sec. 21.76.900. DEFINITIONS. In this chapter

29 (1) "adjustment expenses" means expenses for investigative,

1 processing, legal, actuarial, arbitration, and settlement services  
2 incurred in the adjustment of losses, claims, or benefits;

3 (2) "administrator" means a person or group appointed by  
4 the board of directors to administer a joint insurance arrangement or  
5 a joint insurance fund;

6 (3) "board" or "board of directors" means the board of  
7 directors provided for in a cooperative agreement;

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

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

14 (6) "joint insurance arrangement" means a joint insurance  
15 arrangement authorized under AS 21.76.010.

16 \* Sec. 13. AS 21.39.155(a) is amended to read:

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

24 \* Sec. 14. AS 21.80.180(5) is amended to read:

25 (5) "insolvent insurer" means an insurer

26 (A) authorized to transact insurance in this state,  
27 except an assessable reciprocal insurer formed by and insuring  
28 only municipalities or nonprofit public utilities, a joint insur-  
29 ance arrangement formed under AS 21.76, the Medical Indemnity

1 Corporation of Alaska, and the Health Care Providers Joint Under-  
2 writing Association established under AS 21.88, either at the  
3 time the policy was issued or when the insured event occurred,  
4 and

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

7 \* Sec. 15. AS 21.80.180(6) is amended to read:

8 (6) "member insurer" means a person, except an assessable  
9 reciprocal insurer formed by and insuring only municipalities or  
10 nonprofit public utilities, a joint insurance arrangement formed under  
11 AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health  
12 Care Providers Joint Underwriting Association established under  
13 AS 21.88, who

14 (A) writes any kind of insurance to which this chap-  
15 ter applies under AS 21.80.020 including the exchange of recipro-  
16 cal or interinsurance contracts, and

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

18 \* Sec. 16. AS 21.36.210(e), 21.36.230, and 21.36.300 are repealed.

19 \* Sec. 17. This Act takes effect immediately in accordance with AS 01.-  
20 10.070(c).