

Offered: 3/30/87
Referred: Judiciary

5-0306L

Original sponsors: Navarre, Swackhammer
and Sund

1 IN THE HOUSE BY THE LABOR AND
COMMERCE COMMITTEE
2 CS FOR HOUSE BILL NO. 46 (L&C)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FIFTEENTH LEGISLATURE - FIRST 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 21.09.250 is amended to read:
10 Sec. 21.09.250. PROHIBITED ACTS. An insurer doing business in
11 this state may not make, write, place or cause to be made, written or
12 placed in this state a policy, duplicate policy or contract of insur-
13 ance of any kind or character, or general or floating policy upon
14 persons or property resident, situated or located in this state, from
15 or through a broker, agent, general agent, surplus line broker, or
16 person who has not secured a license in this state. An insurer may
17 not pay a commission or any form of remuneration to a person, firm, or
18 organization for the writing or placing of insurance coverage in this
19 state unless that person, firm, or organization holds a license issued
20 by the director.
21 * Sec. 2. AS 21.09.280 is amended to read:
22 Sec. 21.09.280. GENERAL AGENTS [AND MANAGERS]. (a) An insurer
23 appointing a person as its general agent [OR MANAGER] to represent it
24 in this state shall file notice of the appointment with the director
25 on forms prescribed and furnished by the director.
26 (b) A general agent [OR MANAGER] has the authority, consistent
27 with this title, that may be conferred by the insurer. A general
28 agent, resident or nonresident, qualified in AS 21.27.090, licensed as
29 provided in this section in the same manner as is provided for agents

1 in AS 21.27, may exercise the powers conferred by this title upon
2 agents licensed for the kinds of insurance that the general agent is
3 authorized to transact for the insurer appointing the agent.

4 (c) The [EXCEPT AS PROVIDED UNDER AS 21.27.500, THE] appointment
5 of a resident or nonresident general agent is not effective unless the
6 person appointed is licensed as the general agent of the insurer by
7 the director upon application and payment of a fee set under AS 21.-
8 06.250.

9 (d) Every license is subject to the payment of an annual fee set
10 under AS 21.06.250 and payable on or before [EXPIRES AT] the close of
11 business on the 30th day of June of each year [FOLLOWING THE DATE OF
12 ISSUE, AND MAY BE RENEWED FOR AN ADDITIONAL YEAR UPON APPLICATION AND
13 PAYMENT OF THE FEE].

14 (e) The director may deny, suspend, or revoke a license for any
15 cause specified in AS 21.27.410 in the manner provided in AS 21.27.-
16 420.

17 * Sec. 3. AS 21.09.280 is amended by adding new subsections to read:

18 (f) Persons employed on salary by an insurer, including officers
19 and salaried employees performing the same services as general agents,
20 are considered to be service representatives and are not required to
21 be licensed.

22 (g) For purposes of this section, a person, firm, or corporation
23 that performs management services for an insurer is not considered a
24 general agent if

25 (1) the person, firm, or corporation is a wholly-owned
26 subsidiary of the insurer;

27 (2) the person, firm, or corporation wholly owns the insurer;
28 or

29 (3) the person, firm, or corporation is a wholly-owned

1 subsidiary of the insurance holding company that owns or controls the
2 insurer.

3 * Sec. 4. AS 21.27.020 is amended to read:

4 Sec. 21.27.020. GENERAL QUALIFICATIONS FOR LICENSE. For the
5 protection of the people of this state, the director may not issue [OR
6 RENEW] a license except in compliance with this chapter [, OR] to a
7 person, or to be exercised by [,] a person, found by the director to
8 be untrustworthy, incompetent, or who has not established to the
9 satisfaction of the director that the person is qualified under [IN
10 ACCORDANCE WITH] this chapter.

11 * Sec. 5. AS 21.27.030(a) is amended to read:

12 (a) The director may not grant an agent, solicitor, or broker
13 license to a person if the director has reasonable cause to believe
14 that

15 [(1) DURING EITHER OF THE TWO CALENDAR YEARS IMMEDIATELY
16 PRECEDING THE REQUEST FOR RENEWAL OF THE LICENSE THE AGGREGATE AMOUNT
17 OF COMMISSIONS REPRESENTED BY THE CONTROLLED BUSINESS PROCURED BY OR
18 THROUGH THE LICENSEE EXCEEDED THE AGGREGATE AMOUNT OF COMMISSIONS
19 REPRESENTED BY ALL OTHER INSURANCE BUSINESS PROCURED BY OR THROUGH THE
20 LICENSEE; OR

21 [(2)] the circumstances of the applicant for the license [OR
22 OF A LICENSEE] are such [AS TO CAUSE THE DIRECTOR REASONABLY TO
23 BELIEVE] that during the 12-month period immediately following issu-
24 ance [OR RENEWAL] of the license, if issued [OR RENEWED], the aggre-
25 gate amount of commissions to be represented by the controlled busi-
26 ness would exceed the aggregate amount of commissions to be repre-
27 sented by all other insurance business to be procured by or through
28 the applicant [OR LICENSEE].

29 * Sec. 6. AS 21.27.030 is amended by adding a new subsection to read:

1 (d) The director may revoke an agent, solicitor, or broker
2 license if the director has reasonable cause to believe that during
3 either of the two preceding calendar years the aggregate amount of
4 commissions represented by the controlled business procured by or
5 through the licensee exceeded the aggregate amount of commissions
6 represented by all other insurance business procured by or through the
7 licensee.

8 * Sec. 7. AS 21.27.060 is amended to read:

9 Sec. 21.27.060. EXAMINATION OF APPLICANTS. (a) Each applicant
10 for an individual license as agent, broker, solicitor, or adjuster
11 shall, before the issuance of the license, personally take and pass,
12 to the satisfaction of the director, an examination given by the
13 director as a test of the qualifications and competence of the appli-
14 cant. This requirement does not apply to

15 (1) applicants for limited licenses, as travel insurance
16 agents only, under AS 21.27.150, or, at the discretion of the direc-
17 tor, to applicants for licenses as disability insurance agents for the
18 purpose of handling limited coverages pertaining to sports and recre-
19 ation;

20 (2) applicants who at any time within the five-year period
21 immediately preceding the date of application have been licensed in
22 this state under a license requiring qualifications required by the
23 license applied for and who are considered by the director to be fully
24 qualified and competent;

25 (3) applicants for license as nonresident agent or as
26 nonresident broker who have fulfilled qualification requirements in
27 their state or province of residence and who are considered by the
28 director to be fully qualified and competent;

29 (4) applicants for an agent or solicitor license covering

1 the same kinds of insurance as an agent's or solicitor's license then
2 held by them.

3 (b) The director may at any time require an individual [A]
4 licensed as an agent, broker, solicitor, or adjuster to take and
5 successfully pass an examination testing competence and qualifications
6 as a condition to the continuance [OR RENEWAL] of the license if the
7 licensee has been guilty of violation of this title, or has so con-
8 ducted affairs under the license as to cause the director reasonably
9 to desire further evidence of the qualifications of the licensee.

10 * Sec. 8. AS 21.27.090(a) is amended to read:

11 (a) To qualify for an individual agent or broker license an
12 applicant shall comply with this title and

13 (1) be 19 years of age or over [, IF AN INDIVIDUAL];

14 (2) if for a resident agent's or broker's license, be a
15 bona fide resident before issuance of license [,] and actually reside
16 in the state [RESIDING IN ALASKA, OR IF A CORPORATION, BE OTHER THAN
17 AN INSURER AND MAINTAIN A LAWFULLY ESTABLISHED PLACE OF BUSINESS IN
18 THIS STATE, EXCEPT AS PROVIDED IN AS 21.27.270];

19 (3) [BE EMPOWERED TO BE AN AGENT OR BROKER, AS THE CASE MAY
20 BE, UNDER ITS MEMBERS' AGREEMENT, IF A FIRM, OR BY ITS ARTICLES OF
21 INCORPORATION, IF A CORPORATION;

22 (4)] successfully pass any examination required under
23 AS 21.27.060;

24 (4) [(5)] be a trustworthy person;

25 (5) [(6)] not intend to use or use the license for the
26 purpose principally of writing controlled business, as defined in
27 AS 21.27.030;

28 (6) [(7)] if for an agent license, be appointed as its
29 agent by one or more authorized insurers, subject to issuance of the

1 license, except that an individual acting on behalf of a firm is not
2 required to have an appointment as an agent for that activity:

3 (7) [(8)] if for broker license, have had experience either
4 as an agent, solicitor, adjuster, general agent, broker, or as an
5 employee of insurers or representatives of insurers, or special educa-
6 tion or training of sufficient duration and extent reasonably to
7 satisfy the director that the applicant possesses the competence
8 necessary to fulfill the responsibilities of broker.

9 * Sec. 9. AS 21.27.090 is amended by adding a new subsection to read:

10 (c) To qualify for a firm agent or broker license an applicant
11 shall comply with this title and

12 (1) comply with (a)(5) and (6) of this section;

13 (2) if a corporation, maintain a lawfully established place
14 of business in this state, except as provided in AS 21.27.270.

15 * Sec. 10. AS 21.27.130 is amended to read:

16 Sec. 21.27.130. CONTENT OF AGENT, BROKER, SOLICITOR LICENSES.
17 Agent, solicitor, and broker licenses must [SHALL] be in the form the
18 director prescribes, and must [SHALL] set out

19 (1) the name and address of the licensee, or if the lic-
20 ensee is required to have a place of business, the address of the
21 place of business;

22 (2) if the agent or broker is a firm [OR CORPORATION], the
23 name of the principal or manager of the firm holding an individual
24 license as required by AS 21.27.140 [EACH INDIVIDUAL AUTHORIZED TO
25 EXERCISE THE POWERS CONFERRED BY THE LICENSE];

26 (3) the kind or kinds of insurance the licensee is [THERE-
27 BY] licensed to handle;

28 (4) if a solicitor's license, the name and address of the
29 agent or broker represented by the solicitor;

1 (5) the condition under which the license is granted;
2 (6) the date of issuance [AND DATE OF EXPIRATION] of the
3 license.

4 * Sec. 11. AS 21.27.140 is amended to read:

5 Sec. 21.27.140. LICENSES TO FIRMS [AND CORPORATIONS]. A firm
6 shall have a firm license of the same degree as each individual li-
7 icensee acting on behalf of the firm. A firm [OR CORPORATION] may not
8 be licensed as an adjuster, agent, or broker unless each individual
9 acting as or representing to be an adjuster, agent, or broker on
10 behalf of the firm is licensed as an individual, and the principal or
11 manager of the firm is licensed as an individual to exercise all the
12 powers conferred by the firm's license. If the licensee knows of and
13 consents to an act or representation on behalf of the firm by an
14 individual who is not licensed as required by this chapter, that act
15 or representation [TO BE EMPOWERED AND DESIGNATED IN THE LICENSE TO
16 EXERCISE THE POWERS CONFERRED BY THE LICENSE IS QUALIFIED AS THOUGH
17 THE INDIVIDUAL WERE THE SOLE INDIVIDUAL TO BE SO EMPOWERED, EXCEPT
18 THAT A FIRM OR CORPORATION LICENSED FOR ALL LINES MAY EMPOWER AND
19 DESIGNATE ANY INDIVIDUAL, OTHER THAN THE PRINCIPAL OR MANAGER, LI-
20 CENSED FOR ONLY PROPERTY-CASUALTY OR LIFE-DISABILITY TO EXERCISE THE
21 POWERS CONFERRED BY THE LICENSE TO THE EXTENT THAT INDIVIDUAL IS
22 QUALIFIED TO ACT. EXERCISE OR ATTEMPTED EXERCISE OF THE POWERS BY AN
23 INDIVIDUAL NOT SO DESIGNATED, WITH THE KNOWLEDGE OR CONSENT OF THE
24 LICENSEE,] is cause for the revocation or suspension of the firm
25 license.

26 * Sec. 12. AS 21.27.170(b) is amended to read:

27 (b) The director shall issue to the agent a special vending
28 machine license for each machine to be used. The license must [SHALL]
29 specify the name and address of the insurer and agent, the name of the

1 policy to be sold, the serial number of the machine, and the place
2 where the machine is to be in operation. The license is [SHALL BE]
3 subject to [ANNUAL CONTINUATION, TO EXPIRATION,] suspension or revoca-
4 tion coincidentally with that of the agent. The director shall also
5 revoke the license on a machine if the director finds that the condi-
6 tions upon which the machine was licensed, under [AS REFERRED TO IN]
7 (a) of this section, no longer exist. Proof of the existence of a
8 [SUBSISTING] license shall be displayed on or about each vending
9 machine in use in the manner the director may reasonably require.

10 * Sec. 13. AS 21.27.190(a) is amended to read:

11 (a) Each applicant for a broker license [OR FOR THE RENEWAL OF A
12 BROKER LICENSE EXISTING ON JULY 1, 1966,] shall file with the applica-
13 tion [OR REQUEST FOR RENEWAL] and shall after that [THEREAFTER] main-
14 tain in force while [SO] licensed a bond in favor of the people of the
15 state, executed by an authorized corporate surety approved by the
16 director, in the amount of \$10,000 [\$5,000]. The bond may be continu-
17 ous in form, and total aggregate liability on the bond may be limited
18 to the payment of \$10,000 [\$5,000]. The bond must [SHALL] be contin-
19 gent on the accounting by the broker, to a [ANY] person requesting the
20 broker to obtain insurance or to a person from whom the broker obtains
21 insurance, for money or premiums collected in connection with the
22 insurance [THEREWITH].

23 * Sec. 14. AS 21.27.190 is amended by adding a new subsection to read:

24 (c) An individual who acts on behalf of a firm that files and
25 maintains in force the bond described in (a) of this section is exempt
26 from the requirements of (a) of this section.

27 * Sec. 15. AS 21.27.200(a) is repealed and reenacted to read:

28 (a) A broker is not an agent or other representative of an
29 insurer and does not have power as a broker to bind the insurer

1 regarding a risk or an insurance contract.

2 * Sec. 16. AS 21.27.200 is amended by adding new subsections to read:

3 (c) In determining an insured's entitlement to coverage or
4 return premium, a premium payment made to a broker shall be considered
5 received by the insurer if

6 (1) the payment was, at the time it was made, designated
7 for specific coverage; and

8 (2) the insurer accepted or acknowledged coverage by issu-
9 ing a policy, binder, or other contract for temporary insurance.

10 (d) A broker may not knowingly accept payment for coverage until
11 coverage is authorized by an insurer.

12 (e) Except as provided under (c) of this section, this section
13 is not intended to alter the common law of agency as applied to trans-
14 actions under this title.

15 * Sec. 17. AS 21.27.240(a) is amended to read:

16 (a) An agent or broker who employs a solicitor shall pay the
17 [THE] fee for issuance or annual fee for continuation [RENEWAL] of a
18 solicitor license [SHALL BE PAID BY THE AGENT OR BROKER BY WHOM THE
19 SOLICITOR IS EMPLOYED].

20 * Sec. 18. AS 21.27.300 is amended to read:

21 Sec. 21.27.300. CONTENTS OF LICENSE. The director shall pre-
22 scribe the form of adjuster license, which must contain

23 (1) the name and business address of the adjuster;

24 (2) date of issuance [AND DATE OF EXPIRATION] of the li-
25 cense;

26 (3) other statements proper to the purposes of the license.

27 * Sec. 19. AS 21.27.350 is amended by adding a new subsection to read:

28 (c) In addition to the record required under (a) of this sec-
29 tion, each agent or broker shall have and maintain at the agent's or

1 broker's principal place of business current accounting and financial
2 records maintained in accordance with generally accepted accounting
3 principles. The director may request summary or detailed copies for
4 examination by the division. Records examined under this subsection
5 are confidential when in the possession of the division, but may be
6 used by the director in a proceeding against the licensee. For pur-
7 poses of this subsection, the records of a firm shall be considered
8 the records of an individual agent or broker acting on behalf of the
9 firm.

10 * Sec. 20. AS 21.27.360(b) is amended to read:

11 (b) All funds, except those made payable to the insurer, repre-
12 senting premiums or return premiums received by an agent or broker,
13 shall be received in the fiduciary account of the agent or broker, and
14 shall be deposited in a bank account or depository separate from any
15 other account or depository, and shall be promptly accounted for and
16 paid to the insured, insurer, or agent entitled to the funds. For
17 purposes of this subsection, the fiduciary account of the firm shall
18 be considered the fiduciary account of an individual agent or broker
19 acting on behalf of the firm. Funds deposited into a fiduciary
20 account may not be commingled or otherwise combined with other funds,
21 except as allowed under (d) of this section.

22 * Sec. 21. AS 21.27.360 is amended by adding new subsections to read:

23 (d) An agent or broker may commingle with premium funds, addi-
24 tional funds for the purpose of advancing premiums, establishing
25 reserves for the payment of return premiums, or reserves for receiving
26 and transmitting premium or return premium funds. Funds collected for
27 the payment of premium taxes, policy or filing fees, late payment
28 charges, and interest from fiduciary funds on deposit, may be com-
29 mingled in a fiduciary account, but shall be separately accounted for

1 and periodically removed from the fiduciary account.

2 (e) An agent or broker may not treat funds required to be in a
3 fiduciary account as a personal asset, as collateral for a personal or
4 business loan, or as a personal asset or income on a financial state-
5 ment, except that funds in a fiduciary account may be included in a
6 financial statement of the agent or broker if clearly identified as
7 fiduciary account assets.

8 (f) In this section, "fiduciary account" means an account in
9 which the agent or broker holds funds as a trustee for the insured,
10 insurer, or agent entitled to the funds.

11 * Sec. 22. AS 21.27.380 is repealed and reenacted to read:

12 Sec. 21.27.380. ANNUAL FEE FOR LICENSES. (a) An annual fee set
13 under AS 21.06.250 for resident and nonresident agent, solicitor, and
14 adjuster licenses is due on or before the close of business on the
15 30th day of June.

16 (b) An annual fee set under AS 21.06.250 for resident and non-
17 resident broker licenses is due on or before the close of business on
18 the 31st day of December.

19 (c) An agent or broker shall file the annual fee set under
20 AS 21.06.250 on behalf of a solicitor employed by the agent or broker.

21 (d) If payment of the annual license fee is not received by the
22 director before the due date as required under this section, the
23 licensee shall pay to the director and the director shall collect, in
24 addition to the regular fee, a surcharge as established by regulation
25 under AS 21.06.250. This subsection may not be considered to exempt a
26 person from a penalty provided by law for transacting business without
27 a valid license.

28 * Sec. 23. AS 21.27.390(a) is amended to read:

29 (a) The director may adopt regulations regarding the issuance of

1 an agent or broker temporary license to

2 (1) the surviving spouse or next of kin or to the adminis-
3 trator or executor of a deceased licensed agent or broker;

4 (2) the spouse, next of kin, employee, or legal guardian of
5 a licensed agent or broker who is disabled because of sickness, insan-
6 ity, or injury;

7 (3) a surviving member, [OF A FIRM OR SURVIVING] officer,
8 or employee of a firm [CORPORATION] licensed as agent or broker, upon
9 the death of the principal or manager of the firm holding the same
10 licenses as the firm [AN INDIVIDUAL DESIGNATED IN THE FIRM OR CORPO-
11 RATION'S LICENSE TO EXERCISE POWERS THEREUNDER];

12 (4) the designee of a licensed agent who enters active
13 service in the armed forces of the United States;

14 (5) a person preparing for examination for permanent li-
15 cense under the supervision of an authorized insurer.

16 * Sec. 24. AS 21.27.410(a) is amended to read:

17 (a) The director may refuse to issue a license or may suspend or
18 [,] revoke [, OR REFUSE TO RENEW] a license issued under this chapter
19 or a surplus line broker license, or may refuse to renew a surplus
20 line broker license, for a cause specified in another [ANY OTHER]
21 provision of this title, or for any of the following causes:

22 (1) for a cause [ANY] cause for which issuance of the license
23 could have been refused had it then existed and been known to the
24 director;

25 (2) if the licensee or applicant wilfully violates or
26 knowingly participates in the violation of a provision of this title;

27 (3) if the licensee or applicant has obtained or attempted
28 to obtain the license through wilful misrepresentation or fraud, or
29 has failed to pass an [ANY] examination required under this chapter;

1 (4) if the licensee or applicant has misappropriated or
2 converted to personal use or has illegally withheld money required to
3 be held in a fiduciary capacity;

4 (5) if the licensee or applicant has, with intent to de-
5 ceive, materially misrepresented the terms or effect of an insurance
6 contract; or has engaged or is about to engage in a fraudulent trans-
7 action;

8 (6) if the licensee or applicant has been guilty of "twist-
9 ing," under AS 21.36.050, or of rebating, under AS 21.36.100;

10 (7) if the licensee or applicant has been convicted, by
11 final judgment, of a felony;

12 (8) if in the conduct of affairs under the license, the
13 licensee exhibits conduct considered by the director to reflect incom-
14 petence, untrustworthiness, or a source of injury and loss to the
15 public;

16 (9) if the licensee or applicant has dealt with, or at-
17 tempted to deal with, insurances or to exercise powers relative to
18 insurance outside the scope of the licenses of the licensee or appli-
19 cant.

20 * Sec. 25. AS 21.27.410(b) is amended to read:

21 (b) The license of a firm [OR CORPORATION] may be suspended,
22 revoked, or refused for any of the causes that [WHICH] relate to a
23 [ANY] person acting on behalf of the firm [DESIGNATED IN THE LICENSE
24 TO EXERCISE ITS POWERS].

25 * Sec. 26. AS 21.27.420 is amended to read:

26 Sec. 21.27.420. PROCEDURE FOR SUSPENDING OR [,] REVOKING [OR
27 REFUSING TO RENEW] A LICENSE. The director may suspend or [,] revoke
28 [, OR REFUSE TO RENEW] a license

29 [(1) BY ORDER GIVEN TO THE LICENSEE NOT LESS THAN 15 DAYS

1 BEFORE THE EFFECTIVE DATE OF THE LICENSE, SUBJECT TO THE RIGHT OF THE
2 LICENSEE TO HAVE A HEARING AS PROVIDED IN AS 21.06.180(b); PENDING A
3 HEARING THE LICENSE SHALL BE SUSPENDED; OR

4 (2)] by an order on hearing made as provided in AS 21.06.-
5 220 effective 10 days after the date of the giving of the order,
6 subject to the right of the licensee to appeal to the superior court
7 as provided in AS 21.06.230.

8 * Sec. 27. AS 21.27.440 is amended to read:

9 Sec. 21.27.440. CIVIL PENALTIES MAY BE IMPOSED. After hearing
10 and in addition to or in lieu of the suspension or [,] revocation of
11 [, OR REFUSAL TO RENEW] a license, the director may levy a civil
12 penalty upon the licensee not to exceed \$2,500. The order levying the
13 civil penalty must [SHALL] specify the period within which the civil
14 penalty shall be fully paid. The [, WHICH] period may not be less
15 than 15 or more than 30 days after [FROM] the date of the order. Upon
16 failure to pay the civil penalty when due, the director shall revoke
17 the licenses of the licensee if not already revoked. A [THE] civil
18 penalty collected [SHALL BE PAID] by the director shall be paid to the
19 commissioner of revenue for deposit in the general fund.

20 * Sec. 28. AS 21.27.450 is amended to read:

21 Sec. 21.27.450. FINE IN LIEU OF ACTION AGAINST THE LICENSE.
22 Upon the hearing of an appeal from an order suspending or [,] revoking
23 [, OR REFUSING TO RENEW] a license issued under this chapter, the
24 court, if it finds that the licensee is guilty of violation of the law
25 and if it considers the suspension or [,] revocation [, OR REFUSAL TO
26 RENEW THE LICENSE] too severe a penalty under the facts as found, may
27 instead impose a fine of not more than \$2,500. Payment of the fine
28 within 10 days after its imposition reinstates or restores [SHALL
29 REINSTATE, RESTORE, OR RENEW] the license.

1 * Sec. 29. AS 21.27.460(a) is amended to read:

2 (a) Each license issued under this chapter, although issued and
3 delivered to the licensee agent, broker, solicitor, or adjuster, is
4 the property of the state. Upon the [EXPIRATION,] termination, sus-
5 pension, or revocation of the license, the licensee or other person
6 having possession or custody of the license shall immediately deliver
7 it to the director either by personal delivery or by mail.

8 * Sec. 30. AS 21.34.040(c) is amended to read:

9 (c) A nonadmitted insurer may be eligible to provide coverage in
10 this state if it qualifies under one of the following:

11 (1) a foreign but nonalien insurer may qualify under this
12 subsection if it has a minimum capital and surplus equal to that
13 required in its domiciliary jurisdiction, or [,] \$1,500,000 on Septem-
14 ber 18, 1984, [AND] \$2,500,000 on June 20, 1985, [AND] \$3,500,000 [,]
15 on June 20, 1986, and \$5,000,000 on June 20, 1987, whichever is great-
16 er;

17 (2) an alien insurer may qualify under this subsection if
18 it meets the minimum capital and surplus requirements in (1) of this
19 subsection and maintains in the United States an irrevocable trust
20 fund in either a national bank or a member of the Federal Reserve
21 system, in an amount not less than \$1,500,000 [THAT REQUIRED AS MINI-
22 MUM CAPITAL AND SURPLUS IN (1) OF THIS SUBSECTION], for the protection
23 of all its policyholders in the United States; the trust fund must
24 [SHALL] consist of instruments of substantially the same character and
25 quality as those that are eligible investments for the capital and
26 statutory reserves of admitted insurers authorized to write like kinds
27 of insurance in this state or of irrevocable letters of credit; the
28 trust fund must [FUNDS SHALL] have an expiry date that at no time is
29 less than five years;

1 (3) a Lloyd's or other similar unincorporated group of
2 alien individual insurers may qualify if it maintains a trust fund of
3 not less than \$50,000,000 as security to the full amount, for all
4 policyholders and creditors in the United States, of each member of
5 the group;

6 (4) an "insurance exchange" created by the laws of indi-
7 vidual states may qualify if it maintains capital and surplus, or the
8 substantial equivalent, of not less than \$15,000,000 in the aggregate;
9 in the event the insurance exchange does not maintain funds for the
10 protection of all its policyholders, each individual syndicate shall
11 meet the minimum capital and surplus requirements of (1) of this
12 subsection.

13 * Sec. 31. AS 21.36.210(a) is amended to read:

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

17 (1) nonpayment of premium; or

18 (2) the driver's license or motor vehicle registration of
19 either the named insured or of an operator who resides in the same
20 household as the named insured or who customarily operates a motor
21 vehicle insured under the policy has been under suspension or revoca-
22 tion during the policy period or, if the policy is a renewal, during
23 its policy period or the 180 days immediately preceding its effective
24 date.

25 * Sec. 32. AS 21.36.210(d) is amended to read:

26 (d) This section does not apply to

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

29 (2) a policy that has been in effect less than 60 days at

1 the time notice of cancellation is mailed or delivered by the insurer.
2 unless it is a renewal policy;

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

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

6 (5) a policy covering the operation of a garage; automobile
7 sales agency, repair shop, or service station; or public parking
8 place;

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

10 (7) any other contract providing insurance to the named
11 insured, even though the contract may incidentally provide insurance
12 with respect to motor vehicles.

13 * Sec. 33. AS 21.36.210(f) is amended to read:

14 (f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not
15 exercise its right to cancel a policy of personal insurance other than
16 personal automobile insurance, except for the following reasons [THE
17 TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CON-
18 DITIONS OR CIRCUMSTANCES ARISES]:

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

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

25 (3) discovery of fraud or material misrepresentation made
26 by the insured or a representative of the insured in obtaining the
27 insurance or by the insured in pursuing a claim under the policy;

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

1 (5) physical changes in the insured property that result in
2 the property becoming uninsurable.

3 * Sec. 34. AS 21.36 is amended by adding a new section to read:

4 Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COM-
5 Mercial INSURANCE POLICIES. (a) Except as allowed by the director
6 under (b) of this section, an insurer may exercise its right to cancel
7 a policy of business or commercial insurance only for the following
8 reasons:

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

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

15 (3) discovery of fraud or material misrepresentation made
16 by the insured or a representative of the insured in obtaining the
17 insurance or by the insured in pursuing a claim under the policy;

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

20 (5) physical changes in the insured property that result in
21 the property becoming uninsurable;

22 (6) physical changes in the operations of the insured that
23 result in the property becoming uninsurable;

24 (7) changes in the reinsurance program of the insurer that
25 results in an increase of the insurer's retention of risk on a subject
26 of insurance;

27 (8) changes in the financial condition of the insurer
28 resulting in a violation of AS 21.12.010;

29 (9) a material change in the law that affects the coverage

1 provided under the policy; or

2 (10) an excessive number of claims by the insured.

3 (b) Before issuing a notice of cancellation, an insurer may
4 request the director to determine in a particular case whether a
5 reason for cancellation not specified in (a) of this section is a
6 valid reason for cancellation. The director may allow the insurer to
7 exercise its right to cancel if the director finds that the cancella-
8 tion is justified. The insurer may not implement the requested can-
9 cellation before receiving the approval of the director.

10 * Sec. 35. AS 21.36.220 is amended to read:

11 Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not
12 exercise its right to cancel a personal insurance policy unless a
13 written notice of cancellation is mailed or delivered to the named
14 insured, at the address shown in the policy, at least 60 [20] days
15 before the effective date of cancellation. However, if [, EXCEPT THAT
16 WHEN] cancellation is for nonpayment of premium, the notice shall be
17 mailed or delivered to the named insured at the address shown in the
18 policy at least 20 [10] days before the effective date of cancella-
19 tion. If cancellation is for a reason described in AS 21.36.210-
20 (a)(2) or (f)(2) or (3), the notice shall be mailed or delivered to
21 the named insured at the address shown in the policy at least 10 days
22 before the effective date of cancellation [AND SHALL INCLUDE OR BE
23 ACCOMPANIED BY A STATEMENT OF THE REASON FOR THE CANCELLATION. THIS
24 SECTION DOES NOT APPLY TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO
25 COVERAGE IN FORCE FOR LESS THAN 12 MONTHS].

26 * Sec. 36. AS 21.36.220 is amended by adding new subsections to read:

27 (b) An insurer may not exercise its right to cancel a policy of
28 business or commercial insurance unless a written notice of cancella-
29 tion is mailed or delivered to the named insured, at the address shown

1 in the policy, and to the agent or broker of record, at least 60 days
2 before the effective date of cancellation. However, if cancellation
3 is for nonpayment of premium, the notice shall be mailed or delivered
4 to the named insured at the address shown in the policy and to the
5 agent or broker of record at least 20 days before the effective date
6 of cancellation. If cancellation is for a reason described in
7 AS 21.36.215(a)(2) or (3), the notice shall be mailed or delivered to
8 the named insured at the address shown in the policy and to the agent
9 or broker of record at least 10 days before the effective date of
10 cancellation.

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

15 (1) if cancellation is for nonpayment of premium, any
16 unearned premium shall be returned or credited within 45 days after
17 the notice of cancellation is given;

18 (2) if the policy is cancelled for other than nonpayment of
19 premium and is subject to audit, the insurer shall perform or waive
20 the audit before the effective date of the cancellation and return or
21 credit any estimated unearned premium before the effective date of
22 cancellation.

23 (d) An insurer who mails a notice of cancellation required under
24 this section shall mail the notice by certified mail and shall request
25 a return receipt that indicates the notice has been delivered. If a
26 notice of cancellation is returned undelivered to the insurer, the
27 insurer shall make an additional good faith effort to contact the
28 insured.

29 (e) The division may require an insurer to perform an audit that

1 the insurer has elected to waive under (c) of this section.

2 (f) A notice of cancellation of insurance required to be given
3 under this section must include or be accompanied by a statement of
4 the reason for the cancellation.

5 * Sec. 37. AS 21.36.240 is amended to read:

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

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

18 (2) in case of nonpayment of premium for the expiring
19 policy; or

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

22 * Sec. 38. AS 21.36.250 is amended to read:

23 Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automo-
24 bile liability insurance is cancelled, other than for nonpayment of
25 premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A
26 POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [AP-
27 PLIES], the insurer shall notify the named insured of possible eligi-
28 bility for automobile insurance through the automobile assigned risk
29 plan, or automobile insurance plan. The notification must [SHALL]

1 accompany or be included in the notice of cancellation or nonrenewal
2 required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

3 * Sec. 39. AS 21.36 is amended by adding a new section to read:

4 Sec. 21.36.255. PREMIUM REFUND. (a) If an insurance policy is
5 cancelled, rejected, or rescinded by the insurer or the insured, the
6 insurer shall refund the unearned premium paid to the insured. The
7 insurer may not provide a penalty for midterm cancellation of a policy
8 by the insured or by the insurer and the premium charged may not be
9 more than that provided by the rating plan of the insurer for that
10 coverage.

11 (b) Notwithstanding (a) of this section, if the insurer clearly
12 indicates one or more of the following features in the policy, an
13 insurer may issue a policy

14 (1) whose premium is earned at a varying rate due to
15 seasonality of exposure;

16 (2) that contains a minimum earned premium; or

17 (3) with a fluctuating premium base.

18 * Sec. 40. AS 21.36.310 is amended to read:

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

20 (1) "business or commercial insurance" means insurance
21 other than personal insurance, life insurance, disability insurance,
22 fidelity and surety insurance, title insurance, wet marine and trans-
23 portation insurance as defined in AS 21.34.900, or an annuity con-
24 tract;

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, uninsured or underinsured motorists [COVERAGE, UNINSURED
7 MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automo-
8 bile physical damage [COVERAGE], that is delivered or issued for
9 delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL
10 OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which
11 the 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"

20 (A) means personal automobile insurance, or insurance
21 covering

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

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

28 or

29 (iii) legal liability of natural persons for loss

1 of, damage to, or injury to persons or property if the in-
2 surance does not cover liability arising from or in con-
3 nection with business or commercial activities;

4 (B) does not include an annuity contract or a policy
5 of life insurance, disability insurance, or title insurance;

6 (5) [(3)] "renewal" or "renew" means

7 (A) the issuance and delivery [BY AN INSURER] of an
8 insurance [A] policy [REPLACING] at the end of the policy period,
9 that replaces a policy previously issued and delivered by the
10 same insurer; [,]

11 (B) the issuance and delivery of a certificate or
12 notice extending the term of a policy beyond its policy period or
13 term; [,] or

14 (C) the extension of the term of a policy beyond its
15 policy period or term under a provision for extending the policy
16 by payment of a continuation premium.

17 * Sec. 41. AS 21.84.430(c) is amended to read:

18 (c) The director may refuse to issue or may suspend or revoke
19 [RENEW] an insurance agent's license if, in the judgment of the direc-
20 tor, the proposed licensee is not trustworthy and competent to act as
21 agent, or has given cause for revocation or suspension of the license,
22 or has failed to comply with a prerequisite for the issuance [OR
23 RENEWAL, AS THE CASE MAY BE,] of the license.

24 * Sec. 42. AS 21.88.050 is amended to read:

25 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
26 corporation shall

27 (1) in the form approved by the director, issue to all
28 physicians, nurses, and hospitals who are found to be acceptable risks
29 under standards developed under (5) of this subsection, and who pay

1 the premiums for it, a contract or contracts indemnifying physicians,
2 nurses, and hospitals and their employees who are health care provid-
3 ers against loss by reason of liability for covered claims for an act
4 or omission in the delivery of professional health care in this state,
5 and agreeing to tender on behalf of the physicians, nurses, and hos-
6 pitals and their employees who are health care providers a defense to
7 a covered claim in a proceeding brought under AS 09.55.530 - 09.55.-
8 560; the limits of liability for policies issued by the corporation
9 shall be approved by the director; the contract shall cover the de-
10 fense against but need not indemnify liability for punitive damages
11 arising from a covered claim; at the option of the corporation, if
12 approved by the director, and for an additional premium the contract
13 may cover claims against the physician, nurse, or hospital that arise
14 out of professional services performed by the physician, nurse, or
15 hospital for any period before the contract is issued, except that
16 coverage will not be provided for a claim already filed or that [OF
17 WHICH] the physician, nurse, or hospital had or reasonably should have
18 had notice at the time the retroactive insurance was purchased;

19 (2) charge a premium for the protection provided by the
20 contracts issued by the corporation which shall be determined by the
21 board of governors in accordance with AS 21.88.080 and subject to the
22 approval of the director;

23 (3) comply with or be subject to AS 21.06.090, 21.06.120,
24 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,
25 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and
26 AS 21.36; and shall be exempt from participation as a member insurer
27 in the Alaska Insurance Guaranty Corporation;

28 (4) carry out the obligations of the contracts issued by
29 the corporation by defending all covered claims made against insured

1 health care providers and by paying all liabilities that [WHICH] are
2 finally adjudicated against the insured health care provider or that
3 [WHICH] may in the opinion of the corporation reasonably be expected
4 to be finally adjudicated against the health care provider to the
5 extent of the contract obligation;

6 (5) establish standards for the acceptability of risks; in
7 establishing these standards the corporation may exclude an applicant
8 for insurance based on individual risk selection factors, but may not
9 exclude an applicant based only on the classification of the appli-
10 cant.

11 (b) The corporation may

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

16 (2) negotiate for and procure reinsurance from private
17 casualty insurers or reinsurers for any and all liability incurred by
18 contracts issued by it;

19 (3) provide coverage to insureds for other hazards custom-
20 arily included in medical malpractice insurance policies when there is
21 a finding by the director that this coverage is not available to
22 insureds of the Medical Indemnity Corporation of Alaska in the private
23 insurance market at a competitive price;

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

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

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

29 (7) provide risk management advice and services to

1 hospitals;

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

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

6 (10) in a form approved by the director and for an addition-
7 al premium determined under AS 21.88.080, issue endorsements which
8 provide indemnity for claims not yet reported which arise out of
9 professional services rendered during a period of continuous coverage
10 under the originally issued contract, to physicians, nurses, and
11 hospitals who pay the premium for it and who are terminating their
12 original covered claims contract with the corporation for a period of
13 not less than one year;

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

17 * Sec. 43. AS 21.90.900 is amended to read:

18 Sec. 21.90.900. DEFINITIONS FOR TITLE. In this title, unless
19 the context requires otherwise,

20 (1) "adjuster" means a person who, for compensation as an
21 independent contractor or as an employee of an independent contractor,
22 or for fee or commission, investigates and adjusts claims arising
23 under insurance contracts on behalf of the insurer, but does not
24 include an attorney at law who adjusts insurance losses from time to
25 time incidental to the practice of law or a salaried employee of an
26 insurer;

27 (2) "agent" means a person appointed by an insurer to
28 solicit applications for insurance or annuities on its behalf, and if
29 authorized to do so, to effectuate and countersign insurance

1 contracts, except life or disability insurance or annuities, and to
2 collect premiums on insurance or annuities;

3 (3) "alien insurer" means an insurer formed under the laws
4 of a country other than the United States of America, its states,
5 districts, territories, and commonwealths;

6 (4) [(2)] "authorized insurer" means an insurer authorized
7 by a [SUBSISTING] certificate of authority issued by the director to
8 transact insurance in this state;

9 (5) "broker" means a person who is not an agent of the
10 insurer and who, on behalf of the insured, for compensation as an
11 independent contractor by commission or fee, solicits, negotiates, or
12 procures insurance or reinsurance or the renewal or continuance of
13 insurance or reinsurance; or in any manner aids in the solicitation,
14 negotiation, procurement, renewal, or continuance of insurance or
15 reinsurance, for insureds or prospective insureds not including the
16 broker;

17 (6) [(3)] "commissioner" means the commissioner of the
18 Department of Commerce and Economic Development;

19 (7) [(4)] "court" means superior court;

20 (8) [(5)] "director" means the director of the division of
21 insurance;

22 (9) [(6)] "division" means the division of insurance,
23 Department of Commerce and Economic Development;

24 (10) [(7)] "domestic insurer" means an insurer formed under
25 the laws of this state;

26 (11) "firm" means an organization of two or more licensees
27 acting in association with each other, either in a partnership, corpo-
28 ration, or otherwise, or an organization in which a single licensee
29 has less than 50 percent ownership interest in the organization;

1 (12) [(8)] "foreign insurer" means an insurer formed under
2 the laws of a jurisdiction other than this state and includes an alien
3 insurer;

4 (13) "independent adjuster" means an adjuster representing
5 the interests of the insurer;

6 (14) [(9)] "industrial life insurance" means that form of
7 life insurance written under policies with a face amount of \$1,000 or
8 less, with the words "industrial policy" imprinted on the face as part
9 of the descriptive matter, and under which premiums are payable month-
10 ly or more often;

11 (15) [(10)] "insurance" means a contract whereby one under-
12 takes to indemnify another or pay or provide a specified or determin-
13 able amount or benefit upon determinable contingencies;

14 (16) [(11)] "insurer" includes a person engaged as indemni-
15 tor, surety, or contractor in the business of entering into contracts
16 of insurance or of annuity;

17 (17) [(12)] "person" has the meaning given in AS 01.10.060
18 and includes an insurer, Lloyds, fraternal benefit society, medical
19 service or hospital service plan as defined in AS 21.87, reciprocal or
20 interinsurance exchange, syndicate, and any other legal entity engaged
21 in the business of transacting insurance, including agents, brokers,
22 and claims adjusters;

23 (18) [(13)] "policy" means the written contract of or writ-
24 ten agreement for or effecting insurance, by whatever name called, and
25 includes all clauses, riders, endorsements and papers attached to it
26 and a part of it;

27 (19) [(14)] "premium" means the consideration for insurance,
28 by whatever name called, and by whatever method paid or collected,
29 including an assessment, or membership, policy, survey, inspection,

1 service or similar fee or charge made in consideration for an insur-
2 ance contract;

3 (20) "solicitor" means an individual authorized by an agent
4 or broker to solicit applications for insurance as a representative of
5 the agent or broker and to collect premiums in connection with the
6 insurance;

7 (21) [(15)] "state" means a state, District of Columbia,
8 territory, commonwealth, or possession of the United States of
9 America;

10 (22) [(16)] "transact" with respect to insurance includes

11 (A) solicitation and inducement;

12 (B) preliminary negotiations;

13 (C) effectuation of a contract of insurance;

14 (D) transaction of matters subsequent to effectuation
15 of the contract of insurance and arising out of it;

16 (23) [(17)] "unauthorized insurer" means an insurer not
17 authorized to transact insurance in this state.

18 * Sec. 44. AS 21.90 is amended by adding a new section to read:

19 Sec. 21.90.910. EXCEPTIONS FROM DEFINITIONS. The definitions of
20 "adjuster," "agent," "broker," "firm," and "solicitor" in AS 21.90.900
21 do not include

22 (1) individuals employed and used by agents for the perfor-
23 mance of clerical, stenographic, and similar office duties; incidental
24 taking of an application for insurance from time to time in the office
25 of the employing agent if the employee's compensation is not contin-
26 gent upon or related to the volume of applications, insurance, or
27 premiums;

28 (2) the attorney-in-fact of a reciprocal insurer, or the
29 salaried traveling representative of a reciprocal or mutual insurer

1 not compensated on a commission basis.

2 * Sec. 45. AS 21.03.030, 21.03.040, 21.03.050; AS 21.06.040; AS 21.27.-
3 040(b), 21.27.470, 21.27.480, 21.27.490, 21.27.500, 21.27.510, 21.27.520;
4 AS 21.36.210(c), 21.36.210(e), 21.36.230, and 21.36.300 are repealed.

5 * Sec. 46. Sections 1 - 29 and 31 - 45 of this Act apply to insurance
6 policies entered into or renewed on or after the effective date of secs.
7 1 - 29 and 31 - 45 of this Act.

8 * Sec. 47. Section 30 of this Act takes effect immediately under
9 AS 01.10.070(c).