

Introduced: 1/23/87
 Referred: Labor & Commerce
 and Judiciary

1 IN THE HOUSE

BY SUND, NAVARRE, DAVIS,
 KOPONEN AND BROWN

2

HOUSE BILL NO. 71

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 an insurance broker's receipt of
 7 premium payments, the cancellation or nonrenewal of
 8 insurance policies, the composition of the board of
 9 the Medical Indemnity Corporation of Alaska, and the
 10 provision of medical malpractice insurance for nurses
 11 and nurse midwives."

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

13 * Section 1. AS 21.27.200(a) is repealed and reenacted to read:

14 (a) A broker is not an agent or other representative of an
 15 insurer, and except as provided under (c) of this section, does not
 16 have power as a broker to bind the insurer regarding a risk or an
 17 insurance contract.

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

19 (c) In determining an insured's entitlement to coverage, a
 20 premium paid to the broker is considered to be received by the in-
 21 surer if the payment to the broker is designated for specific coverage
 22 from a specifically named insurer and is supported by competent
 23 evidence.

24 (d) This section is not intended to alter the common law of
 25 agency as applied to transactions under this title.

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; or
- 15 (10) an excessive number of claims by the insured.

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

23 * Sec. 7. AS 21.36.220 is amended to read:

24 Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not
25 exercise its right to cancel a personal insurance policy unless a
26 written notice of cancellation is mailed or delivered to the named
27 insured, at the address shown in the policy, at least 60 [20] days
28 before the effective date of cancellation. However, if [, EXCEPT THAT
29 WHEN] cancellation is for nonpayment of premium, the notice must

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

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

8 (b) An insurer may not exercise its right to cancel a policy of
9 business or commercial insurance unless a written notice of cancella-
10 tion is mailed or delivered to the named insured, at the address shown
11 in the policy, and to the agent or broker of record, at least 60 days
12 before the effective date of cancellation. However, if cancellation
13 is for nonpayment of premium, the notice must be mailed or delivered
14 to the named insured at the address shown in the policy and to the
15 agent or broker of record at least 10 days before the effective date
16 of cancellation, and must include or be accompanied by a statement of
17 the reason for the cancellation.

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

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

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

29 * Sec. 9. AS 21.36.240 is amended to read:

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

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

13 (2) in case of nonpayment of premium for the expiring
14 policy; or

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

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

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

27 * Sec. 11. AS 21.36.310 is amended to read:

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

29 (1) "business or commercial insurance" means insurance

1 other than personal insurance, life insurance, disability insurance,
2 fidelity and surety insurance, title insurance, or an annuity con-
3 tract;

4 (2) "nonpayment of premium" means failure of the named
5 insured to discharge when due any obligations of the named insured in
6 connection with the payment of premium on a policy, or any installment
7 of the premium, whether the premium is payable directly to the insurer
8 or its agent or indirectly under any premium finance plan or extension
9 of credit;

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

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

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

27 (4) "personal insurance" does not include an annuity con-
28 tract or a policy of life insurance, disability insurance, or title
29 insurance; the term means personal automobile insurance, or insurance

1 covering

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

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

8 (C) legal liability of natural persons for loss of,
9 damage to or injury to persons or property if the insurance does
10 not cover liability arising from or in connection with business
11 or commercial activities;

12 (5) [(3)] "renewal" or "renew" means

13 (A) the issuance and delivery [BY AN INSURER] of an
14 insurance [A] policy [REPLACING] at the end of the policy period,
15 that replaces a policy previously issued and delivered by the
16 same insurer; [,]

17 (B) the issuance and delivery of a certificate or
18 notice extending the term of a policy beyond its policy period or
19 term; [,] or

20 (C) the extension of the term of a policy beyond its
21 policy period or term under a provision for extending the policy
22 by payment of a continuation premium.

23 * Sec. 12. AS 21.88.030(a) is amended to read:

24 (a) The corporation shall exercise its powers through a board of
25 governors that [WHICH] is appointed by the governor of the state and
26 confirmed by the legislature. Members of the board of governors shall
27 be Alaska residents as follows:

28 (1) three [FOUR] physicians licensed in the state and
29 engaged in private practice in the state; no more than two of the

1 physicians shall practice or live in a municipality having a popu-
2 lation of more than 100,000, and two of the physicians must be indem-
3 nified against loss by reason of liability for an act or omission in
4 the delivery of professional health care by the Medical Indemnity
5 Corporation of Alaska;

6 (2) one nurse or nurse midwife;

7 (3) an administrator or senior executive officer employed
8 by a hospital licensed in the state;

9 (4) [(3)] two professionals from the insurance industry who
10 are authorized or licensed to do business in the state;

11 (5) [(4)] two persons who are not health care providers or
12 financially interested in the field of health care or representatives
13 of the insurance industry.

14 * Sec. 13. AS 21.88.050 is amended to read:

15 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
16 corporation shall

17 (1) in the form approved by the director, issue to all
18 physicians, nurses, nurse midwives, and hospitals who are found to be
19 acceptable risks under standards developed under (5) of this sub-
20 section, and who pay the premiums for it, a contract or contracts
21 indemnifying physicians, nurses, nurse midwives, and hospitals and
22 their employees who are health care providers against loss by reason
23 of liability for covered claims for an act or omission in the delivery
24 of professional health care in this state, and agreeing to tender on
25 behalf of the physicians, nurses, nurse midwives, and hospitals and
26 their employees who are health care providers a defense to a covered
27 claim in a proceeding brought under AS 09.55.530 - 09.55.560; the
28 limits of liability for policies issued by the corporation shall be
29 approved by the director; the contract shall cover the defense against

1 but need not indemnify liability for punitive damages arising from a
2 covered claim; at the option of the corporation, if approved by the
3 director, and for an additional premium the contract may cover claims
4 against the physician, nurse, nurse midwife, or hospital that arise
5 out of professional services performed by the physician, nurse, nurse
6 midwife, or hospital for any period before the contract is issued,
7 except that coverage will not be provided for a claim already filed or
8 that [OF WHICH] the physician, nurse, nurse midwife, or hospital had
9 or reasonably should have had notice at the time the retroactive
10 insurance was purchased;

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

15 (3) comply with or be subject to AS 21.06.090, 21.06.120,
16 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,
17 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and
18 AS 21.36; and shall be exempt from participation as a member insurer
19 in the Alaska Insurance Guaranty Corporation;

20 (4) carry out the obligations of the contracts issued by
21 the corporation by defending all covered claims made against insured
22 health care providers and by paying all liabilities that [WHICH] are
23 finally adjudicated against the insured health care provider or that
24 [WHICH] may in the opinion of the corporation reasonably be expected
25 to be finally adjudicated against the health care provider to the
26 extent of the contract obligation;

27 (5) establish standards for the acceptability of risks; in
28 establishing these standards the corporation may exclude an applicant
29 for insurance based on individual risk selection factors, but may not

1 exclude an applicant based only on the classification of the appli-
2 cant.

3 (b) The corporation may

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

8 (2) negotiate for and procure reinsurance from private
9 casualty insurers or reinsurers for any and all liability incurred by
10 contracts issued by it;

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

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

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

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

21 (7) provide risk management advice and services to hospi-
22 tals;

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

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

27 (10) in a form approved by the director and for an addition-
28 al premium determined under AS 21.88.080, issue endorsements which
29 provide indemnity for claims not yet reported which arise out of

1 professional services rendered during a period of continuous coverage
2 under the originally issued contract, to physicians, nurses, nurse
3 midwives, and hospitals who pay the premium for it and who are termi-
4 nating their original covered claims contract with the corporation for
5 a period of not less than one year;

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

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

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

11 (18) "nurse midwife" means a registered professional nurse
12 who is certified as an advanced nurse practitioner under AS 08.68.-
13 410(1) and authorized to practice as a nurse midwife under regulations
14 adopted under AS 08.68.

15 * Sec. 15. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.