

HOUSE BILL NO. 282

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 4/17/91

Referred: Labor & Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to licensing, employing, and the authority of managing general agents;
2 and defining certain terms related to insurance."

3 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

4 * **Section 1.** AS 21.27.010(a) is amended to read

5 (a) A person may not act as or represent to be an agent, managing general agent, broker,
6 solicitor, or adjuster unless licensed by the state.

7 * **Sec. 2.** AS 21.27.010(b) is amended to read:

8 (b) An agent, managing general agent, solicitor, or broker may not solicit or take
9 applications for, procure, or place for others any kind of insurance for which the person is not
10 licensed.

11 * **Sec. 3.** AS 21.27.030(a) is amended to read:

12 (a) The director may not grant an agent, managing general agent, solicitor, or broker
13 license to a person if the director has reasonable cause to believe that the applicant for the license
14 would, during the 12-month period immediately following issuance of the license, receive an

1 aggregate amount in commissions represented by the controlled business that exceeds the
2 aggregate amount of commissions represented by all other insurance business that would be
3 procured by or through the applicant.

4 * Sec. 4. AS 21.27.030(d) is amended to read:

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

10 * Sec. 5. AS 21.27.050 is amended to read:

11 Sec. 21.27.050. ONE FILING OF PERSONAL DATA SUFFICIENT. (a) The filing of
12 personal data by an individual in connection with one application for an agent or managing
13 general agent license is sufficient [,] regardless of the number of insurers to be represented or
14 the number of subsequent applications by the same applicant.

15 (b) The director may require a licensed agent, managing general agent, solicitor, broker,
16 or adjuster [,] to supply the information called for in an application for a license.

17 * Sec. 6. AS 21.27.060 is amended to read:

18 Sec. 21.27.060. EXAMINATION OF APPLICANTS. (a) An applicant for an individual
19 license as agent, managing general agent, broker, solicitor, or adjuster shall, before the issuance
20 of the license, personally take and pass, to the satisfaction of the director, an examination given
21 by the director as a test of the qualifications and competence of the applicant. This requirement
22 does not apply to

23 (1) applicants for limited licenses, as travel insurance agents only, under
24 AS 21.27.150, or, at the discretion of the director, to applicants for licenses as disability
25 insurance agents for the purpose of handling limited coverages pertaining to sports and recreation;

26 (2) applicants

27 (A) who, at any time within the two-year period immediately preceding
28 the date of application, have been licensed in this state under a license requiring
29 qualifications required by the license applied for;

30 (B) who are considered by the director to be fully qualified and competent;

31 and

1 (C) whose previous license was not revoked for any reason;
2 (3) applicants for a license who have fulfilled qualification requirements in their
3 state or province of residence and who are considered by the director to be fully qualified and
4 competent.
5 (b) The director may at any time require an individual licensed as an agent, managing
6 general agent, broker, solicitor, or adjuster to take and successfully pass an examination testing
7 competence and qualifications as a condition to the continuance of the license if the licensee has
8 been guilty of a violation of this title, or has conducted affairs under the license that cause the
9 director reasonably to desire further evidence of the qualifications of the licensee.
10 * Sec. 7. AS 21.27.090(a) is amended to read:
11 (a) To qualify for an agent, managing general agent, broker, solicitor, or adjuster license,
12 an applicant shall comply with this title and
13 (1) be 19 years of age or older with a high school or General Education
14 Development diploma or equivalent;
15 (2) if for a resident license, be a bona fide resident before issuance of the license
16 and actually reside in the state;
17 (3) successfully pass any examination required under AS 21.27.060;
18 (4) be a trustworthy person;
19 (5) not use or intend to use the license for the purpose principally of writing
20 controlled business, as defined in AS 21.27.030;
21 (6) not have committed an act that is a ground for denial, suspension, or
22 revocation set out in AS 21.27.410;
23 (7) if the application is for an agent or managing general agent license, be
24 appointed as its agent or managing general agent by one or more authorized insurers, subject to
25 issuance of the license, except that an individual acting on behalf of a firm is not required to
26 have an appointment as an agent or managing general agent for that activity;
27 (8) if the application is for a managing general agent license, have a minimum
28 of three years active working experience in insurance administrative functions, including those
29 listed under the definition of "managing general agent" in AS 21.90.900, that, in the director's
30 discretion, exhibits the applicant's ability to competently perform the administrative functions for
31 all lines applied for;

1 (9) if the application is for a broker license, have a minimum of three years'
2 active working experience in all lines applied for either as an agent, solicitor, adjuster, managing
3 general agent, broker, or as an employee of insurers or representative of insurers, or special
4 education or training of sufficient duration and extent to satisfy the director that the applicant
5 possesses the competence necessary to fulfill the responsibilities of a broker;

6 (10) if the application is for a solicitor license, intend to and in fact make the
7 soliciting and handling of insurance business under the license the applicant's principal gainful
8 occupation and represent and be employed by only one licensed agent, managing general agent,
9 or broker;

10 (11) if the application is for an adjuster license, have at least six months'
11 experience, special education, or training in handling loss claims under insurance contracts, of
12 sufficient duration and extent to make the person reasonably competent to fulfill the
13 responsibilities of an adjuster.

14 * Sec. 8. AS 21.27.095 is amended to read:

15 Sec. 21.27.095. LICENSING OF MANAGING GENERAL AGENTS. (a) A managing
16 general agent has the authority, consistent with this title, that is conferred by the insurer. A
17 managing general agent, resident or nonresident, qualified and licensed under AS 21.27.090, may
18 exercise the powers conferred by this title upon agents licensed for the kinds of insurance that
19 the managing general agent is authorized to transact for the insurer appointing the agent.

20 (b) A person employed on salary by an insurer, including an officer or salaried employee
21 performing the same services as a managing general agent, is considered to be a service
22 representative and is not required to be licensed.

23 (c) For purposes of this section, a person that performs management services for an
24 insurer is not required to be licensed as a managing general agent if the person

25 (1) is a wholly-owned subsidiary of the insurer;

26 (2) wholly owns the insurer; [OR]

27 (3) is a wholly-owned subsidiary of the insurance holding company that owns or
28 controls the insurer; or

29 (4) is a manager of the United States branch of an alien insurer.

30 * Sec. 9. AS 21.27.095 is amended by adding a new subsection to read:

31 (d) The director may require a managing general agent to post a bond in an amount

1 acceptable to the director for the protection of the insurer and may require the managing general
2 agent to maintain an errors and omissions insurance policy.

3 * Sec. 10. AS 21.27.100(a) is amended to read:

4 (a) An insurer appointing an agent or managing general agent in the state shall file
5 written notice of the appointment with the director on forms prescribed and furnished by the
6 director. If the appointee is licensed and if the necessary licensing fee is paid, the director shall
7 provide to the insurer and to the appointee written notification of the effective date of the
8 appointment.

9 * Sec. 11. AS 21.27.100(b) is repealed and reenacted to read:

10 (b) An insurer may not place business with a managing general agent unless there is in
11 effect a written contract between the parties that establishes the responsibilities of each party,
12 indicates where both parties share responsibility for a particular function, specifies the division
13 of the responsibilities, and that contains the following minimum provisions:

14 (1) the insurer may terminate the contract for cause upon written notice to the
15 managing general agent and may suspend the underwriting authority of the managing general
16 agent during a dispute regarding the cause for termination;

17 (2) the managing general agent shall render accounts to the insurer detailing all
18 transactions and remit all funds due under the contract to the insurer at least monthly;

19 (3) all funds collected for the account of an insurer shall be held by the managing
20 general agent in a fiduciary account as described under AS 21.27.360, and the managing general
21 agent shall comply with all applicable fiduciary account regulations; this account shall be used
22 for all payments on behalf of the insurer; the managing general agent may retain not more than
23 three months estimated claims payments and allocated loss adjustment expenses;

24 (4) separate records of business written by the managing general agent shall be
25 maintained; the insurer shall have access and the right to copy all accounts and records related
26 to the insurer's business in a form usable by the insurer; the director shall have access to all
27 books, bank accounts, and records of the managing general agent in a form usable to the director;
28 records shall be retained as required by AS 21.27.350;

29 (5) the contract may not be assigned in whole or part by the managing general
30 agent;

31 (6) if the contract permits the managing general agent to do underwriting, the

1 contract must include the following:

2 (A) the maximum annual premium volume;

3 (B) the basis of the rates to be charged;

4 (C) the types of risks that may be written;

5 (D) maximum limits of liability;

6 (E) applicable exclusions;

7 (F) territorial limitations;

8 (G) policy cancellation provisions; and

9 (H) the maximum policy period;

10 (7) the insurer shall have the right to cancel or not renew a policy of insurance

11 subject to applicable law;

12 (8) if the contract permits the managing general agent to settle claims on behalf

13 of the insurer,

14 (A) all claims shall be reported to the insurer in a timely manner; and

15 (B) a copy of the claim file shall be sent to the insurer upon request or

16 as soon as it becomes known that the claim

17 (i) has the potential to exceed an amount determined by the

18 director or exceeds the limit set by the company, whichever is less;

19 (ii) involves a coverage dispute;

20 (iii) may exceed the managing general agent's claims settlement

21 authority;

22 (iv) is open for more than six months; or

23 (v) is closed by a payment in excess of an amount set by the

24 director or an amount set by the company, whichever is less.

25 (c) All claim files shall be the property of both the insurer and managing general agent.

26 Upon an order of liquidation of the insurer, the files shall become the sole property of the insurer

27 or the insurer's estate; the managing general agent shall have reasonable access to and the right

28 to copy the files on a timely basis.

29 (d) The settlement authority granted to the managing general agent may be terminated

30 for cause upon the insurer's written notice to the managing general agent or upon the termination

31 of the contract. The insurer may suspend the settlement authority during a dispute regarding the

1 cause of termination.

2 (e) If electronic claims files are in existence, the contract must contain provisions for the
3 timely transmission of the electronic data.

4 (f) If the contract provides for a sharing of interim profits by the managing general agent
5 and the managing general agent has the authority to determine the amount of the interim profits
6 by establishing loss reserves, by controlling claim payments, or in any other manner, interim
7 profits may not be paid to the managing general agent until one year after they are earned for
8 property insurance business, five years after they are earned on casualty business, and not until
9 the profits have been verified under (h) of this section.

10 (g) The managing general agent may not

11 (1) bind reinsurance or retrocessions on behalf of the insurer, except that the
12 managing general agent may bind facultative reinsurance contracts under obligatory facultative
13 agreements if the contract with the insurer contains reinsurance underwriting guidelines including,
14 for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements
15 are in effect, the coverages and amounts or percentages that may be reinsured, and commission
16 schedules;

17 (2) commit the insurer to participate in insurance or reinsurance syndicates;

18 (3) appoint an agent unless the agent is licensed to transact the type of insurance
19 for which the agent is appointed;

20 (4) pay or commit the insurer to pay a claim, net of reinsurance, the amount of
21 which exceeds one percent of the insurer's policyholder's surplus as of December 31 of the last
22 completed calendar year without prior approval of the insurer;

23 (5) collect any payment from a reinsurer or commit the insurer to any claim
24 settlement with a reinsurer without prior approval of the insurer, but if prior approval is given,
25 a report must be promptly forwarded to the insurer;

26 (6) permit a subagent or broker to serve on the insurer's board of directors;

27 (7) jointly employ an individual who is employed with the insurer; or

28 (8) delegate managing general agent authority to any other person.

29 (h) An insurer shall have on file an independent financial examination in a form
30 acceptable to the director for each managing general agent with which the insurer has done
31 business, and

1 (1) if a managing general agent establishes loss reserves, annually obtain the
2 opinion of an independent qualified actuary attesting to the adequacy of loss reserves established
3 for losses incurred and outstanding on business produced by the managing general agent in
4 addition to any other required loss reserve certification;

5 (2) at least semiannually conduct an on-site review of the underwriting and claims
6 processing operations of the managing general agent;

7 (3) provide written notification to the director within 30 days of the entry into or
8 termination of a contract with a managing general agent; the notice must include a statement of
9 duties to be performed by the applicant on behalf of the insurer, the lines of insurance for which
10 the applicant has authorization to act, and any other information required by the director; and

11 (4) review its books and records quarterly to determine if an agent or broker has
12 become a managing general agent; upon determination that an agent or broker has acted as a
13 managing general agent, the insurer shall promptly notify the agent or broker and the director of
14 the determination and the insurer and agent or broker must fully comply with the provisions of
15 this section within 30 days.

16 (i) An insurer may not appoint to its board of directors an officer, director, employee,
17 subagent, broker, or controlling shareholder of its managing general agent.

18 (j) The acts of the managing general agent are considered to be the acts of the insurer
19 upon whose behalf it is acting. A managing general agent may be examined as if it were the
20 insurer.

21 (k) A violation of this section is grounds for suspension or revocation, after hearing, of
22 a managing general agent's license or the insurer's certificate of authority, and for imposition of
23 civil penalties under AS 21.90.020.

24 * Sec. 12. AS 21.27.130 is amended to read:

25 Sec. 21.27.130. FORM AND CONTENT OF LICENSES. Agent, managing general
26 agent, adjuster, solicitor, and broker licenses shall [MUST] be in the form the director prescribes
27 [.] and must set out

28 (1) the name and address of the licensee [.] or, if the licensee is required to have
29 a place of business, the address of the place of business;

30 (2) if for a firm, the name of the principal or manager of the firm;

31 (3) the kind or kinds of insurance the licensee is licensed to handle;

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

3 (5) the condition under which the license is granted;

4 (6) the date of issuance of the license.

5 * Sec. 13. AS 21.27.160(a) is amended to read:

6 (a) An agent, managing general agent, broker, solicitor, or adjuster is only required to
7 have one type of license inclusive of all kinds or combination of kinds of insurance the agent,
8 managing general agent, broker, adjuster, or solicitor is licensed to handle, regardless of the
9 number of represented insurers.

10 * Sec. 14. AS 21.27.240(a) is amended to read:

11 (a) An agent, managing general agent, or broker who employs a solicitor shall pay the
12 fee for issuance, or annual fee for continuation, of a solicitor license.

13 * Sec. 15. AS 21.27.250(a) is amended to read:

14 (a) A solicitor license may not cover insurance for which the agent, managing general
15 agent, or broker by whom the solicitor is employed is not licensed.

16 * Sec. 16. AS 21.27.250(c) is amended to read:

17 (c) An individual may not be licensed as an agent, managing general agent, or broker
18 while licensed as a solicitor.

19 * Sec. 17. AS 21.27.260 is amended to read:

20 Sec. 21.27.260. EMPLOYER'S RESPONSIBILITY FOR SOLICITOR. All business
21 transacted by a solicitor under license as a solicitor shall be in the name of the agent, managing
22 general agent, or broker by whom the solicitor is employed. The agent, managing general
23 agent, or broker is responsible for all acts or omissions of the solicitor within the scope of
24 employment as solicitor.

25 * Sec. 18. AS 21.27.270(a) is amended to read:

26 (a) The director may license as a nonresident insurance agent, managing general agent,
27 broker, or adjuster a person who otherwise qualifies under this title, but who is not a resident of
28 or domiciled in the state.

29 * Sec. 19. AS 21.27.280(a) is amended to read:

30 (a) A licensed nonresident agent, managing general agent, broker, or adjuster shall
31 appoint the director as attorney to receive service of legal process issued against the licensee in

1 this state upon causes of action arising in this state. Service upon the director as attorney
2 constitutes effective legal service upon the licensee.

3 * Sec. 20. AS 21.27.320(a) is amended to read:

4 (a) On behalf of and as authorized by an insurer for which the agent or managing
5 general agent is appointed, an agent or managing general agent may occasionally act as an
6 adjuster and investigate and report upon claims without being required to be licensed as an
7 adjuster.

8 * Sec. 21. AS 21.27.330 is amended to read:

9 Sec. 21.27.330. PLACE OF BUSINESS. A licensed agent, managing general agent,
10 broker, and adjuster, other than those licensed for life or disability insurances or annuities only,
11 shall have and maintain in this state, or if a nonresident agent or nonresident broker, in the state
12 of domicile, a place of business accessible to the public where the licensee principally conducts
13 transactions under the licenses. The address of the place of business must appear on all licenses
14 of the licensee, and the licensee must promptly notify the director of any change of address. If
15 the licensee maintains more than one place of business in this state, the licensee shall obtain a
16 license or licenses for each additional place [,] and shall pay an additional license fee for each
17 license.

18 * Sec. 22. AS 21.27.340 is amended to read:

19 Sec. 21.27.340. PUBLIC DISPLAY OF LICENSE. (a) The license or licenses of each
20 agent, managing general agent, broker, and adjuster, other than licenses as to life or disability
21 insurances or annuities only, shall be displayed in a conspicuous place in that part of the place
22 of business that is customarily open to the public.

23 (b) The license of a solicitor shall be displayed in each place of business of the agent,
24 managing general agent, or broker by whom the solicitor is employed.

25 * Sec. 23. AS 21.27.350(a) is amended to read:

26 (a) An agent, managing general agent, broker, or adjuster shall keep at the address
27 shown on the license a record of all transactions consummated under the license. This record
28 shall be in organized form and must include

29 (1) if an agent, managing general agent, or broker,

30 (A) a record of each insurance contract procured, issued, or countersigned,
31 together with the names of the insurers and insureds, the amount of premium paid or to

1 be paid, and a statement of the subject of the insurance;

2 (B) the names of any other licensees from whom business is accepted, and
3 of persons to whom commissions or allowances of any kind are promised or paid;

4 (2) if an adjuster, a record of each investigation or adjustment undertaken or
5 consummated, and a statement of the fee, commission, or other compensation received or to be
6 received by the adjuster on account of the investigation or adjustment;

7 (3) additional information that is customary [,] or that may reasonably be required
8 by the director.

9 * Sec. 24. AS 21.27.350(c) is amended to read:

10 (c) In addition to the record required under (a) of this section, each agent, managing
11 general agent, or broker shall have and maintain at the principal place of business current
12 accounting and financial records maintained under generally accepted accounting principles. The
13 director may request summary or detailed copies for examination by the division. Records
14 examined under this subsection are confidential when in the possession of the division, but may
15 be used by the director in a proceeding against the licensee. For purposes of this subsection, the
16 records of a firm are also the records of an individual licensee acting on behalf of the firm.

17 * Sec. 25. AS 21.27.360(f) is amended to read:

18 (f) In this section, "fiduciary account" means an account in which the licensee holds
19 money as a trustee for the insured, insurer, managing general agent, surplus lines broker, or
20 agent entitled to the money.

21 * Sec. 26. AS 21.27.380(a) is amended to read:

22 (a) A license continues in force, upon payment of

23 (1) an annual fee set under AS 21.06.250 for resident and nonresident agent,
24 managing general agent, solicitor, and adjuster licenses that must be received by the director on
25 or before the close of business on the 30th day of June;

26 (2) an annual fee set under AS 21.06.250 for resident and nonresident broker
27 licenses, that must be received by the director on or before the close of business on the 31st day
28 of December.

29 * Sec. 27. AS 21.27.380(b) is amended to read:

30 (b) An agent, managing general agent, or broker shall file the annual fee set under AS
31 21.06.250 on behalf of a solicitor employed by the agent, managing general agent, or broker.

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

2 (a) The director may issue a temporary license to

3 (1) the surviving spouse or next of kin or to the administrator or executor of a
4 deceased licensed agent, managing general agent, or broker;

5 (2) the spouse, next of kin, employee, or legal guardian of a licensed agent,
6 managing general agent, or broker who is disabled because of sickness, insanity, or injury;

7 (3) a surviving member, officer, or employee of a firm licensed as agent,
8 managing general agent, or broker, upon the death of the principal or manager of the firm
9 holding the same licenses as the firm; or

10 (4) the designee of a licensed agent who enters active service in the armed forces
11 of the United States.

12 * Sec. 29. AS 21.27.400(b) is amended to read:

13 (b) A person requesting a temporary agent or managing general agent license because
14 of the death or disability of an agent or managing general agent may not be appointed by an
15 insurer for which the agent or managing general agent was not appointed at the time of death
16 or commencement of disability.

17 * Sec. 30. As 21.90.900 is amended by adding new paragraphs to read:

18 (29) "independent qualified actuary" means an actuary who is a member of the
19 American Academy of Actuaries and who is not affiliated with, an employee, principal, the direct
20 or indirect owner of, or in any way controlled by the insurer or broker;

21 (30) "interim profits" means the excess of income over expenses and claim
22 reserves determined before the expiration of all claim liabilities and contract obligations of the
23 insurer to the insured;

24 (31) "managing general agent" means a person, firm, or corporation that

25 (A) has authority to exercise general supervision over the business, or any
26 part of the business, of one or more authorized insurers in this state with the authority to
27 appoint agents for the insurer and to terminate the appointment; and

28 (B) for compensation from an authorized insurer performs administrative
29 functions normally performed by the insurer including claims administration and payment,
30 marketing administration, agent appointment, premium accounting, premium billing,
31 coverage verification, final underwriting authority, and certificate issuance; "managing

- 1 general agent" includes a third-party administrator;
- 2 (32) "reinsurance" has the meaning given in AS 21.12.120;
- 3 (33) "subagent" means an agent reporting to another agent or general agent and
- 4 not directly to a company;
- 5 (34) "third party administrator" means a person who collects premiums and pays
- 6 claims on behalf of an insurance company and who would be required to be licensed as a
- 7 managing general agent under AS 21.27;
- 8 (35) "underwrite" means the authority to accept or reject risk on behalf of the
- 9 insurer.
- 10 * Sec. 31. AS 21.90.900(13) is repealed.