

CS FOR HOUSE BILL NO. 282 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 5/9/91
Referred: Judiciary, Finance

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

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. A person may not act as or represent to be
7 a managing general agent representing an insurer domiciled in this state regarding risks
8 located outside the state unless licensed by the state.

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

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

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

14 (a) The director may not grant an agent, managing general agent, solicitor, or broker

1 license to a person if the director has reasonable cause to believe that the applicant for the license
2 would, during the 12-month period immediately following issuance of the license, receive an
3 aggregate amount in commissions represented by the controlled business that exceeds the
4 aggregate amount of commissions represented by all other insurance business that would be
5 procured by or through the applicant.

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

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

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

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

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

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

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

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

28 (2) applicants

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

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

2 and

3 (C) whose previous license was not revoked for any reason;

4 (3) applicants for a license who have fulfilled qualification requirements in their
5 state or province of residence and who are considered by the director to be fully qualified and
6 competent.

7 (b) The director may at any time require an individual licensed as an agent, managing
8 general agent, broker, solicitor, or adjuster to take and successfully pass an examination testing
9 competence and qualifications as a condition to the continuance of the license if the licensee has
10 been guilty of a violation of this title, or has conducted affairs under the license that cause the
11 director reasonably to desire further evidence of the qualifications of the licensee.

12 * Sec. 7. AS 21.27.070(c) is amended to read:

13 (c) The director shall prepare and make available to insurers, managing general agents,
14 brokers, agents, and applicants a printed manual specifying in general terms the subjects that
15 [WHICH] may be covered in an examination for a particular license.

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

17 (a) To qualify for an agent, managing general agent, broker, solicitor, or adjuster license,
18 an applicant shall comply with this title and

19 (1) be 19 years of age or older with a high school or General Education
20 Development diploma or equivalent;

21 (2) if for a resident license, be a bona fide resident before issuance of the license
22 and actually reside in the state;

23 (3) successfully pass any examination required under AS 21.27.060;

24 (4) be a trustworthy person;

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

27 (6) not have committed an act that is a ground for denial, suspension, or
28 revocation set out in AS 21.27.410;

29 (7) if the application is for an agent or managing general agent license, be
30 appointed as its agent or managing general agent by one or more authorized insurers, subject to
31 issuance of the license, except that an individual acting on behalf of a firm is not required to

1 have an appointment as an agent or managing general agent for that activity;

2 (8) if the application is for a managing general agent license, have a minimum
3 of three years active working experience in insurance administrative functions, including those
4 listed under the definition of "managing general agent" in AS 21.90.900, that, in the director's
5 discretion, exhibits the applicant's ability to competently perform the administrative functions for
6 all lines applied for;

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

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

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

20 * Sec. 9. AS 21.27.095 is amended to read:

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

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

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

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

- 1 (2) wholly owns the insurer; [OR]
2 (3) is a wholly-owned subsidiary of the insurance holding company that owns or
3 controls the insurer; or
4 (4) is a manager of the United States branch of an alien insurer.

5 * Sec. 10. AS 21.27.095 is amended by adding a new subsection to read:

6 (d) The director may require a managing general agent to post a bond in an amount
7 acceptable to the director for the protection of the insurer and may require the managing general
8 agent to maintain an errors and omissions insurance policy.

9 * Sec. 11. AS 21.27.100(a) is amended to read:

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

15 * Sec. 12. AS 21.27.100(b) is repealed and reenacted to read:

16 (b) An insurer may not accept business from a managing general agent unless there is
17 in effect a written contract between the parties that establishes the responsibilities of each party,
18 indicates where both parties share responsibility for a particular function, specifies the division
19 of the responsibilities, and that contains the following minimum provisions:

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

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

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

30 (4) separate records of business written by the managing general agent shall be
31 maintained; the insurer shall have access and the right to copy all accounts and records related

1 to the insurer's business in a form usable by the insurer; the director shall have access to all
2 books, bank accounts, and records of the managing general agent in a form usable to the director;
3 records shall be retained as required by AS 21.27.350;

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

6 (6) if the contract permits the managing general agent to do underwriting, the
7 contract must include the following:

8 (A) the maximum annual premium volume;

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

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

11 (D) maximum limits of liability;

12 (E) applicable exclusions;

13 (F) territorial limitations;

14 (G) policy cancellation provisions; and

15 (H) the maximum policy period;

16 (7) the insurer shall have the right to cancel or not renew a policy of insurance
17 subject to applicable law;

18 (8) if the contract permits the managing general agent to settle claims on behalf
19 of the insurer,

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

21 (B) a copy of the claim file shall be sent to the insurer upon request or
22 as soon as it becomes known that the claim

23 (i) has the potential to exceed an amount determined by the
24 director or exceeds the limit set by the company, whichever is less;

25 (ii) involves a coverage dispute;

26 (iii) may exceed the managing general agent's claims settlement
27 authority;

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

29 (v) is closed by a payment in excess of an amount set by the
30 director or an amount set by the company, whichever is less.

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

1 Upon an order of liquidation of the insurer, the files shall become the sole property of the insurer
2 or the insurer's estate; the managing general agent shall have reasonable access to and the right
3 to copy the files on a timely basis.

4 (d) The settlement authority granted to the managing general agent may be terminated
5 for cause upon the insurer's written notice to the managing general agent or upon the termination
6 of the contract. The insurer may suspend the settlement authority during a dispute regarding the
7 cause of termination.

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

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

16 (g) The managing general agent may not

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

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

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

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

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

- 1 (6) permit a subagent or broker to serve on the insurer's board of directors;
2 (7) jointly employ an individual who is employed with the insurer; or
3 (8) delegate managing general agent authority to any other person.

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

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

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

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

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

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

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

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

30 * Sec. 13. AS 21.27.130 is amended to read:

31 Sec. 21.27.130. FORM AND CONTENT OF LICENSES. Agent, managing general

1 agent, adjuster, solicitor, and broker licenses shall [MUST] be in the form the director prescribes
2 [,] and must set out

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

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

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

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

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

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

11 * Sec. 14. AS 21.27.160(a) is amended to read:

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

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

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

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

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

22 * Sec. 17. AS 21.27.250(c) is amended to read:

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

25 * Sec. 18. AS 21.27.260 is amended to read:

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

31 * Sec. 19. AS 21.27.270(a) is amended to read:

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

4 * Sec. 20. AS 21.27.280(a) is amended to read:

5 (a) A licensed nonresident agent, managing general agent, broker, or adjuster shall
6 appoint the director as attorney to receive service of legal process issued against the licensee in
7 this state upon causes of action arising in this state. Service upon the director as attorney
8 constitutes effective legal service upon the licensee.

9 * Sec. 21. AS 21.27.320(a) is amended to read:

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

14 * Sec. 22. AS 21.27.330 is amended to read:

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

24 * Sec. 23. AS 21.27.340 is amended to read:

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

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

31 * Sec. 24. AS 21.27.350(a) is amended to read:

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

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

5 (A) a record of each insurance contract procured, issued, or countersigned,
6 together with the names of the insurers and insureds, the amount of premium paid or to
7 be paid, and a statement of the subject of the insurance;

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

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

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

15 * Sec. 25. AS 21.27.350(c) is amended to read:

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

23 * Sec. 26. AS 21.27.360(f) is amended to read:

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

27 * Sec. 27. AS 21.27.370(a) is amended to read:

28 (a) An agent, managing general agent, solicitor, or broker may not compensate or offer
29 to compensate in any manner a person other than an agent, general agent, solicitor, or broker
30 licensed in this or any other state or province, for procuring or in any manner helping to procure
31 applications for or to place insurance in this state. Nothing in this subsection prohibits the

1 payment of compensation that [WHICH] is not contingent upon volume of business transacted
2 in the form of salaries to the regular employees of the agent, managing general agent, solicitor
3 or broker.

4 * Sec. 28. AS 21.27.380(a) is amended to read:

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

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

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

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

13 (b) An agent, managing general agent, or broker shall file the annual fee set under AS
14 21.06.250 on behalf of a solicitor employed by the agent, managing general agent, or broker.

15 * Sec. 30. AS 21.27.390(a) is amended to read:

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

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

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

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

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

26 * Sec. 31. AS 21.27.400(b) is amended to read:

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

31 * Sec. 32. AS 21.90.900(25) is amended to read:

1 (25) "solicitor" means an individual authorized by an agent or broker to solicit
2 applications for insurance as a representative of the agent, managing general agent, or broker
3 and to collect premiums in connection with the insurance;

4 * Sec. 33. AS 21.90.900 is amended by adding new paragraphs to read:

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

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

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

12 (A) has authority to exercise general supervision over the business, or any
13 part of the business, of one or more authorized insurers in this state; and

14 (B) performs administrative functions normally performed by the insurer
15 including claims administration and payment, marketing administration, agent
16 appointment, premium accounting, premium billing, coverage verification, final
17 underwriting authority, and certificate issuance; "managing general agent" includes a
18 third-party administrator;

19 (32) "reinsurance" has the meaning given in AS 21.12.120;

20 (33) "subagent" means an agent reporting to another agent or general agent and
21 not directly to a company;

22 (34) "third party administrator" means a person who collects premiums and pays
23 claims on behalf of an insurance company and who would be required to be licensed as a
24 managing general agent under AS 21.27;

25 (35) "underwrite" means the authority to accept or reject risk on behalf of the
26 insurer.

27 * Sec. 34. AS 21.90.900(13) is repealed.