

HOUSE BILL NO. 283

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 brokers and managers who act as reinsurance intermediaries, to duties
2 of insurers who use a reinsurance intermediary, and defining certain terms related to
3 insurance."

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

5 * Section 1. AS 21 is amended by adding a new chapter to read:

6 CHAPTER 28. REINSURANCE INTERMEDIARIES.

7 Sec. 21.28.010. LICENSING OF REINSURANCE INTERMEDIARY BROKERS AND
8 REINSURANCE INTERMEDIARY MANAGERS. (a) A person may not act as a reinsurance
9 intermediary broker or reinsurance intermediary manager with an office located in this state or
10 act as a reinsurance intermediary broker or reinsurance intermediary manager for a domestic
11 company located in this state or another state unless the person is licensed under this chapter.

12 (b) A person who acts as a reinsurance intermediary broker or reinsurance intermediary
13 manager for a foreign insurer in this state or for a domestic insurer, but who does not maintain
14 an office in this state, must be licensed under this chapter as a nonresident reinsurance

1 intermediary broker or nonresident reinsurance intermediary manager.

2 (c) The director may require a reinsurance intermediary manager or reinsurance
3 intermediary broker to

4 (1) file a bond in an amount from an insurer acceptable to the director for the
5 protection of the reinsurer; and

6 (2) maintain an errors and omissions policy in an amount acceptable to the
7 director.

8 (d) The director may issue a reinsurance intermediary broker or reinsurance intermediary
9 manager license to a person who has complied with the requirements of this section. A license
10 issued to a firm or association authorizes all members of the firm or association and all
11 designated employees to act as reinsurance intermediaries under the license if the member or
12 employee is named in the application and any supplements. A license issued to a corporation
13 authorizes all officers of the corporation, and all of the corporation's designated employees and
14 directors, to act as reinsurance intermediaries on behalf of the corporation if the employee or
15 director is named in the application and any supplements.

16 (e) If the applicant for a reinsurance intermediary broker or reinsurance intermediary
17 manager license is a nonresident, the applicant shall file the power of attorney required by
18 AS 21.27.270(c) and appoint the director as agent for process of service as required by
19 AS 21.27.280.

20 (f) The director may refuse to issue a reinsurance intermediary broker and reinsurance
21 intermediary manager license if, in the director's judgment, the applicant, a person named on the
22 application, a member, principal, officer, or director of the applicant, or a controlling person of
23 the applicant is not trustworthy to act as a reinsurance intermediary or has failed to comply with
24 a prerequisite for the issuance of the license.

25 (g) A reinsurance intermediary broker or reinsurance intermediary manager shall be
26 subject to examination by the director. In conducting an examination, the director shall have
27 access to all books, bank accounts, and records of the reinsurance intermediary broker or
28 reinsurance intermediary manager in a form usable to the director. A reinsurance intermediary
29 manager may be examined in the same manner as the reinsurer.

30 (h) A reinsurance intermediary, insurer, or reinsurer who is found by the director, after
31 hearing, to be in violation of a provision of this title shall

1 (1) be subject to suspension or revocation of license or fines under AS 21.27.440
2 and any other penalties lawfully available to the director; and

3 (2) make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the
4 insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the
5 violation.

6 (i) This section does not apply to a person licensed as an attorney at law in this state
7 when the person is acting as an attorney.

8 Sec. 21.28.020. OPERATING REQUIREMENTS FOR REINSURANCE
9 INTERMEDIARY BROKERS. (a) Transactions between a reinsurance intermediary broker and
10 a represented insurer may only be entered into under a written contract specifying the
11 responsibilities of each party. The contract must, at a minimum, provide that

12 (1) the insurer may terminate the reinsurance intermediary broker's authority at
13 any time;

14 (2) the reinsurance intermediary broker shall render accounts to the insurer
15 accurately detailing all material transactions, including information necessary to support all
16 commissions, charges, and other fees received by, or owing, to the reinsurance intermediary
17 broker and remit all funds due to the insurer within 30 days of receipt;

18 (3) all funds collected for the insurer's account shall be held by the reinsurance
19 intermediary broker in a fiduciary capacity required under AS 21.27.360 in a bank that is a
20 qualified United States financial institution;

21 (4) the reinsurance intermediary broker shall comply with the written standards
22 established by the insurer for the cession or retrocession of all risks.

23 (b) For at least 10 years after expiration of each contract of reinsurance transacted by the
24 reinsurance intermediary broker, the reinsurance intermediary broker shall keep a complete record
25 for each transaction showing

26 (1) the type of contract, limits, underwriting restrictions, classes or risks, and
27 territory;

28 (2) the period of coverage, including effective and expiration dates, cancellation
29 provisions, and required notice of cancellation;

30 (3) the reporting and settlement requirements of balances;

31 (4) the rate used to compute the reinsurance premium;

- 1 (5) the names and addresses of assuming reinsurers;
- 2 (6) the rates of all reinsurance commissions, including the commissions on
3 retrocessions handled by the reinsurance intermediary broker;
- 4 (7) the related correspondence and memoranda;
- 5 (8) the proof of placement;
- 6 (9) the details regarding retrocessions handled by the reinsurance intermediary
7 broker including the identity of retrocessionaries and the percentage of each contract assumed or
8 ceded;
- 9 (10) the financial records of premium and loss accounts; and
- 10 (11) if the reinsurance intermediary broker procures a reinsurance contract on
11 behalf of a licensed ceding insurer,
- 12 (A) written evidence directly from any assuming reinsurer that it has
13 agreed to assume the risk; or
- 14 (B) written evidence, if placed through a representative of the assuming
15 reinsurer other than an employee, that the reinsurer has delegated binding authority to the
16 representative.
- 17 (c) The insurer shall have access and the right to copy and audit all accounts and records
18 maintained by the reinsurance intermediary broker related to the insurer's business in a form
19 usable by the insurer.
- 20 Sec. 21.28.030. DUTIES OF INSURERS UTILIZING THE SERVICES OF A
21 REINSURANCE INTERMEDIARY BROKER. (a) An insurer may not engage the services of
22 a person to act as a reinsurance intermediary broker on the insurer's behalf unless the person is
23 licensed under AS 21.28.010.
- 24 (b) An insurer may not employ an individual who is employed by a reinsurance
25 intermediary broker with which it transacts business unless the reinsurance intermediary broker
26 is under common control with the insurer and subject to AS 21.22.
- 27 (c) The insurer shall annually obtain a copy of statements of the financial condition of
28 each reinsurance intermediary broker with which the insurer transacts business.
- 29 Sec. 21.28.040. OPERATING REQUIREMENTS FOR REINSURANCE
30 INTERMEDIARY MANAGERS. (a) Transactions between a licensed reinsurance intermediary
31 manager and the reinsurer it represents in that capacity may only be entered into under a written

1 contract, specifying the responsibilities of each party, that is approved by the reinsurer's board
2 of directors. At least 30 days before the reinsurer assumes or cedes business through the
3 manager under a contract, a copy of the contract shall be filed with the director for approval if

4 (1) the reinsurer is a domestic insurer; or

5 (2) the reinsurance intermediary manager has an office in the state.

6 (b) The director may not approve the contract unless at a minimum the contract provides
7 that

8 (1) the reinsurer may terminate the contract for cause upon written notice to the
9 reinsurance intermediary manager; the reinsurer may immediately suspend the authority to assume
10 or cede business during a dispute regarding the cause for termination;

11 (2) the reinsurance intermediary manager shall render accounts to the reinsurer
12 accurately detailing all material transactions, including information necessary to support all
13 commissions, charges, and other fees received by, or owing to, the reinsurance intermediary
14 manager and remit all funds due under the contract to the reinsurer on at least a monthly basis;

15 (3) all funds collected for the reinsurer's account shall be held by the reinsurance
16 intermediary manager in a fiduciary capacity under AS 21.27.360 and in a bank that is a qualified
17 United States financial institution; the reinsurance intermediary manager may retain not more than
18 three months estimated claims payments and allocated loss adjustment expenses; the reinsurance
19 intermediary manager shall maintain a separate bank account for each reinsurer that it represents;

20 (4) the reinsurer shall have access and the right to copy all accounts and records
21 maintained by the reinsurance intermediary manager related to the reinsurer's business in a form
22 usable by the reinsurer;

23 (5) the contract may not be assigned in whole or in part by the reinsurance
24 intermediary manager;

25 (6) the reinsurance intermediary manager shall comply with the written
26 underwriting and rating standards established by the insurer for the acceptance, rejection, or
27 cession of all risks;

28 (7) all the rates, terms, and purposes of commissions, charges, and other fees that
29 the reinsurance intermediary manager may levy against the reinsurer are listed;

30 (8) if the contract permits the reinsurance intermediary manager to settle claims
31 on behalf of the reinsurer

1 (A) all claims shall be reported to the reinsurer in a timely manner;
2 (B) a copy of the claim file shall be sent to the reinsurer at the insurer's
3 request or as soon as it becomes known that the claim
4 (i) has the potential to exceed the lesser of an amount determined
5 by the director or the limit set by the reinsurer;
6 (ii) involves a coverage dispute;
7 (iii) may exceed the reinsurance intermediary manager's claims
8 settlement authority;
9 (iv) is open for more than six months; or
10 (v) is closed by payment of the lesser of an amount set by the
11 director or an amount set by the reinsurer;
12 (C) all claim files shall be the property of both the reinsurer and
13 reinsurance intermediary manager; upon an order of liquidation of the reinsurer, the files
14 will become the sole property of the reinsurer or the reinsurer's estate; the reinsurance
15 intermediary manager shall have reasonable access to and the right to copy the files on
16 a timely basis; and
17 (D) settlement authority granted to the reinsurance intermediary manager
18 may be terminated for cause upon the reinsurer's written notice to the reinsurance
19 intermediary manager or upon the termination of the contract; the reinsurer may suspend
20 the settlement authority during a dispute regarding the cause of termination;
21 (9) if the contract provides for a sharing of interim profits by the reinsurance
22 intermediary manager, the interim profits may not be paid until one year after the end of each
23 underwriting period for property business and five years after the end of each underwriting period
24 for casualty business, or a later period set by the director for specified lines of insurance, and not
25 until the adequacy of reserves on remaining claims have been verified under AS 21.28.050(c);
26 (10) the reinsurance intermediary manager shall annually provide the reinsurer
27 with a financial statement prepared by an independent certified public accountant;
28 (11) the reinsurer shall at least semiannually conduct an on-site review of the
29 underwriting and claims processing operations of the reinsurance intermediary manager;
30 (12) the reinsurance intermediary manager shall disclose to the reinsurer any
31 relationship with an insurer before ceding or assuming business with the insurer under the

1 contract; and

2 (13) within the scope of actual or apparent authority, the acts of the reinsurance
3 intermediary manager are the acts of the reinsurer on whose behalf the reinsurance intermediary
4 manager is acting.

5 (c) Subsection (a) of this section does not require the director to approve a contract that
6 the director determines to be hazardous to the financial standing of an insurer or reinsurer.

7 (d) For at least 10 years after expiration of a contract of reinsurance transacted by the
8 reinsurance intermediary manager, the reinsurance intermediary manager will keep a complete
9 record for each transaction showing

10 (1) the type of contract, limits, underwriting restrictions, classes, or risks, and
11 territory;

12 (2) the period of coverage, including effective and expiration dates, cancellation
13 provisions and notice required of cancellation, and disposition of outstanding reserves on covered
14 risks;

15 (3) reporting and settlement requirements of balances;

16 (4) the rate used to compute the reinsurance premium;

17 (5) the names and addresses of reinsurers;

18 (6) rates of all reinsurance commissions, including the commissions on
19 retrocessions handled by the reinsurance intermediary manager;

20 (7) related correspondence and memoranda;

21 (8) proof of placement;

22 (9) details regarding retrocessions handled by the reinsurance intermediary
23 manager, as permitted by (e) of this section, including the identity of retrocessionaries and
24 percentage of each contract assumed or ceded;

25 (10) financial records, including premium and loss accounts; and

26 (11) when the reinsurance intermediary manager places a reinsurance contract on
27 behalf of a ceding insurer,

28 (A) written evidence directly from an assuming reinsurer that the reinsurer
29 has agreed to assume the risk; or

30 (B) written evidence, if placed through a representative of the assuming
31 reinsurer other than an employee, that the reinsurer has delegated binding authority to the

1 representative.

2 (e) The reinsurance intermediary manager may not

3 (1) cede retrocessions on behalf of the reinsurer, but the reinsurance intermediary

4 manager may cede facultative retrocessions under obligatory facultative agreements if the contract

5 with the reinsurer contains reinsurance underwriting guidelines that include a list of reinsurers

6 with which the automatic agreements are in effect and, for each reinsurer, the coverages and

7 amounts or percentages that may be reinsured, and commission schedules;

8 (2) commit the reinsurer to participate in reinsurance syndicates;

9 (3) appoint an agent or broker without assuring that the agent or broker is licensed

10 to transact the type of reinsurance for which the agent or broker is appointed;

11 (4) without prior approval of the reinsurer, pay or commit the reinsurer to pay a

12 claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one

13 percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar

14 year;

15 (5) collect a payment from a retrocessionaire or commit the reinsurer to a claim

16 settlement with a retrocessionaire without prior approval of the reinsurer; if prior approval is

17 given, a report must be promptly forwarded to the reinsurer;

18 (6) jointly employ an individual who is employed by the reinsurer unless the

19 reinsurance intermediary manager is under common control with the reinsurer as defined in

20 AS 21.22; or

21 (7) transfer the authority as a reinsurance intermediary manager to other persons.

22 Sec. 21.28.050. DUTIES OF REINSURERS UTILIZING THE SERVICES OF A

23 REINSURANCE INTERMEDIARY MANAGER. (a) A reinsurer may not use a person to act

24 as a reinsurance intermediary manager on the reinsurer's behalf unless the person is licensed

25 under AS 21.28.010.

26 (b) The reinsurer shall annually obtain a copy of statements of the financial condition of

27 each reinsurance intermediary manager that the reinsurer has used, prepared by an independent

28 certified public accountant in a form acceptable to the director.

29 (c) If a reinsurance intermediary manager establishes loss reserves, the reinsurer shall

30 annually obtain the opinion of an independent qualified actuary attesting to the adequacy of loss

31 reserves established for losses incurred and outstanding on business produced by the reinsurance

1 intermediary manager. This opinion is in addition to any other required loss reserve certification.

2 (d) Binding authority for all retrocessional contracts or participation in reinsurance
3 syndicates rests with an officer of the reinsurer who may not be affiliated with the reinsurance
4 intermediary manager.

5 (e) Within 30 days of termination of a contract with a reinsurance intermediary manager,
6 the reinsurer shall provide written notification of the termination to the director.

7 (f) A reinsurer may not appoint to its board of directors any officer, director, employee,
8 controlling shareholder, or subagent of its reinsurance intermediary manager. This subsection
9 does not apply to relationships governed by AS 21.22.

10 Sec. 21.28.900. DEFINITIONS. In this chapter,

11 (1) "qualified United States financial institution" has the meaning given in
12 AS 21.12.020(f);

13 (2) "reinsurance intermediary broker" means a person, firm, association, or
14 corporation, other than an officer or employee of the ceding insurer, who solicits, negotiates, or
15 places reinsurance cessions or retrocessions on behalf of a ceding insurer without the authority
16 or power to bind reinsurance on behalf of the insurer;

17 (3) "reinsurance intermediary manager" means a person, firm, association, or
18 corporation, including an insurer, who has authority to bind or manage all or part of the assumed
19 reinsurance business of a reinsurer, including the management of a separate division, department,
20 or underwriting office, and who acts as an agent for the reinsurer whether known as a reinsurance
21 intermediary manager, manager, or other similar term; the following persons are not considered
22 a reinsurance intermediary manager, with respect to the reinsurer, for the purposes of this chapter:

23 (A) an employee of the reinsurer;

24 (B) a manager of the United States branch of an alien reinsurer;

25 (C) an underwriting manager that, under a contract, manages all the
26 reinsurance operations of the reinsurer, is under common control with the reinsurer, and
27 whose compensation is not based on the volume of premiums written; in this
28 subparagraph, "under common control with" has the meaning given in AS 21.22.200(2);
29 or

30 (D) the manager of a group, association, pool, or organization of insurers
31 that does joint underwriting or joint reinsurance and that is subject to examination by the

1 authorized insurance official of the state in which the manager's principal business office
2 is located.

3 * Sec. 2. AS 21.90.900 is amended by adding new paragraphs to read:

4 (29) "cession" means a unit of insurance passed to a reinsurer by a primary
5 company that issued a policy to the original insured that may transfer part or all of a single risk,
6 a defined policy, or a defined group of business as agreed to in a contract of reinsurance;

7 (30) "financial statement prepared by a certified public accountant" means a
8 written presentation purporting to show the condition or results of operations for a stated period
9 of a person, firm, association, or corporation that is audited or compiled or reviewed with all
10 disclosures necessary to conform to generally accepted accounting principals by a licensed
11 individual or firm of certified public accountants;

12 (31) "independent qualified actuary" means an actuary who is a member of the
13 American Academy of Actuaries or Casualty Actuarial Society and who is not affiliated with, nor
14 an employee, principal, or the direct or indirect owner of, or in any way controlled by the insurer
15 or broker;

16 (32) "office in this state" means a location in the state where a person conducts
17 the business of insurance or a representative receives mail regarding the business of insurance;

18 (33) "reinsurance" has the meaning given in AS 21.12.120;

19 (34) "reinsurance intermediary" means a person, firm, association, or corporation
20 who acts as a producer in soliciting, negotiating, or procuring the making of a reinsurance
21 contract or binder on behalf of a ceding insurer or acts as a producer in accepting a reinsurance
22 contract or binder on behalf of an assuming insurer;

23 (35) "retrocession" means a transaction where a reinsurer cedes to another
24 reinsurer all or part of the business the reinsurer has previously assumed.