CS FOR HOUSE BILL NO. 283 (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 & COMMERCE COMMITTEE

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; and
23 (5) the reinsurance intermediary broker shall disclose to the insurer any
24 relationship with a reinsurer to which business is ceded or retroceded.
25 (b) For at least 10 years after expiration of each contract of reinsurance transacted by the
26 reinsurance intermediary broker, the reinsurance intermediary broker shall keep a complete record
27 for each transaction showing
28 (1) the type of contract, limits, underwriting restrictions, classes or risks, and
29 territory;
30 (2) the period of coverage, including effective and expiration dates, cancellation
31 provisions, and required notice of cancellation;

1 (3) the reporting and settlement requirements of balances;
2 (4) the rate used to compute the reinsurance premium;
3 (5) the names and addresses of assuming reinsurers;
4 (6) the rates of all reinsurance commissions, including the commissions on
5 retrocessions handled by the reinsurance intermediary broker;
6 (7) the related correspondence and memoranda;
7 (8) the proof of placement;
8 (9) the details regarding retrocessions handled by the reinsurance intermediary
9 broker including the identity of retrocessionaires and the percentage of each contract assumed or
10 ceded;
11 (10) the financial records of premium and loss accounts; and
12 (11) if the reinsurance intermediary broker procures a reinsurance contract on
13 behalf of a licensed ceding insurer,
14 (A) written evidence directly from any assuming reinsurer that it has
15 agreed to assume the risk; or
16 (B) written evidence, if placed through a representative of the assuming
17 reinsurer other than an employee, that the reinsurer has delegated binding authority to the
18 representative.
19 (c) The insurer shall have access and the right to copy and audit all accounts and records
20 maintained by the reinsurance intermediary broker related to the insurer's business in a form
21 usable by the insurer.
22 Sec. 21.28.030. DUTIES OF INSURERS UTILIZING THE SERVICES OF A
23 REINSURANCE INTERMEDIARY BROKER. (a) An insurer may not engage the services of
24 a person to act as a reinsurance intermediary broker on the insurer's behalf unless the person is
25 licensed under AS 21.28.010.
26 (b) Notwithstanding (a) of this section, a domestic insurer may use a reinsurance
27 intermediary broker that is not licensed under this chapter, if the reinsurance intermediary broker
28 meets the licensing requirements for a reinsurance intermediary broker imposed by the state,
29 territory, or country of residence.
30 (c) An insurer may not employ an individual who is employed by a reinsurance
31 intermediary broker with which it transacts business unless the reinsurance intermediary broker

1 is under common control with the insurer and subject to AS 21.22.

2 (d) The insurer shall annually obtain a copy of statements of the financial condition of
3 each reinsurance intermediary broker with which the insurer transacts business.

4 Sec. 21.28.040. OPERATING REQUIREMENTS FOR REINSURANCE
5 INTERMEDIARY MANAGERS. (a) Transactions between a licensed reinsurance intermediary
6 manager and the reinsurer it represents in that capacity may only be entered into under a written
7 contract, specifying the responsibilities of each party, that is approved by the reinsurer's board
8 of directors. At least 30 days before the reinsurer assumes or cedes business through the
9 manager under a contract, a copy of the contract shall be filed with the director for approval if

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

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

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

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

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

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

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

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

31 (6) the reinsurance intermediary manager shall comply with the written

1 underwriting and rating standards established by the insurer for the acceptance, rejection, or
2 cession of all risks;
3 (7) all the rates, terms, and purposes of commissions, charges, and other fees that
4 the reinsurance intermediary manager may levy against the reinsurer are listed;
5 (8) if the contract permits the reinsurance intermediary manager to settle claims
6 on behalf of the reinsurer
7 (A) all claims shall be reported to the reinsurer in a timely manner;
8 (B) a copy of the claim file shall be sent to the reinsurer at the insurer's
9 request or as soon as it becomes known that the claim
10 (i) has the potential to exceed the lesser of an amount determined
11 by the director or the limit set by the reinsurer;
12 (ii) involves a coverage dispute;
13 (iii) may exceed the reinsurance intermediary manager's claims
14 settlement authority;
15 (iv) is open for more than six months; or
16 (v) is closed by payment of the lesser of an amount set by the
17 director or an amount set by the reinsurer;
18 (C) all claim files shall be the property of both the reinsurer and
19 reinsurance intermediary manager; upon an order of liquidation of the reinsurer, the files
20 will become the sole property of the reinsurer or the reinsurer's estate; the reinsurance
21 intermediary manager shall have reasonable access to and the right to copy the files on
22 a timely basis; and
23 (D) settlement authority granted to the reinsurance intermediary manager
24 may be terminated for cause upon the reinsurer's written notice to the reinsurance
25 intermediary manager or upon the termination of the contract; the reinsurer may suspend
26 the settlement authority during a dispute regarding the cause of termination;
27 (9) if the contact provides for a sharing of interim profits by the reinsurance
28 intermediary manager, the interim profits may not be paid until one year after the end of each
29 underwriting period for property business and five years after the end of each underwriting period
30 for casualty business, or a later period set by the director for specified lines of insurance, and not
31 until the adequacy of reserves on remaining claims have been verified under AS 21.28.050(c);

1 (10) the reinsurance intermediary manager shall annually provide the reinsurer
2 with a financial statement prepared by an independent certified public accountant;
3 (11) the reinsurer shall at least semiannually conduct an on-site review of the
4 underwriting and claims processing operations of the reinsurance intermediary manager;
5 (12) the reinsurance intermediary manager shall disclose to the reinsurer any
6 relationship with an insurer before ceding or assuming business with the insurer under the
7 contract; and
8 (13) within the scope of actual or apparent authority, the acts of the reinsurance
9 intermediary manager are the acts of the reinsurer on whose behalf the reinsurance intermediary
10 manager is acting.
11 (c) Subsection (a) of this section does not require the director to approve a contract that
12 the director determines to be hazardous to the financial standing of an insurer or reinsurer.
13 (d) For at least 10 years after expiration of a contract of reinsurance transacted by the
14 reinsurance intermediary manager, the reinsurance intermediary manager will keep a complete
15 record for each transaction showing
16 (1) the type of contract, limits, underwriting restrictions, classes, or risks, and
17 territory;
18 (2) the period of coverage, including effective and expiration dates, cancellation
19 provisions and notice required of cancellation, and disposition of outstanding reserves on covered
20 risks;
21 (3) reporting and settlement requirements of balances;
22 (4) the rate used to compute the reinsurance premium;
23 (5) the names and addresses of reinsurers;
24 (6) rates of all reinsurance commissions, including the commissions on
25 retrocessions handled by the reinsurance intermediary manager;
26 (7) related correspondence and memoranda;
27 (8) proof of placement;
28 (9) details regarding retrocessions handled by the reinsurance intermediary
29 manager, as permitted by (e) of this section, including the identity of retrocessionaires and
30 percentage of each contract assumed or ceded;
31 (10) financial records, including premium and loss accounts; and

1 (11) when the reinsurance intermediary manager places a reinsurance contract on
2 behalf of a ceding insurer,
3 (A) written evidence directly from an assuming reinsurer that the reinsurer
4 has agreed to assume the risk; or
5 (B) written evidence, if placed through a representative of the assuming
6 reinsurer other than an employee, that the reinsurer has delegated binding authority to the
7 representative.
8 (c) The reinsurance intermediary manager may not
9 (1) cede retrocessions on behalf of the reinsurer, but the reinsurance intermediary
10 manager may cede facultative retrocessions under obligatory facultative agreements if the contract
11 with the reinsurer contains reinsurance underwriting guidelines that include a list of reinsurers
12 with which the automatic agreements are in effect and, for each reinsurer, the coverages and
13 amounts or percentages that may be reinsured, and commission schedules;
14 (2) commit the reinsurer to participate in reinsurance syndicates;
15 (3) appoint an agent or broker without assuring that the agent or broker is licensed
16 to transact the type of reinsurance for which the agent or broker is appointed;
17 (4) without prior approval of the reinsurer, pay or commit the reinsurer to pay a
18 claim, net of retrocessions, that exceeds the lesser of an amount specified by the reinsurer or one
19 percent of the reinsurer's policyholder's surplus as of December 31 of the last complete calendar
20 year;
21 (5) collect a payment from a retrocessionaire or commit the reinsurer to a claim
22 settlement with a retrocessionaire without prior approval of the reinsurer; if prior approval is
23 given, a report must be promptly forwarded to the reinsurer;
24 (6) jointly employ an individual who is employed by the reinsurer unless the
25 reinsurance intermediary manager is under common control with the reinsurer as defined in
26 AS 21.22; or
27 (7) transfer the authority as a reinsurance intermediary manager to other persons.
28 Sec. 21.28.050. DUTIES OF REINSURERS UTILIZING THE SERVICES OF A
29 REINSURANCE INTERMEDIARY MANAGER. (a) A reinsurer may not use a person to act
30 as a reinsurance intermediary manager on the reinsurer's behalf unless the person is licensed
31 under AS 21.28.010.

1 (b) The reinsurer shall annually obtain a copy of statements of the financial condition of
2 each reinsurance intermediary manager that the reinsurer has used, prepared by an independent
3 certified public accountant in a form acceptable to the director.
4 (c) If a reinsurance intermediary manager establishes loss reserves, the reinsurer shall
5 annually obtain the opinion of an independent qualified actuary attesting to the adequacy of loss
6 reserves established for losses incurred and outstanding on business produced by the reinsurance
7 intermediary manager. This opinion is in addition to any other required loss reserve certification.
8 (d) Binding authority for all retrocessional contracts or participation in reinsurance
9 syndicates rests with an officer of the reinsurer who may not be affiliated with the reinsurance
10 intermediary manager.
11 (e) Within 30 days of termination of a contract with a reinsurance intermediary manager,
12 the reinsurer shall provide written notification of the termination to the director.
13 (f) A reinsurer may not appoint to its board of directors any officer, director, employee,
14 controlling shareholder, or subagent of its reinsurance intermediary manager. This subsection
15 does not apply to relationships governed by AS 21.22.
16 Sec. 21.28.900. DEFINITIONS. In this chapter,
17 (1) "qualified United States financial institution" has the meaning given in
18 AS 21.12.020(f);
19 (2) "reinsurance intermediary broker" means a person, firm, association, or
20 corporation, other than an officer or employee of the ceding insurer, who solicits, negotiates, or
21 places reinsurance cessions or retrocessions on behalf of a ceding insurer with or without the
22 authority or power to bind reinsurance on behalf of the insurer;
23 (3) "reinsurance intermediary manager" means a person, firm, association, or
24 corporation, including an insurer, who has authority to bind or manage all or part of the assumed
25 reinsurance business of a reinsurer, including the management of a separate division, department,
26 or underwriting office, and who acts as an agent for the reinsurer whether known as a reinsurance
27 intermediary manager, manager, or other similar term; the following persons are not considered
28 a reinsurance intermediary manager, with respect to the reinsurer, for the purposes of this chapter:
29 (A) an employee of the reinsurer;
30 (B) a manager of the United States branch of an alien reinsurer;
31 (C) an underwriting manager that, under a contact, manages all the

1 reinsurance operations of the reinsurer, is under common control with the reinsurer, and
2 whose compensation is not based on the volume of premiums written; in this
3 subparagraph, "under common control with" has the meaning given in AS 21.22.200; or
4 (D) the manager of a group, association, pool, or organization of insurers
5 that does joint underwriting or joint reinsurance and that is subject to examination by the
6 authorized insurance official of the state in which the manager's principal business office
7 is located.
8 * **Sec. 2.** AS 21.90.900 is amended by adding new paragraphs to read:
9 (29) "cession" means a unit of insurance passed to a reinsurer by a primary
10 company that issued a policy to the original insured that may transfer part or all of a single risk,
11 a defined policy, or a defined group of business as agreed to in a contract of reinsurance;
12 (30) "financial statement prepared by a certified public accountant" means a
13 written presentation purporting to show the condition or results of operations for a stated period
14 of a person, firm, association, or corporation that is audited or compiled or reviewed with all
15 disclosures necessary to conform to generally accepted accounting principals by a licensed
16 individual or firm of certified public accountants;
17 (31) "independent qualified actuary" means an actuary who is a member of the
18 American Academy of Actuaries or Casualty Actuarial Society and who is not affiliated with, nor
19 an employee, principal, or the direct or indirect owner of, or in any way controlled by the insurer
20 or broker;
21 (32) "office in this state" means a location in the state where a person conducts
22 the business of insurance or a representative receives mail regarding the business of insurance;
23 (33) "reinsurance" has the meaning given in AS 21.12.120;
24 (34) "reinsurance intermediary" means a person, firm, association, or corporation
25 who acts as a producer in soliciting, negotiating, or procuring the making of a reinsurance
26 contract or binder on behalf of a ceding insurer or acts as a producer in accepting a reinsurance
27 contract or binder on behalf of an assuming insurer;
28 (35) "retrocession" means a transaction where a reinsurer cedes to another
29 reinsurer all or part of the business the reinsurer has previously assumed.