

# COMMITTEE REPORT

## SENATE

FURTHER:

3/23/84

Date 5/1/84

Mr. President

The Committee on FINANCE considered SB 470

relating to insurance.

and (a majority of the committee) (the committee) reports it back with the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 470 (L+C)
- new title
- same title and recommends DO PASS
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE  
e 2/15/84
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

MEMBERS HAVING  
OTHER RECOMMENDATIONS

\_\_\_\_\_  
\_\_\_\_\_  
*Bill Joseph*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_  
*[Signature]*  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Signature]*  
Chairman

Chairman recommendation

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: SB 470  
Title: Relating to Insurance

Sponsor: Mulcahy  
Requestor: Senate L&C  
Date of Request: 2/15/84

FISCAL DETAIL

Agency Affected: Dept. of Comm. & Econ. Dev.  
Program Category Affected: \_\_\_\_\_

Public Protection  
BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: *Kenneth C. Moore* Phone: 465-2515  
Division: Insurance Date: 2/15/84

Approved by Commissioner: Richard A. Lyon Date: 2/15/84  
Agency: Department of Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

3/20/84

I have read CS 58470 (LFC) and it does resolve the questions we posed at the last hearing on the bill. The amendments we did request at that time have been incorporated in the substitute.



Division of Insurance

This proposal upgrades the Unauthorized (nonadmitted) Insurers Act and the Surplus Lines Insurance Act to comport with the recently adopted models of the National Association of Insurance Commissioners (NAIC). Currently, these two acts, along with a third, the Unauthorized Insurers Service of Process Act appear in AS 21.33.

This proposal continues the Unauthorized (nonadmitted) Insurers Act and the Unauthorized Insurers Service of Process Act in AS 21.33. Access to that market is more clearly stated. Most of the changes in AS 21.33 are not substantive. However the Surplus Lines Insurance Act has been removed from AS 21.33 and placed in a new chapter, AS 21.34. This chapter makes some substantial revisions with respect to how a surplus lines business can be conducted in this state. It will give the regulator a clearer ability to deal with the competence of the licensee and provide more meaningful protection for the public through:

- clarification of the duties and responsibilities of the licensee;
- higher financial requirements for the nonadmitted insurer;
- permission to form a surplus lines association with an active role in regulating the market; and,
- allowing admitted markets to compete with the nonadmitted markets.

Section 1. Page 1, lines 8-17.

Current law provides that when the state examines an insurance company, the insurance company pays for that examination. A surplus lines broker is also subject to examination but does not pay for that examination. The position of the surplus lines broker is in many respects similar to an insurer, particularly when the broker has utilized an insurer that is not able to meet its obligations. This section provides that the surplus lines broker must also meet the cost of its examination.

Section 2. Page 1, lines 18-29 & page 2, lines 1-7.

The change here is on page 1, lines 24-25. This section ties in with Section 1. It lists those entities subject to examination without charge.

Section 3. Page 2, lines 8-29 & page 3, lines 1-3.

This rewrite of the purpose section does not contain substantive changes. It is formatted in a more readable form and the application of the chapter to surplus lines brokers has been deleted.

Section 4. Page 3, lines 4-24.

The changes in this section are editorial. The phrase "doing an insurance business" has been changed to "transaction of insurance", and gender oriented references have been changed.

Section 5. Page 3, lines 25-29 & page 4, lines 1-13.

This section contains more of the same changes noted in Section 4. No substantive change.

Section 6. Page 4, lines 14-29 & page 5, lines 1-8.  
The change in this section are similar to those in Section 4. No substantive changes.

Section 7. Page 5, lines 9-29 & page 6, lines 1-4.  
The difference here is found on page 6, lines 2-4. It is primarily a clarification. No substantive change.

Section 8. Page 6, lines 5-13.  
Changes similar to those in Section 4.

Section 9. Page 6, lines 14-26.  
The sole change in this section is the insertion of the word "nonadmitted" on line 16. This has been done in several of the earlier sections without comment. It is a clarification, and one that is defined in the definition section on page 12, lines 15-18. Previously the words "insurer", "nonadmitted insurer", and, "unauthorized insurer" have been used synonymously. That is inconsistent and has led to some confusion. This change should clear up that situation.

Section 10. Page 6, lines 27-29 & page 7, lines 1-29.  
This section is a consolidation of several other sections. (a) replaces AS 21.33.015 with no substantive difference. (b) replaces AS 21.33.075 with some shift in an individuals ability to enter and use the nonadmitted market place. This ability is broadened in this bill by removing the specific description of an industrial insured found in AS 21.33.075(9). (c) replaces the combination of AS 21.33.015 and AS 21.33.075(6) with no substantive difference. (d) replaces AS 21.33.041 with no substantive difference.

Section 11. Page 8, lines 1-24.  
This is a new section and it limits a nonadmitted insurers access to Alaska courts. This is as to those not placed through a surplus lines broker in AS 21.34. It clarifies the standing of those insurers.

Section 12. Page 8, lines 25-29 & page 9, lines 1-6.  
This is the same kind of change noted in Section 9. One additional change is that access by the director to an insureds purchases in the admitted or authorized market has been removed. This ability to access admitted purchases is probably unreasonable when placed on the insured. Presumably access to these records through other sources is sufficient.

Section 13. Page 9, lines 7-13.  
This section reinforces the ability of the director to obtain records and information under this section. This is accomplished by allowing the director to apply for a court order to compel production of records and information.

Section 14. Page 9, lines 14-29 & page 10, lines 1-10.  
"Unauthorized" has been changed to "nonadmitted" as noted in section 9.  
The penalty provision has been revised so that it is more readily  
calculable. This penalty will generally be stiffer than that now provided.

Section 15. Page 10, lines 11-26.  
More editorial changes like those in section 9. Since the surplus lines  
law has been removed from AS 21.33 and placed in AS 21.34, that reference  
has been noted. The time for reporting has been shortened from 60 days to  
30 days.

Section 16. Page 10, lines 27-29 & page 11, lines 1-6.  
Same editorial change noted in section 9.

Section 17. Page 11, lines 7-15.  
The penalty provision has been upgraded in the same fashion as section 14.

Section 18. Page 11, lines 16-21.  
This section is intended to avoid any potential conflict with new  
sections AS 21.33.037 and AS 21.33.042.

Section 19. Page 11, lines 22-29 & page 12, lines 1-4.  
This section upgrades the penalty section by increasing the per violation  
penalty from \$500 for the first offense to \$1,000 and by increasing the  
second offense penalty from \$500 to \$2,000. A new penalty is also  
structured for allowing a violation to continue uncorrected in the amount  
of \$1,000 for each month of continuation.

Section 20. Page 12, lines 5-29 & page 13, lines 1-25.  
This definition section is new. There is nothing representing a  
substantive difference from current law except in (9)(A) where vessels of  
50 displacement tons or less are not included in the definition of marine  
and are therefor included in the requirements of this proposed law.

Section 21. Page 13, lines 26-29, all of pages 14-30, & page 31, lines  
1-16.  
This section adds a new chapter to the insurance code dealing with  
surplus lines insurance. This chapter has essentially been removed from  
AS 21.33. A number of changes have been made to provide for a stronger  
regulation of the surplus lines market. This is accomplished by  
strengthening the financial requirements of a company in that market  
before it can be used in this state. The line of responsibility for the  
surplus lines broker is clarified. The bill permits the creation of a  
surplus lines association that can have a substantial self-regulatory  
role which has experienced substantial success in California and in  
Washington. This would allow the division to more effectively use its  
resources to avoid problems for persons insured in that market.

Sec 21.34.010. Page 13, lines 28-29 & page 14, lines 1-14.  
This is the purpose section for the new chapter

Sec 21.34.020. Page 14, lines 15-23  
This section conditions what can be placed in the nonadmitted market.  
There is no substantive difference from current law.

Sec 21.34.030. Page 14, lines 24-29 & page 15, lines 1-12.  
This section permits workers compensation to be written in the surplus lines market provided the director finds it to be in the public interest. It is substantially the same as current law except that this proposal has financial requirements that are higher than other placements in that market.

Sec 21.34.040. Page 15, lines 13-29 & page 16, lines 1-29.  
This section substantially increases the minimum capital and surplus requirements used in the surplus lines market. It also recognizes distinctions among insurers, Lloyds type organizations, and insurance exchanges.

Sec 21.34.050. Page 17, lines 1-9.  
This section is a new provision which substantially tracks current practice. It provides for the listing of eligible surplus lines insurers. It also permits the surplus lines association to perform that task when approved by the director.

Sec 21.34.060. Page 17, lines 10-23.  
This section requires that when a policy is written by more than one insurer and one or more of those insurers are not eligible, the insured must be notified. This prevents a practice where some brokers conceal the fact that there are ineligible insurers on a risk. One way that this is done is to list the insurers as "underwriters at Lloyd's and other companies." The division does not accept this practice now, but is not certain that even in those cases where we correct it, the insured is adequately informed. A little information at this stage can prevent a lot of problems later.

Sec 21.34.070. Page 17, lines 24-29 & page 18, lines 1-11.  
This section establishes a procedure for removing an insurer from the eligible list and sets forth a notice requirement to all licensees.

Sec 21.34.080. Page 18, lines 12-29.  
This section is similar to an existing requirement to file affidavits of coverage. It adds a requirement on the surplus lines broker to provide evidence of insurance to an insured within 30 days of placement of the coverage. It also provides that these filing requirements may be transferred to the surplus lines association upon an order by the director.

Sec 21.34.090. Page 19, lines 1-29 & page 20, lines 1-15.

This section permits the formation of a surplus lines association and sets forth the powers and purposes for which it may be formed. It establishes the requirements for its formation and makes it subject to examination by the director. It provides that the director may require membership in the association as a condition of licensure in this state.

Sec 21.34.100. Page 20, lines 16-29, all of page 21, & page 22, line 1. This section describes the evidence of insurance which a surplus lines broker must provide for an insured. The basic idea is to require a full disclosure of the facts relating to a placement in the nonadmitted market. This also applies to changes made in coverage. The broker is required to maintain a full copy of all documents pertinent to the insurance transaction. A warning is required to apprise the insured that a policy placed in the nonadmitted market is not covered by the Alaska Insurance Guaranty Association Act.

Sec 21.34.110. Page 22, lines 2-13.

This section provides that the insured has no liability for premium until the broker has provided a notice to the insured to the effect that the insurer is nonadmitted, and there is no insolvency protection provided under state law. This is a new approach.

Sec 21.34.120. Page 22, lines 14-16.

This is similar to present law. It provides that contracts in the surplus lines market place are valid contracts.

Sec 21.34.130. Page 22, lines 17-22.

Section provides that payment to the broker is payment to the insurer.

Sec 21.34.140. Page 22, lines 23-29, all of page 23, and page 24, lines 1-6.

This section sets forth the licensing standards and requirements for a surplus lines brokers license. The requirements are not substantially different than those in current law. The bond requirement is higher. This proposal does permit nonresident surplus lines brokers licensees. (e) does provide a penalty for late renewal of license.

Sec 21.34.150. Page 24, lines 7-12.

This section clarifies the scope of a surplus lines brokers license. It allows the surplus lines broker to accept business from other surplus lines brokers and other brokers but not from agents.

Sec 21.34.160. Page 24, lines 13-29 & page 25, lines 1-11.

This section clearly outlines the kinds of records that must be maintained by a surplus lines broker and that such records must be open for examination by the director.

Sec 21.34.170. Page 25, lines 12-18.

This section requires a monthly report of business placed in the surplus lines market.

Sec 21.34.180. Page 25, lines 19-29 & page 26, lines 1-27.

This section is substantially the same as current law. The premium tax is established here and the director may have the tax collected by the surplus lines association. The director has the ability to establish adequate safeguards to protect the monies collected in this fashion.

Sec 21.34.190. Page 26, lines 28-29 & page 27, lines 1-3.

A filing fee of 1% is established. This is presently at 1/2%.

Sec 21.34.200. Page 27, lines 4-21.

This section provides for two alternate means of tax collection. The first is by the director in the usual manner. The second is by the surplus lines association upon an order by the director after establishing those safeguards deemed appropriate.

Sec 21.34.210. Page 27, lines 22-29 & page 28, lines 1-16.

In the current law, the director has discretionary suspension or revocation authority. The restructuring found in this section is more specific and lists those actions which can result in suspension or revocation.

Sec 21.23.220. Page 28, lines 17-28.

This section ties into AS 21.33 for service of process on a nonadmitted insurer used through the surplus lines market. The presence of a nonadmitted insurer on a surplus lines contract assumes that the insurer has subjected itself to AS 21.34.

Sec 21.34.230. Page 28, line 29 & page 29, lines 1-7.

This penalty section is an upgrade from the present law. It also includes an ability to take action under AS 21.33.320-330 in the unfair trade practices act.

Sec 21.34.240. Page 29, lines 8-12.

Separability section.

Sec 21.34.250. Page 29, lines 13-14.

This section enables the director to promulgate those regulations necessary to implement, define and enforce the provisions of this new chapter.

Sec 21.34.900. Page 29, lines 15-28, all of page 30, & page 31, lines 1-14.

The definitions here take the same explanation as those in Sec 20. There are a few additional definitions but these are not substantively different than current usage in the insurance code.

Sec 22. Page 31, lines 15-19.

This added section in the unfair trade practices act makes it an unfair trade practice to fail to make the required disclosures and reports.

Sec 23. Page 31, lines 20-29 & page 32, lines 1-2.

This section gives admitted insurance companies the ability to compete with the nonadmitted market. It ties in with sections 24 & 25.

Sec 24. Page 32, lines 3-9

This section ties in with Sec 23 and Sec 25 in allowing the admitted market to compete with the nonadmitted market. This is accomplished by providing these exceptions in the rate law which has to date acted as an impediment to that kind of competition.

Sec 25. Page 32, lines 10-15.

This section ties in with the previous two sections. It specifies those conditions under which an admitted insurer can work outside of its filings made with the director. This provides the ability to directly compete with the surplus lines market. This is in the public interest since most admitted market coverages are protected by the guaranty association act.

Sec 26. Page 32, lines 16-17.

This section repeals those sections in AS 21.33 which are no longer needed or have been replaced in the new chapter in section 21.

COMMITTEE REPORT  
SENATE

FURTHER:

FINANCE

2/13/84

Date

3/22/84

Mr. President

The Committee on LABOR & COMMERCE considered SB 470  
relating to insurance.

and (a majority of the committee) (the committee) reports it back with  
the following recommendations:

- do pass
- do pass with attached amendment(s)
- replace with/or adopt CS for SB 470 (L+C)
- new title
- same title and recommends do pass
- and attached a "LETTER OF INTENT"  NEW FISCAL NOTE  
*zuo*
- reports it back without recommendation
- recommends referral to \_\_\_\_\_ Committee

MEMBERS SIGNING  
DO PASS

1 [Signature]  
[Signature]  
1 [Signature]  
1 [Signature]  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

MEMBERS HAVING  
OTHER RECOMMENDATIONS

2 [Signature] N.R.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[Signature]  
Chairman

[Signature]  
Chairman recommendation

STATE OF ALASKA 1984 LEGISLATIVE SESSION  
FISCAL NOTE

*File accompanied  
bill into  
committee  
2/23/84*

Revision Date: \_\_\_\_\_

REQUEST

Bill/Resolution No.: CS SB 470 (LCC)  
Title: Relating to Insurance

Sponsor: Mulcahy  
Requestor: Senate L&C  
Date of Request: 2/15/84

FISCAL DETAIL

Agency Affected: Dept. of Comm. & Econ. Dev.  
Program Category Affected: Public Protection  
BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	F. 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: ~~Attach a separate page for analysis~~

Prepared By: *Kenneth C. Moore* Phone: 465-2515  
Division: Insurance Date: 2/15/84

Approved by Commissioner: *Richard A. Lyon* Date: 2/15/84  
Agency: Department of Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

Offered: 3/23/84  
Referred: Finance

Original sponsor: Mulcahy

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE SENATE

2

CS FOR SENATE BILL NO. 470 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to insurance."

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

8 \* Section 1. AS 21.06.120(a) is amended to read:

9 (a) The director may [SHALL] examine the affairs, transactions,  
10 accounts, records, and assets of each authorized insurer and each li-  
11 icensed surplus lines broker as often as the director [HE] considers  
12 advisable. The director [HE] shall so examine each domestic insurer  
13 at least once [NOT LESS THAN] every three years. Examination of an  
14 alien insurer may be limited to its insurance transactions and affairs  
15 in the United States. Examination of a reciprocal insurer may also  
16 include examination of its attorney-in-fact to the extent that the  
17 transactions of the attorney-in-fact relate to the insurer.

18 \* Sec. 2. AS 21.06.130(a) is amended to read:

19 (a) To determine [FOR THE PURPOSE OF ASCERTAINING] compliance  
20 with this title, the director may as often as the director [HE]  
21 considers advisable examine or require a written report of the  
22 accounts, records, documents, and transactions pertaining to or  
23 affecting the insurance affairs or proposed insurance affairs of

24 (1) an insurance agent, broker, solicitor, [SURPLUS LINE  
25 AGENT,] general agent, or adjuster;

26 (2) a person having a contract under which the person [HE]  
27 enjoys in fact the exclusive or dominant right to manage or control an  
28 insurer;

29 (3) a person holding the shares of voting stock or

1 policyholder proxies of a domestic insurer, for the purpose of con-  
2 trolling its [THE] management [THEREOF], as voting trustee or other-  
3 wise;

4 (4) a person engaged in or proposing to be engaged in or  
5 assisting in the promotion or formation of a domestic insurer or  
6 insurance holding corporation, or corporation to finance a domestic  
7 insurer or the production of its business.

8 \* Sec. 3. AS 21.33.011 is repealed and reenacted to read:

9 Sec. 21.33.011. PURPOSE. The legislature declares that insur-  
10 ance transactions with nonadmitted insurers are so affected with a  
11 public interest as to require regulation, taxation, supervision and  
12 control of the transactions and matters relating to nonadmitted insur-  
13 ance as provided in this chapter in order to

14 (1) protect the insureds and claimants of this state in  
15 transactions involving the purchase of insurance from nonadmitted  
16 insurers;

17 (2) avoid the obstacle of resorting to distant forums for  
18 the purpose of asserting legal rights under policies issued by non-  
19 admitted insurers;

20 (3) provide a method of substituted service of process upon  
21 nonadmitted insurers for proceedings before the director and in the  
22 courts of this state;

23 (4) provide for the public, to the extent that insurance is  
24 not procurable from admitted insurers, or from eligible surplus lines  
25 insurers through surplus lines brokers;

26 (5) protect the revenue of the state;

27 (6) protect regulated, admitted insurers from unregulated  
28 and unfair competition by nonadmitted insurers;

29 (7) regulate and supervise the effectuation of nonadmitted

1 insurance in accordance with the laws of this state and P.L. 79-15  
2 (1945) (Chapter 20, 1st Sess., S.340), 59 Stat. 33; and

3 (8) maintain reliable insurance markets.

4 \* Sec. 4. AS 21.33.021(a) is amended to read:

5 (a) The transaction of insurance [AN ACT OF DOING AN INSURANCE  
6 BUSINESS AS SET OUT IN AS 21.33.071] by an unauthorized person or  
7 nonadmitted insurer is equivalent to and constitutes an irrevocable  
8 appointment by that person or insurer, binding upon the person or  
9 insurer, the [HIM, HIS] executor, administrator or personal represen-  
10 tative of the person or insurer, or its successor in interest if a  
11 corporation, of the director and the [HIS] successors of the director  
12 in office to be the lawful attorney of that person or insurer upon  
13 whom may be served all legal process in any action, suit or proceeding  
14 in any court arising out of a transaction of insurance [DOING AN  
15 INSURANCE BUSINESS] in this state by that person or nonadmitted  
16 insurer, except in an action, suit or proceeding by the director or by  
17 the state. The transaction of insurance [AN ACT OF DOING AN INSURANCE  
18 BUSINESS AS SET OUT IN AS 21.33.071] by an unauthorized person or  
19 nonadmitted insurer is signification of the [HIS] agreement of that  
20 person or insurer that legal process so served is of the same legal  
21 force and validity as personal service of process in this state upon  
22 the person or insurer, or upon the [HIS] executor, administrator or  
23 personal representative of the person or insurer, or its successor in  
24 interest if a corporation.

25 \* Sec. 5. AS 21.33.021(d) is amended to read:

26 (d) Service of process in [SUCH] an action, suit or proceeding  
27 described in (a) of this section, in addition to the manner provided  
28 in (b) and (c) of this section, is valid if served upon a person in  
29 this state who on behalf of an unauthorized person or nonadmitted

1 insurer is doing any transaction of insurance [ACT OF AN INSURANCE  
2 BUSINESS AS SET OUT IN AS 21.33.071], and if a copy of the process is  
3 sent within 10 days by registered mail by the plaintiff or the [HIS]  
4 attorney of the plaintiff to the defendant at the last known principal  
5 place of business of the defendant and the defendant's receipt, or  
6 receipt issued by the post office with which the letter is registered,  
7 showing the name of the sender of the letter and the name and address  
8 of the person or insurer to whom the letter is addressed and the  
9 affidavit of the plaintiff or the [HIS] attorney of the plaintiff  
10 showing compliance with this subsection are filed with the clerk of  
11 the court in which the action is pending on or before the date the  
12 defendant is required to appear, or within additional time that  
13 [WHICH] the court may allow.

14 \* Sec. 6. AS 21.33.025(a) is amended to read:

15 (a) The transaction of insurance [AN ACT OF DOING AN INSURANCE  
16 BUSINESS AS SET OUT IN AS 21.33.071] by an unauthorized person or  
17 nonadmitted insurer is equivalent to and constitutes an irrevocable  
18 appointment by that person or insurer, binding upon the person or  
19 insurer, the [HIM, HIS] executor, administrator or personal represen-  
20 tative of the person or insurer, or its successor in interest if a  
21 corporation, of the lieutenant governor and the [HIS] successors in  
22 office of the lieutenant governor to be the lawful attorney of that  
23 person or insurer upon whom may be served all legal process in any  
24 action, suit or proceeding in any court by the director or by the  
25 state and upon whom may be served any notice, order, pleading or  
26 process in any proceeding before the director and which arises out of  
27 the transaction of insurance [DOING AN INSURANCE BUSINESS] in this  
28 state by that person or insurer. The transaction of insurance [AN ACT  
29 OF DOING AN INSURANCE BUSINESS AS SET OUT IN AS 21.33.071] by an

1 unauthorized person or nonadmitted insurer is signification of the  
2 [HIS] agreement of that person or insurer that legal process in the  
3 court action, suit or proceeding and any notice, order, pleading or  
4 process in an administrative proceeding before the director so served  
5 is of the same legal force and validity as personal service of process  
6 in this state upon the person or insurer, or upon the [HIS] executor,  
7 administrator or personal representative of that person or insurer, or  
8 its successor in interest if a corporation.

9 \* Sec. 7. AS 21.33.031(a) is amended to read:

10 (a) Before an unauthorized person or nonadmitted insurer files  
11 or causes to be filed a pleading in a court action, suit or proceeding  
12 or in a notice, order, pleading or process in an administrative pro-  
13 ceeding before the director instituted against the person or insurer,  
14 by service made as provided in AS 21.33.021 or [AS] 21.33.025, the  
15 person or insurer shall either:

16 (1) deposit with the clerk of the court in which the  
17 action, suit or proceeding is pending, or with the director in admin-  
18 istrative proceedings before the director, cash or securities or bond  
19 with good and sufficient sureties to be approved by the court, or the  
20 director, in an amount to be fixed by the court or the director suffi-  
21 cient to secure the payment of a final judgment which may be rendered  
22 in the court proceeding or in the administrative proceeding before the  
23 director; however the court, or the director in administrative pro-  
24 ceedings before the director, may in its or the director's [HIS]  
25 discretion make an order dispensing with the deposit or bond where the  
26 insurer makes a showing satisfactory to the court or the director that  
27 it maintains in a state of the United States funds or securities, in  
28 trust or otherwise, sufficient and available to satisfy a final judg-  
29 ment which may be entered in the court action, suit or proceeding or

1 in an administrative proceeding before the director; or

2 (2) obtain admission to transact insurance in this state  
3 through a certificate of authority issued under this title [PROCURE  
4 PROPER AUTHORIZATION TO DO AN INSURANCE BUSINESS IN THIS STATE].

5 \* Sec. 8. AS 21.33.031(c) is amended to read:

6 (c) Nothing in (a) of this section may be construed to prevent  
7 an unauthorized person or nonadmitted insurer from filing a motion to  
8 quash a writ or to set aside service made as provided in AS 21.33.021  
9 or [AS] 21.33.025 on the ground that the unauthorized person or insurer  
10 has not transacted insurance in this state [DONE ANY OF THE ACTS  
11 ENUMERATED IN AS 21.33.071] or that the person on whom service was  
12 made under AS 21.33.021(d) was not transacting insurance in this state  
13 [DOING ANY OF THE ACTS ENUMERATED IN AS 21.33.071].

14 \* Sec. 9. AS 21.33.035 is amended to read:

15 Sec. 21.33.035. ATTORNEY FEES. In an action against an unau-  
16 thorized person or nonadmitted insurer upon a contract of insurance  
17 issued or delivered in this state to a resident or to a corporation  
18 authorized to do business in this state, if the person or insurer has  
19 failed for 30 days after demand before the commencement of the action  
20 to make payment in accordance with the terms of the contract, and it  
21 appears to the court that the refusal was vexatious and without rea-  
22 sonable cause, the court may allow to the plaintiff a reasonable  
23 attorney fee and include the fee in the judgment that may be rendered  
24 in the action. Failure of the person or insurer to defend the action  
25 shall be considered prima facie evidence that its failure to make  
26 payment was vexatious and without reasonable cause.

27 \* Sec. 10. AS 21.33 is amended by adding a new section to read:

28 Sec. 21.33.037. ACTING FOR OR AIDING NONADMITTED INSURERS PRO-  
29 HIBITED. (a) A person may not directly or indirectly act as agent

1 \* Sec. 11. AS 21.33 is amended by adding a new section to read:

2           Sec. 21.33.042. SUITS BY NONADMITTED INSURERS.    A nonadmitted  
3 insurer may not commence or maintain an action in law or equity in  
4 this state to enforce a right arising out of a transaction of insur-  
5 ance in this state except with respect to

6           (1) claims under policies lawfully written in this state;

7           (2) liquidation of assets and liabilities, other than the  
8 collection of new premium, resulting from its former admitted opera-  
9 tions in this state;

10           (3) transactions subsequent to issuance of a policy not  
11 covering domestic risks at time of issuance, and lawfully solicited,  
12 written, or delivered outside this state;

13           (4) surplus lines insurance coverage exported in accordance  
14 with AS 21.34;

15           (5) reinsurance;

16           (6) the continuation and servicing of life insurance,  
17 disability insurance policies or annuity contracts remaining in force  
18 as to residents of this state where the insurer has withdrawn from the  
19 state and is not transacting new insurance;

20           (7) servicing of policies written by an admitted insurer in  
21 a state to which the insured has moved but in which the insured is not  
22 licensed, until the term of the policy expires;

23           (8) claims under policies covering wet marine and transpor-  
24 tation insurance, including vessels of 50 displacement tons or less.

25 \* Sec. 12. AS 21.33.045 (a) is amended to read:

26           (a) When the director has reason to believe that insurance has  
27 been effectuated by or for a person in this state with a nonadmitted  
28 [AN UNAUTHORIZED] insurer the director shall in writing order the  
29 person to produce for examination all insurance contracts and other

1 for, or otherwise represent, assist, or aid on behalf of another, a  
2 nonadmitted insurer in the transaction of insurance in this state.

3 (b) This section does not apply to

4 (1) matters authorized to be done by the director;

5 (2) surplus lines insurance effected and written under  
6 AS 21.34;

7 (3) transactions for which a certificate of authority is not  
8 required under this title;

9 (4) reinsurance;

10 (5) the property and operations of railroads or aircraft  
11 engaged in interstate or foreign commerce and wet marine and transpor-  
12 tation insurance;

13 (6) life insurance, disability insurance and annuity con-  
14 tracts when solicited solely by mail or when not solicited, negotiated  
15 or procured in this state;

16 (7) transactions subsequent to issuance of a policy not  
17 covering domestic risks at time of issuance, and lawfully solicited,  
18 written or delivered outside this state.

19 (c) A person who represents or aids a nonadmitted insurer in  
20 violation of this section is subject to the penalties provided in  
21 AS 21.33.065. An insurance contract entered into in violation of this  
22 section shall not preclude the insured from enforcing the insured's  
23 rights in accordance with the terms and provisions of the contract and  
24 the laws of this state.

25 (d) If the nonadmitted insurer fails to pay a claim or loss  
26 within the provisions of the insurance contract, a person who assisted  
27 or in any manner aided directly or indirectly in the procurement of  
28 the insurance contract, shall be liable to the insured for the full  
29 amount under the provisions of the insurance contract.

1 documents evidencing insurance with nonadmitted [BOTH AUTHORIZED AND  
2 UNAUTHORIZED] insurers and to disclose to the director the amount of  
3 insurance, name and address of each insurer, gross amount of premium  
4 paid or to be paid and the name and address of the person or persons  
5 assisting or aiding in the solicitation, negotiation or effectuation  
6 of the insurance.

7 \* Sec. 13. AS 21.33.045 is amended by adding new subsections to read:

8 (c) In case of a failure of any person to comply with the direc-  
9 tor's order under (a) of this section, the superior court, on applica-  
10 tion of the director, may issue an order requiring the production of  
11 the records and information sought by the director.

12 (d) This section does not apply to life insurance, disability  
13 insurance or annuity contracts.

14 \* Sec. 14. AS 21.33.055(a) is amended to read:

15 (a) Except as to premiums on lawfully procured surplus lines  
16 insurance and premiums on independently procured insurance on which a  
17 tax has been paid under AS 21.33.061, every nonadmitted [UNAUTHORIZED]  
18 insurer shall pay to the director before April 1 following the calen-  
19 dar year in which the insurance was so effectuated, continued or  
20 renewed a premium-receipts tax of three percent of gross premiums  
21 charged on the insurance other than marine insurance and a premium-  
22 receipts tax of three-fourths of one percent of gross premiums charged  
23 for the marine insurance on subjects resident, located or to be per-  
24 formed in this state. The insurance on subjects resident, located or  
25 to be performed in this state procured through negotiations or an  
26 application, in whole or in part occurring or made in or from in or  
27 out of this state, or for which premiums in whole or in part are  
28 remitted directly or indirectly from in or out of this state, shall be  
29 considered to be insurance procured, or continued or renewed in this

1 state. The term "premium" includes all premiums, membership fees,  
2 assessments, dues and any other consideration for insurance. The tax  
3 is in lieu of all taxes and fire department dues. On default of a  
4 nonadmitted [AN UNAUTHORIZED] insurer in the payment of the tax the  
5 insured shall pay the tax. If the tax prescribed by this section is  
6 not paid within the time stated, the tax shall be increased by a  
7 penalty of 25 percent and by the amount of an additional penalty not  
8 to exceed \$100 a day [COMPUTED AT THE RATE OF ONE PERCENT PER MONTH OR  
9 ANY PART OF A MONTH] from the date the payment was due to the date  
10 paid.

11 \* Sec. 15. AS 21.33.061(a) is amended to read:

12 (a) Every insured who procures or causes to be procured or  
13 continues or renews insurance with a nonadmitted [AN UNAUTHORIZED]  
14 insurer, or an insured or self-insurer who so procures or continues  
15 excess loss, catastrophe or other insurance, upon a subject of insur-  
16 ance resident, located or to be performed in this state, other than  
17 insurance procured through a surplus lines broker [AGENT] under  
18 AS 21.34 [THE SURPLUS LINES LAW OF THIS STATE] shall, within 30 [60]  
19 days after the date the insurance was procured, continued, or renewed,  
20 file a report with the director in writing and upon forms designated  
21 by the director and furnished to the insured upon request. The report  
22 shall show the name and address of the insured [OR INSUREDS], name and  
23 address of the insurer, the subject of the insurance, a general de-  
24 scription of the coverage, the amount of premium currently charged,  
25 and additional pertinent information which is reasonably requested by  
26 the director.

27 \* Sec. 16. AS 21.33.061(b) is amended to read:

28 (b) Insurance in a nonadmitted [AN UNAUTHORIZED] insurer of a  
29 subject of insurance resident, located or to be performed in this

1 state procured through negotiations or an application, in whole or in  
2 part occurring or made in or from in or out of this state, or for  
3 which premiums in whole or in part are remitted directly or indirectly  
4 from in or out of this state, is [SHALL BE] considered to be insurance  
5 procured, or continued or renewed in this state within the intent of  
6 (a) of this section.

7 \* Sec. 17. AS 21.33.061(e) is amended to read:

8 (e) If the insured fails to withhold from the premium the amount  
9 of tax levied, the insured is liable for the amount and shall pay the  
10 tax to the director within the time stated in (c) of this section. If  
11 the tax prescribed by this section is not paid within the time stated  
12 in (c) of this section, the tax shall be increased by a penalty of 25  
13 percent and by the amount of an additional penalty not to exceed \$100  
14 per day [COMPUTED AT THE RATE OF ONE PERCENT PER MONTH OR ANY PART OF  
15 A MONTH] from the date the payment was due to the date paid.

16 \* Sec. 18. AS 21.33.061 is amended by adding new subsections to read:

17 (h) This section does not abrogate or modify, and may not be  
18 construed or considered to abrogate or modify a provision of AS 21.-  
19 33.037 or 21.33.042 or another provision of this chapter.

20 (i) This section does not apply to life insurance, disability  
21 insurance or annuity contracts.

22 \* Sec. 19. AS 21.33.065 is repealed and reenacted to read:

23 Sec. 21.33.065. PENALTIES. (a) A person other than an insured,  
24 who in this state represents or aids a nonadmitted insurer in viola-  
25 tion of AS 21.33.037, is subject to a civil penalty of not more than  
26 \$5,000 in addition to applicable criminal penalties and other penal-  
27 ties prescribed in this chapter.

28 (b) In addition to any other penalty provided, a person who  
29 violates a provision of this chapter shall be subject to a civil

1 penalty of not more than \$1,000 for the first offense and not more  
2 than \$2,000 for each succeeding violation.

3 (c) An additional penalty of not more than \$1,000 may be levied  
4 for each month that a violation under this chapter continues.

5 \* Sec. 20. AS 21.33 is amended by adding a new section to read:

6 Sec. 21.33.900. DEFINITIONS. In this chapter

7 (1) "admitted insurer" means an insurer that has been  
8 issued a certificate of authority by the director to transact insur-  
9 ance in this state;

10 (2) "eligible surplus insurer" means a nonadmitted insurer  
11 with which a surplus lines broker may place surplus lines insurance  
12 under AS 21.34.040;

13 (3) "export" means to place surplus lines insurance with a  
14 nonadmitted insurer;

15 (4) "nonadmitted insurer" means an insurer that does not  
16 have a certificate of authority issued by the director to transact  
17 insurance in this state and includes insurance exchanges authorized  
18 under the laws of various states;

19 (5) "surplus lines insurance" means any insurance in this  
20 state of risks resident, located, or to be performed in this state,  
21 permitted to be placed through a surplus lines broker with a nonadmit-  
22 ted insurer eligible to accept insurance, other than reinsurance, wet  
23 marine and transportation insurance, insurance independently procured,  
24 life insurance, disability insurance and annuity contracts;

25 (6) "surplus lines broker" means a person licensed under  
26 AS 21.34 to place insurance of risks resident, located or to be per-  
27 formed in this state with eligible surplus lines insurers;

28 (7) "transaction of insurance" means the solicitation,  
29 negotiation, procurement, effectuation, or renewal of insurance;

1 forwarding of applications; delivery of policies or contracts; in-  
2 spection of risks; fixing of rates; investigation or adjustment of  
3 claim or losses; collection or forwarding of premiums; or, transaction  
4 of matters subsequent to effectuation of the contract of insurance and  
5 arising out of it;

6 (8) "unauthorized person" means a person not licensed as a  
7 surplus lines broker or one who is not a salaried employee of the  
8 insured;

9 (9) "wet marine and transportation insurance" means

10 (A) insurance upon, of interest in, or relating to  
11 vessels, crafts, hulls, except vessels of 50 displacement tons or  
12 less;

13 (B) insurance of marine builders risks, marine war  
14 risks and contracts of marine protection and indemnity insurance;

15 (C) insurance of freights and disbursements pertaining  
16 to a subject of insurance under this paragraph; and

17 (D) insurance of personal property and interests in  
18 personal property, in the course of exportation from or importa-  
19 tion into any country, or in the course of coastal or inland  
20 water transportation, including transportation by land, water, or  
21 air from point of origin to final destination, in connection with  
22 any and all risks or perils of navigation, transit, or transpor-  
23 tation, and while being prepared for and while awaiting shipment,  
24 and during any delays, transshipment or reshipment incident to  
25 them.

26 \* Sec. 21. AS 21 is amended by adding a new chapter to read:

27 CHAPTER 34. SURPLUS LINES INSURANCE.

28 Sec. 21.34.010. PURPOSE. The legislature declares that insur-  
29 ance transactions with nonadmitted insurers are so affected with a

1 public interest as to require regulation, taxation, supervision, and  
2 control of the transactions and matters relating to nonadmitted insur-  
3 ance. The purpose of this chapter includes:

4 (1) protection of persons seeking insurance in this state;

5 (2) permission for surplus lines insurance to be placed  
6 with reputable and financially sound nonadmitted insurers and to be  
7 exported from this state under this chapter;

8 (3) establishment of a system of regulation that will

9 (A) permit orderly access to surplus lines insurance  
10 in this state; and

11 (B) encourage admitted insurers to provide new and  
12 innovative types of insurance and make them available to con-  
13 sumers in this state; and

14 (4) protection of the revenues of this state.

15 Sec. 21.34.020. PLACEMENT C - SURPLUS LINES INSURANCE. Insurance  
16 may be procured through a surplus lines broker from nonadmitted insur-  
17 ers if

18 (1) each insurer is an eligible surplus lines insurer;

19 (2) the full amount or kind of insurance cannot be obtained  
20 from insurers who are admitted to do business in this state;

21 (3) the director authorizes exception to (2) of this sec-  
22 tion; and

23 (4) all other requirements of this chapter are met.

24 Sec. 21.34.030. WORKERS' COMPENSATION INSURANCE. (a) Workers'  
25 compensation insurance may be placed in and written by a nonadmitted  
26 insurer if

27 (1) the director considers it in the best interest of the  
28 public and issues a directive to that effect;

29 (2) the insurance is written in accordance with this

1 chapter; and

2 (3) all conditions established for writing workers' compen-  
3 sation insurance in a nonadmitted market receive compliance.

4 (b) The rates and rating plans for workers' compensation insur-  
5 ance are subject to AS 21.39. The surplus lines broker is responsible  
6 for making the filings required under AS 21.39 and for maintaining the  
7 records required in that chapter.

8 (c) Insurance placed or written in a nonadmitted insurer and the  
9 activities of the surplus lines broker relating to that transaction  
10 are subject to the applicable provision of this title.

11 (d) The minimum capital and surplus required is two times that  
12 required in AS 21.34.040(c)(1).

13 Sec. 21.34.040. ELIGIBLE SURPLUS LINES INSURERS REQUIRED. (a)  
14 Coverage may be placed in a nonadmitted insurer by a surplus lines  
15 broker only, if at the time of placement, the nonadmitted insurer  
16 meets all the requirements of this section.

17 (b) The nonadmitted insurer must establish satisfactory evidence  
18 of good repute and financial integrity to be eligible.

19 (c) A nonadmitted insurer may be eligible to provide coverage in  
20 this state if it qualifies under one of the following:

21 (1) has a minimum capital and surplus equal to that re-  
22 quired in its domiciliary jurisdiction or, \$1,500,000 at the effective  
23 date of this Act, and \$2,500,000 one year after enactment, and  
24 \$3,500,000, two years after enactment, and \$5,000,000 three years  
25 after enactment, whichever is greater;

26 (2) an alien insurer may qualify under this subsection if  
27 it maintains in the United States an irrevocable trust fund in either  
28 a national bank or a member of the Federal Reserve system, in an  
29 amount not less than that required as minimum capital and surplus in

1 (1) of this subsection, for the protection of all its policyholders in  
2 the United States; the trust fund shall consist of instruments of  
3 substantially the same character and quality as those that are eligi-  
4 ble investments for the capital and statutory reserves of admitted  
5 insurers authorized to write like kinds of insurance in this state;  
6 the trust funds shall have an expiry date that at no time be less than  
7 five years;

8 (3) a Lloyd's or other similar unincorporated group of  
9 alien individual insurers may qualify if it maintains a trust fund of  
10 not less than \$50,000,000 as security to the full amount, for all  
11 policyholders and creditors in the United States, of each member of  
12 the group;

13 (4) an "insurance exchange" created by the laws of individ-  
14 ual states may qualify if it maintains capital and surplus, or the  
15 substantial equivalent, of not less than \$15,000,000 in the aggregate;  
16 in the event the insurance exchange does not maintain funds for the  
17 protection of all its policyholders, each individual syndicate shall  
18 meet the minimum capital and surplus requirements of (1) of this  
19 subsection.

20 (d) A nonadmitted insurer may be eligible to provide coverage in  
21 this state if it furnishes to the director a copy of its current  
22 annual statement that has been certified by the insurer. The state-  
23 ment shall be provided no more than six months after the close of the  
24 period reported upon and that is either filed with and approved by the  
25 regulatory authority in the domicile of the nonadmitted insurer, or  
26 certified by an accounting or auditing firm licensed in the jurisdic-  
27 tion of the insurer's domicile. In the case of an insurance exchange,  
28 the statement may be an aggregate combined statement of all underwrit-  
29 ing syndicates operating during the period reported upon.

1           Sec. 21.34.050. LISTING ELIGIBLE SURPLUS LINES INSURERS. In  
2 addition to meeting the requirements of AS 21.34.040, a nonadmitted  
3 insurer shall be an eligible surplus lines insurer if it appears on  
4 the most recent list of eligible surplus lines insurers published by  
5 the director or by the surplus lines association when approved by the  
6 director. The list is to be published at least semi-annually. Noth-  
7 ing in this section requires the director or the surplus lines asso-  
8 ciation to place or maintain the name of a nonadmitted insurer on the  
9 list of eligible surplus lines insurers.

10           Sec. 21.34.060. OTHER NONADMITTED INSURERS. Only that portion  
11 of a risk eligible for export for which the full amount of coverage is  
12 not procurable from eligible surplus lines insurers may be placed with  
13 another nonadmitted insurer that does not appear on the list of eligi-  
14 ble surplus lines insurers published under AS 21.34.050 but nonethe-  
15 less meets the requirements of AS 21.34.040 and a regulation adopted  
16 under this chapter. The surplus lines broker seeking to provide  
17 coverage through an unlisted nonadmitted insurer shall make a filing  
18 specifying the amount and percentage of each risk to be placed and  
19 naming each nonadmitted insurer with which placements intended.  
20 Within 30 days after placing the coverage, the surplus lines broker  
21 shall also send written notice to the insured or the producing broker  
22 that the insurance, or a portion of it, has been placed with the  
23 unlisted nonadmitted insurer.

24           Sec. 21.34.070. DECLARATION OF INELIGIBILITY. (a) If after a  
25 review of a nonadmitted insurer and consideration of factors including  
26 quality of management, capital and surplus of a parent company, under-  
27 writing profit, investment income trends, trade practices, reserving  
28 practices, company record and reputation within the industry, the  
29 director finds the insurer to be unacceptable, the director may

1 declare the nonadmitted insurer to be ineligible.

2 (b) The director may declare a nonadmitted insured ineligible if  
3 at any time the director has reason to believe that the nonadmitted  
4 insured

5 (1) is in unsound financial condition;

6 (2) is no longer eligible under AS 21.34.040;

7 (3) has wilfully violated the laws of this state; or

8 (4) does not make reasonably prompt payment of just losses  
9 and claims in this state or elsewhere.

10 (c) The director shall promptly mail notice of all declarations  
11 under (b) of this section to each licensed surplus lines broker.

12 Sec. 21.34.080. EVIDENCE OF INSURANCE, AFFIDAVITS, DUTY TO FILE.

13 (a) Within 30 days after the placing of surplus lines insurance, each  
14 surplus lines broker shall execute and file with the director a writ-  
15 ten report, which shall be kept confidential, regarding the insurance.  
16 The report must include the following:

17 (1) the name and address of the insured;

18 (2) the identity of each insurer and percentage of coverage  
19 provided by each;

20 (3) a description of the subject and location of the risk;

21 (4) the amount of insurance charged for the insurance; and

22 (5) other pertinent information required by the director.

23 (b) Upon the placing of surplus lines insurance, each producing  
24 broker shall execute and maintain an affidavit, which shall be open to  
25 public inspection, as to the diligent efforts to place the coverage  
26 with admitted insurance and the result of those efforts. The  
27 affidavits shall be on a form prescribed by the director.

28 (c) The director may order that filings required under this  
29 section be made to the surplus lines association.

1           Sec. 21.34.090. SURPLUS LINES ASSOCIATION. (a) A surplus lines  
2 association of surplus lines brokers may be formed to

3           (1) facilitate and encourage compliance by its members with  
4 the laws of this state and the regulations relative to surplus lines  
5 insurance;

6           (2) provide means for the examination, which shall remain  
7 confidential, of all surplus lines coverages written by its members to  
8 determine whether the coverages comply with the laws and regulations  
9 of this state;

10           (3) communicate with organizations of admitted insurers  
11 with respect to the proper use of the surplus lines market;

12           (4) receive and disseminate to its members information  
13 relative to surplus lines coverages; and

14           (5) receive and collect on behalf of the state and remit to  
15 the state premium receipts tax for surplus lines insurance.

16           (b) The surplus lines association shall file with the director

17           (1) a copy of its constitution, its articles of agreement  
18 of association, or its certificate of incorporation;

19           (2) a copy of its bylaws and regulations governing its  
20 activities;

21           (3) a current list of its members;

22           (4) the name of a resident of this state upon whom notices  
23 or orders of the director or processes issued at the director's in-  
24 struction may be served;

25           (5) an agreement that the director may examine the surplus  
26 lines association in accordance with this section; and

27           (6) a schedule of its membership fees and assessments.

28           (c) The director shall, at least once in three years, make or  
29 cause to be made, an examination of the surplus lines association.

1 The reasonable cost of an examination shall be paid by the surplus  
2 lines association upon presentation to it by the director of a de-  
3 tailed account of the cost. The officers, managers, agents, and  
4 employees of the surplus lines association may be examined at any  
5 time, under oath, and shall exhibit all books, records, accounts,  
6 documents or agreements governing its method of operation. The direc-  
7 tor shall furnish a copy of the examination report to the surplus  
8 lines association and shall notify it that it may request a hearing on  
9 the report or on any facts or recommendations contained in the report,  
10 if requested within 20 days. The surplus lines association or any of  
11 its members that the director determines has violated this chapter is  
12 subject to penalties established in AS 21.34.230.

13 (d) The director may, by order, require that all surplus lines  
14 brokers, as a condition of continued licensure under this chapter,  
15 join the surplus lines association.

16 Sec. 21.34.100. EVIDENCE OF INSURANCE. (a) When surplus lines  
17 insurance is placed, the surplus lines broker shall promptly deliver  
18 to the insured or the producing broker the policy, or if the policy is  
19 not then available, a certificate, cover note, binder or other evi-  
20 dence of insurance. The certificate, cover note, binder or other  
21 evidence of insurance shall be executed by the surplus lines broker  
22 and shall contain a complete record of all policy insuring agreements,  
23 conditions, exclusions, clauses, endorsements, other material facts  
24 that would regularly be included in the policy, description and lo-  
25 cation of the subject of insurance, a general description of the  
26 coverages of the insurance, the premium and rate charged and taxes to  
27 be collected from the insured, the name and address of the insured,  
28 the name of each surplus lines insurer and the percentage of the  
29 entire risk assumed by each, the name of the surplus lines broker, and

1 the license number of the surplus lines broker.

2 (b) A surplus lines broker may not issue or deliver evidence of  
3 insurance or purport to insure or represent that insurance will be or  
4 has been written by an eligible surplus lines insurer, or a non-  
5 admitted insurer under AS 21.34.060, unless the surplus lines broker  
6 has authority from the insurer to cause the risk to be insured, or has  
7 received information from the insurer in the regular course of busi-  
8 ness that the insurance has been granted.

9 (c) If after delivery of evidence of insurance there is a change  
10 in the identity of the insurers, or the percentage of the risk assumed  
11 by an insurer, or another material change in coverage from that stated  
12 in the surplus lines brokers original evidence of insurance, or in  
13 another material concerning the evidenced insurance, the surplus lines  
14 broker shall promptly issue and deliver to the insured or the produc-  
15 ing broker, an appropriate substitute for, or endorsement of the  
16 original document, accurately showing the current status of the cover-  
17 age and the insurers responsibility.

18 (d) The surplus lines broker shall deliver a copy of the policy  
19 or cover note issued by the insurer as soon as reasonably possible  
20 after placement of the insurance coverage.

21 (e) A surplus lines broker who fails to comply with the require-  
22 ments of this section is subject to the penalties in AS 21.34.230.

23 (f) Every evidence of insurance negotiated, placed, or procured  
24 under the provisions of this chapter issued by a surplus lines broker  
25 shall bear the name of the surplus lines broker that may not be  
26 covered, concealed or obscured by the producing broker, and the fol-  
27 lowing legend in at least 10 point type: "This is evidence of insur-  
28 ance procured and developed under the Alaska Surplus Lines Law,  
29 AS 21.34. It is not covered by the Alaska Insurance Guaranty

1 Association Act, AS 21.80."

2 Sec. 21.34.110. SURPLUS LINES BROKER'S DUTY TO NOTIFY INSURED.

3 A contract of insurance placed by a surplus lines broker under this  
4 chapter shall not be binding upon the insured and a premium charged  
5 shall not be due and payable until the surplus lines broker has noti-  
6 fied the insured in writing, a copy of which shall be maintained by  
7 the licensee with the records of the contract, available for examina-  
8 tion, that the insurer with which the surplus lines broker places the  
9 insurance is not licensed by this state and is not subject to its  
10 supervision, and in the event of the insolvency of the surplus lines  
11 insurer, losses will not be paid by the state insurance guaranty fund.  
12 Nothing in this section shall nullify an agreement by an insurer to  
13 provide insurance.

14 Sec. 21.34.120. VALIDITY OF SURPLUS LINES CONTRACTS. Insurance  
15 contracts procured under this chapter shall be valid and enforceable  
16 as to all parties.

17 Sec. 21.34.130. EFFECT OF PAYMENT TO SURPLUS LINES BROKER. A  
18 payment of premium to a surplus lines broker acting for a person other  
19 than oneself in negotiating, continuing, or reviewing a policy of  
20 insurance under this chapter, is considered to be payment to the  
21 insurer, notwithstanding conditions or stipulations in the policy or  
22 contract to the contrary.

23 Sec. 21.34.140. LICENSING OF SURPLUS LINES BROKERS. (a) An  
24 agent or broker licensed by the state may not procure a contract or  
25 policy of surplus lines insurance with a nonadmitted insurer, unless  
26 the agent or broker possesses a current surplus lines broker license  
27 issued by the director.

28 (b) The director shall issue a surplus lines broker license to a  
29 qualified holder of a current property and casualty broker's license

1 or general agents license but only when the broker or general agent  
2 has

3 (1) remitted the annual fee established under AS 21.06.250;

4 (2) submitted a completed license application on a form  
5 prescribed by the director, and the application has been approved by  
6 the director;

7 (3) passed a qualifying examination approved by the direc-  
8 tor;

9 (4) filed with the director, and maintains during the term  
10 of license, an in-force, unimpaired bond in favor of insureds under  
11 this chapter and the state, in the penal sum of \$200,000, aggregate  
12 liability, with corporate sureties approved by the director; the bond  
13 shall be conditioned in that the surplus lines broker will conduct  
14 business in accordance with the provisions of this chapter, will  
15 promptly remit the taxes provided by law, will return premiums prompt-  
16 ly when due and will pay proper losses promptly; a bond may not be  
17 terminated unless at least 60 days prior written notice is given to  
18 the surplus lines broker and the director.

19 (c) If the director determines that a surplus lines broker of  
20 another state is competent and trustworthy, the director may issue a  
21 nonresident surplus lines broker license.

22 (d) A firm or corporation is eligible for license if

23 (1) the license lists individuals within the corporation  
24 who have satisfied all requirements of this chapter to become surplus  
25 lines brokers; and

26 (2) only those individuals listed on the license will  
27 transact surplus lines business.

28 (e) Each surplus lines broker license expires on December 31  
29 of each year and shall be renewed before December 2 of each year upon

1 payment of the annual fee, and compliance with other provisions of  
2 this section. A surplus lines broker who fails to apply for renewal  
3 of the license before December 2 shall pay a penalty of \$100. A  
4 surplus lines broker who fails to apply for renewal of the license  
5 before December 31 shall pay a penalty of \$250 and any other penalties  
6 provided in this title before the license may be renewed.

7 Sec. 21.34.150. SURPLUS LINES BROKERS MAY ACCEPT BUSINESS FROM  
8 OTHER BROKERS. A surplus lines broker may originate surplus lines  
9 insurance or accept surplus lines insurance from another broker or  
10 surplus lines broker licensed in this state as to the kind of insur-  
11 ance involved. The surplus lines broker may compensate the licensed  
12 broker or surplus lines broker for the insurance.

13 Sec. 21.34.160. RECORDS OF SURPLUS LINES BROKER. (a) Each sur-  
14 plus lines broker shall keep in the office a full and true record of  
15 each surplus lines insurance contract placed by or through the surplus  
16 lines broker, including a copy of the policy, certificate, cover note,  
17 or other evidence of insurance showing the following items as may be  
18 applicable:

- 19 (1) amount of insurance and perils insured;
- 20 (2) brief description of property insured and its location;
- 21 (3) gross premium charged;
- 22 (4) any return premium paid;
- 23 (5) rate of premium charged upon the several items of  
24 property;
- 25 (6) effective date of the contract, and the terms of the  
26 contract;
- 27 (7) name and address of the insured;
- 28 (8) name and address of the insurer;
- 29 (9) amount of tax and other sums to be collected from the

1 insured;

2 (10) any evidence of insurance issued in compliance with  
3 AS 21.34.160;

4 (11) identity of the producing broker;

5 (12) any confirming correspondence from the insurer or its  
6 representative; and

7 (13) the application.

8 (b) The record of each contract shall be kept open at all rea-  
9 sonable times to examination by the director without notice for a  
10 period of not less than five years following termination of the con-  
11 tract.

12 Sec. 21.34.170. MONTHLY REPORTS, SUMMARY OF EXPORTED BUSINESS.  
13 On or before the end of each month, each surplus lines broker shall  
14 file with the director, on forms prescribed by the director, a  
15 verified report in duplicate of all surplus lines insurance trans-  
16 acted during the preceding calendar month showing aggregate gross  
17 premiums written and aggregate return premiums by kind of insur-  
18 ance.

19 Sec. 21.34.180. SURPLUS LINES TAX. (a) Gross premiums  
20 charged, less any return premium, for surplus lines insurance are  
21 subject to a premium receipts tax as outlined in AS 21.09.210, which  
22 shall be collected by the surplus lines broker as specified by the  
23 director, in addition to the full amount of the gross premium charged  
24 by the insurer for the insurance. The tax on any portion of the  
25 premium unearned at termination of insurance having been credited by  
26 the state to the surplus lines broker shall be returned to the policy  
27 holder directly by the surplus lines broker or through the producing  
28 broker, if any. The surplus lines broker may not absorb the tax or  
29 any part of it, and may not rebate for any reason the tax or any

1 part of it.

2 (b) The surplus lines tax is due on the second day of March  
3 following the calendar year in which the premium is written. The tax  
4 shall be paid to and reported on forms prescribed by the director, or  
5 upon the director's order paid to and reported on forms prescribed by  
6 the surplus lines association.

7 (c) If a surplus lines policy procured through a surplus lines  
8 broker covers risks or exposures only partially located or to be  
9 performed in this state, the tax payable shall be computed on the  
10 portions of the premium properly attributable to the risks or expo-  
11 sures located or to be performed in this state as follows:

12 (1) if the risk insured is real or personal property, the  
13 percentage of the entire tax that is due to this state is the same as  
14 the percentage of the entire risk that is located in this state,  
15 computed on the same basis as was employed to calculate the insurable  
16 value of the risk;

17 (2) if the risk insured is business operations, general  
18 liability or employee benefits, the percentage of the entire tax that  
19 is due to this state is the same as the percentage of the insured  
20 business operations or employees that are located in this state.

21 (d) This section does not apply to insurance of risks of state  
22 government, its political subdivision, or an agency of state govern-  
23 ment or its political subdivisions.

24 (e) If a multi-state risk has a portion of that risk located  
25 within this state, the surplus lines broker will remit payment of  
26 taxes collected in this state in accordance with the provisions of (c)  
27 of this section.

28 Sec. 21.34.190. FILING FEE. The fee for filing the statement  
29 under AS 21.34.180(b) is an amount equal to one percent on gross

1 premium charged less any return premiums during the preceding calendar  
2 year. The surplus lines broker shall pay the fee at the time of  
3 filing of the statement.

4 Sec. 21.34.200. COLLECTION OF TAXES AND FEES. (a) If the tax  
5 collectible under AS 21.34.180 or the fee collectible under AS 21.-  
6 34.190 by a surplus lines broker is not paid within the time pre-  
7 scribed, the tax, fee, or both along with appropriate penalties may be  
8 collected by distraint or by an action in court, against the surplus  
9 lines licensee and the surety on the bond filed under AS 21.34.140-  
10 (b)(4).

11 (b) The director may order that taxes collectible under AS 21.-  
12 34.180 and filings fees under collectible AS 21.34.190 be collected by  
13 the surplus lines association. The tax shall be remitted to the state  
14 by the surplus lines association by April 1 following the calendar  
15 year in which the premium was written. When the surplus lines asso-  
16 ciation provides services listed in the order by the director for  
17 collection of taxes, it shall retain the filing fee described in  
18 AS 21.34.190, as payment of association expense.

19 (c) In addition to penalties provided in this chapter, failure  
20 to pay tax within the time prescribed is subject to penalties provided  
21 in AS 21.36.320.

22 Sec. 21.34.210. SUSPENSION, REVOCATION OR NON-RENEWAL OF SURPLUS  
23 LINES BROKER LICENSE. The director may suspend, revoke, or refuse to  
24 renew the license of a surplus lines licensee after notice and hearing  
25 as provided in AS 21.06.180 - 21.06.230 upon one or more of the fol-  
26 lowing grounds:

27 (1) removal of the resident surplus lines broker's office  
28 from this state;

29 (2) removal of the resident surplus lines broker's accounts

1 and records from this state during the period within which the ac-  
2 counts and records are required to be maintained under AS 21.34.160;

3 (3) removal of the nonresident surplus lines broker's  
4 accounts and records from the location described in the license appli-  
5 cation without approval of the director that are required to be main-  
6 tained under AS 21.34.160;

7 (4) closing of the surplus lines broker's office for a  
8 period of more than 30 business days, unless permission is granted by  
9 the director;

10 (5) failure to make the required reports;

11 (6) failure to transmit required tax or fee on surplus  
12 lines premiums;

13 (7) failure to maintain required bond;

14 (8) violation of a provision of this chapter; or

15 (9) for another cause for which an insurance license could  
16 be denied, revoked, suspended, or renewal refused under AS 21.27.

17 Sec. 21.34.220. ACTIONS AGAINST SURPLUS LINES INSURER-SERVICE OF  
18 PROCESS. (a) A surplus lines insurer may be sued upon a cause of  
19 action arising in this state under a surplus lines insurance contract  
20 made by it or evidence of insurance issued or delivered by the surplus  
21 lines broker under the procedure provided in AS 21.33. A policy  
22 issued by the surplus lines broker shall contain a provision stating  
23 the substance of this section and designating the person to whom the  
24 director shall mail process.

25 (b) Each surplus lines insurer assuming a surplus lines insur-  
26 ance is considered to have subjected itself to this chapter.

27 (c) The remedies provided in this section are in addition to  
28 other methods provided by law for service of process upon insurers.

29 Sec. 21.34.230. PENALTIES. (a) In addition to any other

1 penalty provided by law, a person that the director determines has vi-  
2 olated the provisions of this chapter is subject to a civil penalty of  
3 not more than \$1,000 for the first offense and not more than \$2,000  
4 for each succeeding offense.

5 (b) The penalties set out in this chapter are not exclusive  
6 remedies. Penalties may also be assessed under AS 21.33.320 - 21.33.-  
7 330.

8 Sec. 21.34.240. SEPARABILITY. If any provision of this chapter,  
9 or the application of a provision of this chapter to any person or  
10 circumstance, is held invalid, the remainder of the chapter and the  
11 application of that provision to persons or circumstances other than  
12 those as to which it is held invalid, shall not be affected.

13 Sec. 21.34.250. REGULATIONS. The director may adopt regulations  
14 to implement, define, and enforce the provisions of this chapter.

15 Sec. 21.34.900. DEFINITIONS. In this chapter

16 (1) "admitted insurer" means an insurer that has been  
17 issued a certificate of authority by the director to transact insur-  
18 ance in this state;

19 (2) "capital" means funds paid in for stock or other evi-  
20 dence of ownership;

21 (3) "eligible surplus lines insurer" means a nonadmitted  
22 insurer with which a surplus lines broker may place surplus lines  
23 insurance under AS 21.34.040;

24 (4) "export" means to place surplus lines insurance with a  
25 nonadmitted insurer;

26 (5) "kind of insurance" means one of the types of insurance  
27 required to be reported on in the annual statement that is filed with  
28 the director by admitted insurers;

1           (6) "nonadmitted insurer" means an insurer that does not  
2 have a certificate of authority issued by the director to transact  
3 insurance in this state and includes insurance exchanges authorized  
4 under the laws of various states;

5           (7) "producing broker" means the individual broker or  
6 surplus lines broker dealing directly with the party seeking insur-  
7 ance;

8           (8) "surplus," as used in the financial requirements of  
9 AS 21.34.040, means funds over and above liabilities and capital of  
10 the company for the protection of policy holders;

11           (9) "surplus lines broker" means a person licensed under  
12 this chapter to place insurance of risks resident, located or to be  
13 performed in this state with eligible surplus lines insurers;

14           (10) "surplus lines insurance" means any insurance in this  
15 state of risks resident, located or to be performed in this state,  
16 permitted to be placed through a surplus lines broker with a non-  
17 admitted insurer eligible to accept insurance, other than reinsurance,  
18 wet marine and transportation insurance, insurance independently  
19 procured, life insurance, disability insurance and annuity contracts;

20           (11) "transaction of insurance" means the solicitation,  
21 negotiation, procurement, effectuation, or renewal of insurance;  
22 forwarding of applications; delivery of policies or contracts; in-  
23 spection of risks; fixing of rates; investigation or adjustment of  
24 claims or losses; collection or forwarding of premiums; or, trans-  
25 action of matters subsequent to effectuation of the contract of in-  
26 surance and arising out of it;

27           (12) "wet marine and transportation insurance" means

28                   (A) insurance upon, of interest in, or relating to  
29 vessels, crafts, hulls, except vessels of 50 displacement tons or

1 less;

2 (B) insurance of marine builders risks, marine war  
3 risks and contracts of marine protection and indemnity insurance;

4 (C) insurance of freights and disbursements pertaining  
5 to a act of insurance coming within this paragraph; and

6 (D) insurance of personal property and interests in  
7 personal property, in the course of exportation from or importa-  
8 tion into a country, or in the course of coastal or inland water  
9 transportation, including transportation by land, water or air  
10 from point of origin to final destination, in connection with any  
11 and all risks or perils of navigation, transit, or transporta-  
12 tion, and while being repaired for and while awaiting shipment,  
13 and during any delays, transshipment, or reshipment incident to  
14 them.

15 \* Sec. 22. AS 21.36 is amended by adding a new section to read:

16 Sec. 21.36.195. SURPLUS LINES BROKERS-PROHIBITED ACTS. A sur-  
17 plus lines broker may not fail to provide the evidences of insurance,  
18 affidavits, filings, or reports, or fail to maintain the records, or  
19 fail to pay the taxes and fees, required under AS 21.34.

20 \* Sec. 23. AS 21.39.040(f) is amended to read:

21 (f) The [UNDER REGULATIONS WHICH HE SHALL ADOPT THE] director  
22 may, by written order, suspend or modify the requirement of filing on  
23 a kind of insurance, subdivision or combination of them [THEREOF], or  
24 on classes of risks, the rates for which cannot practicably be filed  
25 before they are used or the filing and approval of which are, in the  
26 director's opinion, not desirable or necessary for the protection of  
27 the public. The orders [AND REGULATIONS] shall be made known to in-  
28 surers and rating organizations affected by them. The director may  
29 make an examination that the director [WHICH HE] may consider ad-

1       visable to ascertain whether the rates affected by the order meet the  
2       standards set out in AS 21.39.030(a)(2).

3       \* Sec. 24. AS 21.39.040(h) is amended to read:

4           (h) An [NO] insurer may not make or issue a contract or policy  
5       except in accordance with the filings that [WHICH] are in effect for  
6       that insurer as provided in this chapter or in accordance with (f),  
7       [AND] (g), and (i) of this section. This subsection does not apply to  
8       contracts or policies for inland marine risks on which filings are not  
9       required.

10       \* Sec. 25. AS 21.39.040 is amended by adding a new subsection to read:

11           (i) An insurer may use a rate less than that provided by a  
12       filing otherwise applicable on a specific risk the insurance for which  
13       would otherwise be exported under AS 21.34. Within 30 days of this  
14       action the insurer shall file a report detailing the information  
15       required by the director on a form prescribed by the director.

16       \* Sec. 26. AS 21.33.015, 21.33.041, 21.33.045(b), 21.33.051, and  
17       21.33.068 - 21.33.300 are repealed.

Introduced: 2/13/84  
Referred: Labor and Commerce  
and Finance

1 IN THE SENATE

BY MULCAHY

2

SENATE BILL NO. 470

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6 For an Act entitled: "An Act relating to insurance."

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

8 \* Section 1. AS 21.06.120(a) is amended to read:

9 (a) The director shall examine the affairs, transactions, ac-  
10 counts, records, and assets of each authorized insurer and each li-  
11 censed surplus lines broker as often as the director [HE] considers  
12 advisable. The director [HE] shall so examine each domestic insurer  
13 not less than every three years. Examination of an alien insurer may  
14 be limited to its insurance transactions and affairs in the United  
15 States. Examination of a reciprocal insurer may also include examina-  
16 tion of its attorney-in-fact to the extent that the transactions of  
17 the attorney-in-fact relate to the insurer.

18 \* Sec. 2. AS 21.06.130(a) is amended to read:

19 (a) For the purpose of ascertaining compliance with this title,  
20 the director may as often as the director [HE] considers advisable  
21 examine or require a written report of the accounts, records, docu-  
22 ments, and transactions pertaining to or affecting the insurance  
23 affairs or proposed insurance affairs of

24 (1) an insurance agent, broker, solicitor, [SURPLUS LINE  
25 AGENT,] general agent, or adjuster;

26 (2) a person having a contract under which the person [HE]  
27 enjoys in fact the exclusive or dominant right to manage or control an  
28 insurer;

29 (3) a person holding the shares of voting stock or

1 policyholder proxies of a domestic insurer, for the purpose of con-  
2 trolling its [THE] management [THEREOF], as voting trustee or other-  
3 wise;

4 (4) a person engaged in or proposing to be engaged in or  
5 assisting in the promotion or formation of a domestic insurer or  
6 insurance holding corporation, or corporation to finance a domestic  
7 insurer or the production of its business.

8 \* Sec. 3. AS 21.33.011 is repealed and reenacted to read:

9 Sec. 21.33.011. PURPOSE. The legislature declares that insur-  
10 ance transactions with nonadmitted insurers are so affected with a  
11 public interest as to require regulation, taxation, supervision and  
12 control of the transactions and matters relating to nonadmitted insur-  
13 ance as provided in this chapter in order to

14 (1) protect the insureds and claimants of this state in  
15 transactions involving the purchase of insurance from nonadmitted  
16 insurers;

17 (2) avoid the obstacle of resorting to distar forums for  
18 the purpose of asserting legal rights under policies issued by non-  
19 admitted insurers;

20 (3) provide a method of substituted service of process upon  
21 nonadmitted insurers for proceedings before the director and in the  
22 courts of this state;

23 (4) provide for the public, to the extent that insurance is  
24 not procurable from admitted insurers, or from eligible surplus lines  
25 insurers through surplus lines brokers;

26 (5) protect the revenue of the state;

27 (6) protect regulated, admitted insurers from unregulated  
28 and unfair competition by nonadmitted insurers;

29 (7) regulate and supervise the effectuation of nonadmitted

1 insurance in accordance with the laws of this state and P.L. 79-15  
2 (1945) (Chapter 20, 1st Sess., §.340), 59 Stat. 33; and

3 (8) maintain reliable insurance markets.

4 \* Sec. 4. AS 21.33.021(a) is amended to read:

5 (a) The transaction of insurance [AN ACT OF DOING AN INSURANCE  
6 BUSINESS AS SET OUT IN AS 21.33.071] by an unauthorized person or  
7 nonadmitted insurer is equivalent to and constitutes an irrevocable  
8 appointment by that person or insurer, binding upon the person or  
9 insurer, [HIM, HIS] executor, administrator or personal representative  
10 of the person or insurer, or its successor in interest if a corpo-  
11 ration, of the director and the [HIS] successors of the director in  
12 office to be the lawful attorney of that person or insurer upon whom  
13 may be served all legal process in any action, suit or proceeding in  
14 any court arising out of a transaction of insurance [DOING AN INSUR-  
15 ANCE BUSINESS] in this state by that person or nonadmitted insurer,  
16 except in an action, suit or proceeding by the director or by the  
17 state. The transaction of insurance [AN ACT OF DOING AN INSURANCE  
18 BUSINESS AS SET OUT IN AS 21.33.071] by an unauthorized person or  
19 nonadmitted insurer is signification of the [HIS] agreement of that  
20 person or insurer that legal process so served is of the same legal  
21 force and validity as personal service of process in this state upon  
22 the person or insurer, or upon the [HIS] executor, administrator or  
23 personal representative of the person or insurer, or its successor in  
24 interest if a corporation.

25 \* Sec. 5. AS 21.33.021(d) is amended to read:

26 (d) Service of process in [SUCH] an action, suit or proceeding  
27 described in (a) of this section, in addition to the manner provided  
28 in (b) and (c) of this section, is valid if served upon a person in  
29 this state who on behalf of an unauthorized person or nonadmitted

1 insurer is doing any transaction of insurance [ACT OF AN INSURANCE  
2 BUSINESS AS SET OUT IN AS 21.33.071], and if a copy of the process is  
3 sent within 10 days by registered mail by the plaintiff or the [HIS]  
4 attorney of the plaintiff to the defendant at the last known principal  
5 place of business of the defendant and the defendant's receipt, or  
6 receipt issued by the post office with which the letter is registered,  
7 showing the name of the sender of the letter and the name and address  
8 of the person or insurer to whom the letter is addressed and the  
9 affidavit of the plaintiff or the [HIS] attorney of the plaintiff  
10 showing compliance with this subsection are filed with the clerk of  
11 the court in which the action is pending on or before the date the  
12 defendant is required to appear, or within additional time that  
13 [WHICH] the court may allow.

14 \* Sec. 6. AS 21.33.025(a) is amended to read:

15 (a) The transaction of insurance [AN ACT OF DOING AN INSURANCE  
16 BUSINESS AS SET OUT IN AS 21.33.071] by an unauthorized person or  
17 nonadmitted insurer is equivalent to and constitutes an irrevocable  
18 appointment by that person or insurer, binding upon the person or  
19 insurer, the [HIM, HIS] executor, administrator or personal represen-  
20 tative of the person or insurer, or its successor in interest if a  
21 corporation, of the lieutenant governor and the [HIS] successors in  
22 office of the lieutenant governor to be the lawful attorney of that  
23 person or insurer upon whom may be served all legal process in any  
24 action, suit or proceeding in any court by the director or by the  
25 state and upon whom may be served any notice, order, pleading or  
26 process in any proceeding before the director and which arises out of  
27 the transaction of insurance [DOING AN INSURANCE BUSINESS] in this  
28 state by that person or insurer. The transaction of insurance [AN ACT  
29 OF DOING AN INSURANCE BUSINESS AS SET OUT IN AS 21.33.071] by an

1 unauthorized person or nonadmitted insurer is signification of the  
2 [HIS] agreement of that person or insurer that legal process in the  
3 court action, suit or proceeding and any notice, order, pleading or  
4 process in an administrative proceeding before the director so served  
5 is of the same legal force and validity as personal service of process  
6 in this state upon the person or insurer, or upon the [HIS] executor,  
7 administrator or personal representative of that person or insurer, or  
8 its successor in interest if a corporation.

9 \* Sec. 7. AS 21.33.031(a) is amended to read:

10 (a) Before an unauthorized person or nonadmitted insurer files  
11 or causes to be filed a pleading in a court action, suit or proceeding  
12 or in a notice, order, pleading or process in an administrative pro-  
13 ceeding before the director instituted against the person or insurer,  
14 by service made as provided in AS 21.33.021 or [AS] 21.33.025, the  
15 person or insurer shall either:

16 (1) deposit with the clerk of the court in which the  
17 action, suit or proceeding is pending, or with the director in admin-  
18 istrative proceedings before the director, cash or securities or bond  
19 with good and sufficient sureties to be approved by the court, or the  
20 director, in an amount to be fixed by the court or the director suffi-  
21 cient to secure the payment of a final judgment which may be rendered  
22 in the court proceeding or in the administrative proceeding before the  
23 director; however the court, or the director in administrative pro-  
24 ceedin s before the director, may in its or the director's [HIS]  
25 discretion make an order dispensing with the deposit or bond where the  
26 insurer makes a showing satisfactory to the court or the director that  
27 it maintains in a state of the United States funds or securities, in  
28 trust or otherwise, sufficient and available to satisfy a final judg-  
29 ment which may be entered in the court action, suit or proceeding or

1 in an administrative proceeding before the director; or

2 (2) obtain admission to transact insurance in this state  
3 through a certificate of authority issued under this title [PROCURE  
4 PROPER AUTHORIZATION TO DO AN INSURANCE BUSINESS IN THIS STATE].

5 \* Sec. 8. AS 21.33.031(c) is amended to read:

6 (c) Nothing in (a) of this section may be construed to prevent  
7 an unauthorized person or nonadmitted insurer from filing a motion to  
8 quash a writ or to set aside service made as provided in AS 21.33.021  
9 or [AS] 21.33.025 on the ground that the unauthorized person or insurer  
10 has not transacted insurance in this state [DONE ANY OF THE ACTS  
11 ENUMERATED IN AS 21.33.071] or that the person on whom service was  
12 made under AS 21.33.021(d) was not transacting insurance in this state  
13 [DOING ANY OF THE ACTS ENUMERATED IN AS 21.33.071].

14 \* Sec. 9. AS 21.33.035 is amended to read:

15 Sec. 21.33.035. ATTORNEY FEES. In an action against an unau-  
16 thorized person or nonadmitted insurer upon a contract of insurance  
17 issued or delivered in this state to a resident or to a corporation  
18 authorized to do business in this state, if the person or insurer has  
19 failed for 30 days after demand before the commencement of the action  
20 to make payment in accordance with the terms of the contract, and it  
21 appears to the court that the refusal was vexatious and without rea-  
22 sonable cause, the court may allow to the plaintiff a reasonable  
23 attorney fee and include the fee in the judgment that may be rendered  
24 in the action. Failure of the person or insurer to defend the action  
25 shall be considered prima facie evidence that its failure to make  
26 payment was vexatious and without reasonable cause.

27 \* Sec. 10. AS 21.33 is amended by adding a new section to read:

28 Sec. 21.33.037. ACTING FOR OR AIDING NONADMITTED INSURERS PRO-  
29 HIBITED. (a) A person may not directly or indirectly act as agent

1 for, or otherwise represent, assist, or aid on behalf of another, a  
2 nonadmitted insurer in the transaction of insurance in this state.

3 (b) This section does not apply to

4 (1) matters authorized to be done by the director;

5 (2) surplus lines insurance effected and written under  
6 AS 21.34;

7 (3) transactions for which a certificate of authority is not  
8 required under this title;

9 (4) reinsurance;

10 (5) the property and operations of railroads or aircraft  
11 engaged in interstate or foreign commerce and wet marine and transpor-  
12 tation insurance;

13 (6) life insurance, disability insurance and annuity con-  
14 tracts when solicited solely by mail or when not solicited, negotiated  
15 or procured in this state;

16 (7) transactions subsequent to issuance of a policy not  
17 covering domestic risks at time of issuance, and lawfully solicited,  
18 written or delivered outside this state.

19 (c) A person who represents or aids a nonadmitted insurer in  
20 violation of this section is subject to the penalties provided in  
21 AS 21.33.065. An insurance contract entered into in violation of this  
22 section shall not preclude the insured from enforcing the insured's  
23 rights in accordance with the terms and provisions of the contract and  
24 the laws of this state.

25 (d) If the nonadmitted insurer fails to pay a claim or loss  
26 within the provisions of the insurance contract, a person who assisted  
27 or in any manner aided directly or indirectly in the procurement of  
28 the insurance contract, shall be liable to the insured for the full  
29 amount under the provisions of the insurance contract.

1 \* Sec. 11. AS 21.33 is amended by adding a new section to read:

2           Sec. 21.33.042. SUITS BY NONADMITTED INSURERS. A nonadmitted  
3 insurer may not commence or maintain an action in law or equity in  
4 this state to enforce a right arising out of a transaction of insur-  
5 ance in this state except with respect to

6                   (1) claims under policies lawfully written in this state;

7                   (2) liquidation of assets and liabilities, other than the  
8 collection of new premium, resulting from its former admitted opera-  
9 tions in this state;

10                   (3) transactions subsequent to issuance of a policy not  
11 covering domestic risks at time of issuance, and lawfully solicited,  
12 written, or delivered outside this state;

13                   (4) surplus lines insurance coverage exported in accordance  
14 with AS 21.34;

15                   (5) reinsurance;

16                   (6) the continuation and servicing of life insurance,  
17 disability insurance policies or annuity contracts remaining in force  
18 as to residents of this state where the insurer has withdrawn from the  
19 state and is not transacting new insurance;

20                   (7) servicing of policies written by an admitted insurer in  
21 a state to which the insured has moved but in which the insured is not  
22 licensed, until the term of the policy expires;

23                   (8) claims under policies covering wet marine and transpor-  
24 tation insurance, including vessels of 50 displacement tons or less.

25 \* Sec. 12. AS 21.33.045 (a) is amended to read:

26           (a) When the director has reason to believe that insurance has  
27 been effectuated by or for a person in this state with a nonadmitted  
28 [AN UNAUTHORIZED] insurer the director shall in writing order the  
29 person to produce for examination all insurance contracts and other

1 documents evidencing insurance with nonadmitted [BOTH AUTHORIZED AND  
2 UNAUTHORIZED] insurers and to disclose to the director the amount of  
3 insurance, name and address of each insurer, gross amount of premium  
4 paid or to be paid and the name and address of the person or persons  
5 assisting or aiding in the solicitation, negotiation or effectuation  
6 of the insurance.

7 \* Sec. 13. AS 21.33.045 is amended by adding new subsections to read:

8 (c) In case of a failure of any person to comply with the direc-  
9 tor's order under (a) of this section, the superior court, on applica-  
10 tion of the director, may issue an order requiring the production of  
11 the records and information sought by the director.

12 (d) This section does not apply to life insurance, disability  
13 insurance or annuity contracts.

14 \* Sec. 14. AS 21.33.055(a) is amended to read:

15 (a) Except as to premiums on lawfully procured surplus lines  
16 insurance and premiums on independently procured insurance on which a  
17 tax has been paid under AS 21.33.061, every nonadmitted [UNAUTHORIZED]  
18 insurer shall pay to the director before April 1 following the calen-  
19 dar year in which the insurance was so effectuated, continued or  
20 renewed a premium-receipts tax of three percent of gross premiums  
21 charged for the insurance other than marine insurance and a premium-  
22 receipts tax of three-fourths of one percent of gross premiums charged  
23 for the marine insurance on subjects resident, located or to be per-  
24 formed in this state. The insurance on subjects resident, located or  
25 to be performed in this state procured through negotiations or an  
26 application, in whole or in part occurring or made in or from in or  
27 out of this state, or for which premiums in whole or in part are  
28 remitted directly or indirectly from in or out of this state, shall be  
29 considered to be insurance procured, or continued or renewed in this

1 state. The term "premium" includes all premiums, membership fees,  
2 assessments, dues and any other consideration for insurance. The tax  
3 is in lieu of all taxes and fire department dues. In default of a  
4 nonadmitted [AN UNAUTHORIZED] insurer in the payment of the tax the  
5 insured shall pay the tax. If the tax prescribed by this section is  
6 not paid within the time stated, the tax shall be increased by a  
7 penalty of 25 percent and by the amount of an additional penalty not  
8 to exceed \$100 a day [COMPUTED AT THE RATE OF ONE PERCENT PER MONTH OR  
9 ANY PART OF A MONTH] from the date the payment was due to the date  
10 paid.

11 \* Sec. 15. AS 21.33.061(a) is amended to read:

12 (a) Every insured who procures or causes to be procured or  
13 continues or renews insurance with a nonadmitted [AN UNAUTHORIZED]  
14 insurer, or an insured or self-insurer who so procures or continues  
15 excess loss, catastrophe or other insurance, upon a subject of insur-  
16 ance resident, located or to be performed in this state, other than  
17 insurance procured through a surplus lines broker [AGENT] under  
18 AS 21.34 [THE SURPLUS LINES LAW OF THIS STATE] shall, within 30 [60]  
19 days after the date the insurance was procured, continued, or renewed,  
20 file a report with the director in writing and upon forms designated  
21 by the director and furnished to the insured upon request. The report  
22 shall show the name and address of the insured [OR INSUREDS], name and  
23 address of the insurer, the subject of the insurance, a general de-  
24 scription of the coverage, the amount of premium currently charged,  
25 and additional pertinent information which is reasonably requested by  
26 the director.

27 \* Sec. 16. AS 21.33.061(b) is amended to read:

28 (b) Insurance in a nonadmitted [AN UNAUTHORIZED] insurer of a  
29 subject of insurance resident, located or to be performed in this

1 state procured through negotiations or an application, in whole or in  
2 part occurring or made in or from in or out of this state, or for  
3 which premiums in whole or in part are remitted directly or indirectly  
4 from in or out of this state, shall be considered to be insurance  
5 procured, or continued or renewed in this state within the intent of  
6 (a) of this section.

7 \* Sec. 17. AS 21.33.061(e) is amended to read:

8 (e) If the insured fails to withhold from the premium the amount  
9 of tax levied, the insured is liable for the amount and shall pay the  
10 tax to the director within the time stated in (c) of this section. If  
11 the tax prescribed by this section is not paid within the time stated  
12 in (c) of this section, the tax shall be increased by a penalty of 25  
13 percent and by the amount of an additional penalty not to exceed \$100  
14 per day [COMPUTED AT THE RATE OF ONE PERCENT PER MONTH OR ANY PART OF  
15 A MONTH] from the date the payment was due to the date paid.

16 \* Sec. 18. AS 21.33.061 is amended by adding new subsections to read:

17 (h) This section does not abrogate or modify, and may not be  
18 construed or considered to abrogate or modify a provision of AS 21.-  
19 33.037 or 21.33.042 or another provision of this chapter.

20 (i) This section does not apply to life insurance, disability  
21 insurance or annuity contracts.

22 \* Sec. 19. AS 21.33.065 is repealed and reenacted to read:

23 Sec. 21.33.065. PENALTIES. (a) A person, other than an insured  
24 who in this state represents or aids a nonadmitted insurer in viola-  
25 tion of AS 21.33.037, is subject to a civil penalty of not more than  
26 \$5,000 in addition to applicable criminal penalties and other penal-  
27 ties prescribed in this chapter.

28 (b) In addition to any other penalty provided, a person who  
29 violates a provision of this chapter shall be subject to a civil

1 penalty of not more than \$1,000 for the first offense and not more  
2 than \$2,000 for each succeeding violation.

3 (c) An additional penalty of not more than \$1,000 may be levied  
4 for each month that a violation under this chapter continues.

5 \* Sec. 20. AS 21.33 is amended by adding a new section to read:

6 Sec. 21.33.900. DEFINITIONS. In this chapter

7 (1) "admitted insurer" means an insurer that has been  
8 issued a certificate of authority by the director to transact insur-  
9 ance in this state;

10 (2) "eligible surplus insurer" means a nonadmitted insurer  
11 with which a surplus lines broker may place surplus lines insurance  
12 under AS 21.34.040;

13 (3) "export" means to place surplus lines insurance with a  
14 nonadmitted insurer;

15 (4) "nonadmitted insurer" means an insurer that does not  
16 have a certificate of authority issued by the director to transact  
17 insurance in this state and includes insurance exchanges authorized  
18 under the laws of various states;

19 (5) "surplus lines insurance" means any insurance in this  
20 state of risks resident, located, or to be performed in this state,  
21 permitted to be placed through a surplus lines broker with a nonadmit-  
22 ted insurer eligible to accept insurance, other than reinsurance, wet  
23 marine and transportation insurance, insurance independently procured,  
24 life insurance, disability insurance and annuity contracts;

25 (6) "surplus lines broker" means a person licensed under  
26 AS 21.34 to place insurance of risks resident, located or to be per-  
27 formed in this state with eligible surplus lines insurers;

28 (7) "transaction of insurance" means the solicitation,  
29 negotiation, procurement, effectuation, or renewal of insurance;

1 forwarding of applications; delivery of policies or contracts; in-  
2 spection of risks; fixing of rates; investigation or adjustment of  
3 claim or losses; collection or forwarding of premiums; or, transaction  
4 of matters subsequent to effectuation of the contract of insurance and  
5 arising out of it;

6 (8) "unauthorized person" means a person not licensed as a  
7 surplus lines broker or one who is not a salaried employee of the  
8 insured;

9 (9) "wet marine and transportation insurance" means

10 (A) insurance upon, of interest in, or relating to  
11 vessels, crafts, hulls, except vessels of 50 displacement tons or  
12 less;

13 (B) insurance of marine builders risks, marine war  
14 risks and contracts of marine protection and indemnity insurance;

15 (C) insurance of freights and disbursements pertaining  
16 to a subject of insurance under this paragraph; and

17 (D) insurance of personal property and interests in  
18 personal property, in the course of exportation from or importa-  
19 tion into any country, or in the course of coastal or inland  
20 water transportation, including transportation by land, water, or  
21 air from point of origin to final destination, in connection with  
22 any and all risks or perils of navigation, transit, or transpor-  
23 tation, and while being prepared for and while awaiting shipment,  
24 and during any delays, transshipment or reshipment incident to  
25 them.

26 \* Sec. 21. AS 21. is amended by adding a new chapter to read:

27 CHAPTER 34. SURPLUS LINES INSURANCE.

28 Sec. 21.34.010. PURPOSE. The legislature declares that insur-  
29 ance transactions with nonadmitted insurers are so affected with a

1 public interest as to require regulation, taxation, supervision, and  
2 control of the transactions and matters relating to nonadmitted insur-  
3 ance. The purpose of this chapter includes:

4 (1) protection of persons seeking insurance in this state;

5 (2) permission for surplus lines insurance to be placed  
6 with reputable and financially sound nonadmitted insurers and to be  
7 exported from this state under this chapter;

8 (3) establishment of a system of regulation that will

9 (A) permit orderly access to surplus lines insurance  
10 in this state; and

11 (B) encourage admitted insurers to provide new and  
12 innovative types of insurance and make them available to con-  
13 sumers in this state; and

14 (4) protection of the revenues of this state.

15 Sec. 21.34.020. PLACEMENT OF SURPLUS LINES INSURANCE. Insurance  
16 may be procured through a surplus lines broker from nonadmitted insur-  
17 ers if

18 (1) each insurer is an eligible surplus lines insurer;

19 (2) the full amount or kind of insurance cannot be obtained  
20 from insurers who are admitted to do business in this state;

21 (3) the director authorizes exception to (2) of this sec-  
22 tion; and

23 (4) all other requirements of this chapter are met.

24 Sec. 21.34.030. WORKERS' COMPENSATION INSURANCE. (a) Workers'  
25 compensation insurance may be placed in and written by a nonadmitted  
26 insurer if

27 (1) the director considers it in the best interest of the  
28 public and issues a directive to that effect;

29 (2) the insurance is written in accordance with this

1 chapter; and

2 (3) all conditions established for writing workers' compen-  
3 sation insurance in a nonadmitted market receive compliance.

4 (b) The rates and rating plans for workers' compensation insur-  
5 ance are subject to AS 21.39. The surplus lines broker is responsible  
6 for making the filings required under AS 21.39 and for maintaining the  
7 records required in that chapter.

8 (c) Insurance placed or written in a nonadmitted insurer and the  
9 activities of the surplus lines broker relating to that transaction  
10 are subject to the applicable provision of this title.

11 (d) The minimum capital and surplus required is two times that  
12 required in AS 21.34.040(c)(1).

13 Sec. 21.34.040. ELIGIBLE SURPLUS LINES INSURERS REQUIRED. (a)  
14 Coverage may be placed in a nonadmitted insurer by a surplus lines  
15 broker only, if at the time of placement, the nonadmitted insurer  
16 meets all the requirements of this section.

17 (b) The nonadmitted insurer must establish satisfactory evidence  
18 of good repute and financial integrity to be eligible.

19 (c) A nonadmitted insurer may be eligible to provide coverage in  
20 this state if it qualifies under one of the following:

21 (1) has a minimum capital and surplus equal to that re-  
22 quired in its domiciliary jurisdiction or, \$1,500,000 at the effective  
23 date of this Act, and \$2,500,000 one year after enactment, and  
24 \$3,500,000, two years after enactment, and \$5,000,000 three years  
25 after enactment, whichever is greater;

26 (2) an alien insurer may qualify under this subsection if  
27 it maintains in the United States an irrevocable trust fund in either  
28 a national bank or a member of the Federal Reserve system, in an  
29 amount not less than that required as minimum capital and surplus in

1 (1) of this subsection, for the protection of all its policyholders in  
2 the United States; the trust fund shall consist of instruments of  
3 substantially the same character and quality as those that are eligi-  
4 ble investments for the capital and statutory reserves of admitted  
5 insurers authorized to write like kinds of insurance in this state;  
6 the trust funds shall have an expiry date that at no time be less than  
7 five years;

8 (3) a Lloyd's or other similar unincorporated group of  
9 alien individual insurers may qualify if it maintains a trust fund of  
10 not less than \$50,000,000 as security to the full amount, for all  
11 policyholder and creditors in the United States, of each member of  
12 the group;

13 (4) an "insurance exchange" created by the laws of individ-  
14 ual states may qualify if it maintains capital and surplus, or the  
15 substantial equivalent, of not less than \$15,000,000 in the aggregate;  
16 in the event the insurance exchange does not maintain funds for the  
17 protection of all its policyholders, each individual syndicate shall  
18 meet the minimum capital and surplus requirements of (1) of this  
19 subsection.

20 (d) A nonadmitted insurer may be eligible to provide coverage in  
21 this state if it furnishes to the director a copy of its current  
22 annual statement that has been certified by the insurer. The state-  
23 ment must be provided no more than six months after the close of the  
24 period reported upon and that is either filed with and approved by the  
25 regulatory authority in the domicile of the nonadmitted insurer, or  
26 certified by an accounting or auditing firm licensed in the jurisdic-  
27 tion of the insurer's domicile. In the case of an insurance exchange,  
28 the statement may be an aggregate combined statement of all underwrit-  
29 ing syndicates operating during the period reported upon.

1           Sec. 21.34.050. LISTING ELIGIBLE SURPLUS LINES INSURERS. In  
2 addition to meeting the requirements of AS 21.34.040, a nonadmitted  
3 insurer shall be an eligible surplus lines insurer if it appears on  
4 the most recent list of eligible surplus lines insurers published by  
5 the director or by the surplus lines association when approved by the  
6 director. The list is to be published at least semi-annually. Noth-  
7 ing in this section shall require the director or the surplus lines  
8 association to place or maintain the name of a nonadmitted insurer on  
9 the list of eligible surplus lines insurers.

10           Sec. 21.34.060. OTHER NONADMITTED INSURERS. Only that portion  
11 of a risk eligible for export for which the full amount of coverage is  
12 not procurable from eligible surplus lines insurers may be placed with  
13 another nonadmitted insurer that does not appear on the list of eligi-  
14 ble surplus lines insurers published under AS 21.34.050 but nonethe-  
15 less meets the requirements of AS 21.34.040 and a regulation adopted  
16 under this chapter. The surplus lines broker seeking to provide  
17 coverage through an unlisted nonadmitted insurer shall make a filing  
18 specifying the amount and percentage of each risk to be placed and  
19 naming each nonadmitted insurer with which placements intended.  
20 Within 30 days after placing the coverage, the surplus lines broker  
21 shall also send written notice to the insured or the producing broker  
22 that the insurance, or a portion of it, has been placed with the  
23 unlisted nonadmitted insurer.

24           Sec. 21.34.070. DECLARATION OF INELIGIBILITY. (a) If after a  
25 review of a nonadmitted insurer and consideration of factors including  
26 quality of management, capital and surplus of a parent company, under-  
27 writing profit, investment income trends, trade practices, reserving  
28 practices, company record and reputation within the industry, the  
29 director finds the insurer to be unacceptable, the director may

1 declare the nonadmitted insurer to be ineligible.

2 (b) The director may declare a nonadmitted insured ineligible if  
3 at any time the director has reason to believe that the nonadmitted  
4 insured

5 (1) is in unsound financial condition;

6 (2) is no longer eligible under AS 21.34.040;

7 (3) has wilfully violated the laws of this state; or

8 (4) does not make reasonably prompt payment of just losses  
9 and claims in this state or elsewhere.

10 (c) The director shall promptly mail notice of all such decla-  
11 rations to each licensed surplus lines broker.

12 Sec. 21.34.080. EVIDENCE OF INSURANCE, AFFIDAVITS, DUTY TO FILE.

13 (a) Within 30 days after the placing of surplus lines insurance, each  
14 surplus lines broker shall execute and file with the director a writ-  
15 ten report, which shall be kept confidential, regarding the insurance  
16 that shall include the following:

17 (1) the name and address of the insured;

18 (2) the identity of each insurer and percentage of coverage  
19 provided by each;

20 (3) a description of the subject and location of the risk;

21 (4) the amount of insurance charged for the insurance; and

22 (5) other pertinent information required by the director.

23 (b) Within 30 days after the placing of surplus lines insurance,  
24 each producing broker shall execute and file with the director an  
25 affidavit, which shall be open to public inspection, as to the dili-  
26 gent efforts to place the coverage with admitted insurance and the  
27 result of those efforts. The affidavits shall be on a form prescribed  
28 by the director.

29 (c) The director may order that filings required under this

1 section be made to the surplus lines association.

2 Sec. 21.34.090. SURPLUS LINES ASSOCIATION. (a) A surplus lines  
3 association of surplus lines brokers may be formed to

4 (1) facilitate and encourage compliance by its members with  
5 the laws of this state and the regulations relative to surplus lines  
6 insurance;

7 (2) provide means for the examination, which shall remain  
8 confidential, of all surplus lines coverages written by its members to  
9 determine whether the coverages comply with the laws and regulations  
10 of this state;

11 (3) communicate with organizations of admitted insurers  
12 with respect to the proper use of the surplus lines market;

13 (4) receive and disseminate to its members information  
14 relative to surplus lines coverages; and

15 (5) receive and collect on behalf of the state and remit to  
16 the state premium receipts tax for surplus lines insurance.

17 (b) The surplus lines association shall file with the director

18 (1) a copy of its constitution, its articles of agreement  
19 of association, or its certificate of incorporation;

20 (2) a copy of its bylaws and regulations governing its  
21 activities;

22 (3) a current list of its members;

23 (4) the name of a resident of this state upon whom notices  
24 or orders of the director or processes issued at the director's in-  
25 struction may be served;

26 (5) an agreement that the director may examine the surplus  
27 lines association in accordance with this section; and

28 (6) a schedule of its membership fees and assessments.

29 (c) The director shall, at least once in three years, make or

1 caused to be made, an examination of the surplus lines association.  
2 The reasonable cost of an examination shall be paid by the surplus  
3 lines association upon presentation to it by the director of a de-  
4 tailed account of the cost. The officers, managers, agents, and  
5 employees of the surplus lines association may be examined at any  
6 time, under oath, and shall exhibit all books, records, accounts,  
7 documents or agreements governing its method of operation. The direc-  
8 tor shall furnish a copy of the examination report to the surplus  
9 lines association and shall notify it that it may request a hearing on  
10 the report or on any facts or recommendations contained in the report,  
11 if requested within 20 days. The surplus lines association or any of  
12 its members that the director determines has violated this chapter is  
13 subject to penalties established in AS 21.34.230.

14 (d) The director may, by order, require that all surplus lines  
15 brokers, as a condition of continued licensure under this chapter,  
16 join the surplus lines association.

17 Sec. 21.34.100. EVIDENCE OF INSURANCE. (a) When surplus lines  
18 insurance is placed, the surplus lines broker shall promptly deliver  
19 to the insured or the producing broker the policy, or if the policy is  
20 not then available, a certificate, cover note, binder or other evi-  
21 dence of insurance. The certificate, cover note, binder or other  
22 evidence of insurance shall be executed by the surplus lines broker  
23 and shall contain a complete record of all policy insuring agreements,  
24 conditions, exclusions, clauses, endorsements, other material facts  
25 that would regularly be included in the policy, description and lo-  
26 cation of the subject of insurance, a general description of the  
27 coverages of the insurance, the premium and rate charged and taxes to  
28 be collected from the insured, the name and address of the insured,  
29 the name of each surplus lines insurer and the percentage of the

1 entire risk assumed by each, the name of the surplus lines broker, and  
2 the license number of the surplus lines broker.

3 (b) A surplus lines broker may not issue or deliver evidence of  
4 insurance or purport to insure or represent that insurance will be or  
5 has been written by an eligible surplus lines insurer, or a non-  
6 admitted insurer under AS 21.34.060, unless the surplus lines broker  
7 has authority from the insurer to cause the risk to be insured, or has  
8 received information from the insurer in the regular course of busi-  
9 ness that the insurance has been granted.

10 (c) If after delivery of evidence of insurance there is a change  
11 in the identity of the insurers, or the percentage of the risk assumed  
12 by an insurer, or another material change in coverage from that stated  
13 in the surplus lines brokers original evidence of insurance, or in  
14 another material concerning the evidenced insurance, the surplus lines  
15 broker shall promptly issue and deliver to the insured or the produc-  
16 ing broker, an appropriate substitute for, or endorsement of the  
17 original document, accurately showing the current status of the cover-  
18 age and the insurers responsibility.

19 (d) The surplus lines broker shall deliver a copy of the policy  
20 or cover note issued by the insurer as soon as reasonably possible  
21 after placement of the insurance coverage.

22 (e) A surplus lines broker who fails to comply with the require-  
23 ments of this section is subject to the penalties in AS 21.34.230.

24 (f) Every evidence of insurance negotiated, placed, or procured  
25 under the provisions of this chapter issued by a surplus lines broker  
26 shall bear the name of the surplus lines broker that may not be  
27 covered, concealed or obscured by the producing broker, and the fol-  
28 lowing legend in at least 10 point type: "This is evidence of insur-  
29 ance procured and developed under the Alaska Surplus Lines Law,

1 AS 21.34. It is not covered by the Alaska Insurance Guaranty Asso-  
2 ciation Act, AS 21.80."

3 Sec. 21.34.110. SURPLUS LINES BROKER'S DUTY TO NOTIFY INSURED.

4 A contract of insurance placed by a surplus lines broker under this  
5 chapter shall not be binding upon the insured and a premium charged  
6 shall not be due and payable until the surplus lines broker shall have  
7 notified the insured in writing, a copy of which shall be maintained  
8 by the licensee with the records of the contract, available for ex-  
9 amination, that the insurer with which the surplus lines broker places  
10 the insurance is not licensed by this state and is not subject to its  
11 supervision, and in the event of the insolvency of the surplus lines  
12 insurer, losses will not be paid by the state insurance guaranty fund.  
13 Nothing in this section shall nullify an agreement by an insurer to  
14 provide insurance.

15 Sec. 21.34.120. VALIDITY OF SURPLUS LINES CONTRACTS. Insurance  
16 contracts procured under this chapter shall be valid and enforceable  
17 as to all parties.

18 Sec. 21.34.130. EFFECT OF PAYMENT TO SURPLUS LINES BROKER. A  
19 payment of premium to a surplus lines broker acting for a person other  
20 than oneself in negotiating, continuing, or reviewing a policy of  
21 insurance under this chapter, shall be considered to be payment to the  
22 insurer, notwithstanding conditions or stipulations in the policy or  
23 contract to the contrary.

24 Sec. 21.34.140. LICENSING OF SURPLUS LINES BROKERS. (a) An  
25 agent or broker licensed by the state shall not procure a contract or  
26 policy of surplus lines insurance with a nonadmitted insurer, unless  
27 the agent or broker possesses a current surplus lines broker license  
28 issued by the director.

29 (b) The director shall issue a surplus lines broker license to a

1 qualified holder of a current property and casualty broker's license  
2 or general agents license but only when the broker or general agent  
3 has

4 (1) remitted the annual fee established under AS 21.06.250;  
5 (2) submitted a completed license application on a form  
6 prescribed by the director, and the application has been approved by  
7 the director;

8 (3) passed a qualifying examination approved by the direc-  
9 tor, except that all holders of a license before the effective date of  
10 this chapter are considered to have passed the qualifying examination;

11 (4) filed with the director, and maintains during the term  
12 of license, an in-force, unimpaired bond in favor of insureds under  
13 this chapter and the state, in the penal sum of \$200,000, aggregate  
14 liability, with corporate sureties approved by the director. The bond  
15 shall be conditioned in that the surplus lines broker will conduct  
16 business in accordance with the provisions of this chapter, will  
17 promptly remit the taxes provided by law, will return premiums prompt-  
18 ly when due and will pay proper losses promptly. A bond shall not be  
19 terminated unless at least 60 days prior written notice is given to  
20 the surplus lines broker and the director.

21 (c) If the director determines that a surplus lines broker of  
22 another state is competent and trustworthy, the director may issue a  
23 nonresident surplus lines broker license.

24 (d) A firm or corporation shall be eligible for license if

25 (1) the license shall list individuals within the corpo-  
26 ration who have satisfied all requirements of this chapter to become  
27 surplus lines brokers; and

28 (2) only those individuals listed on the license shall  
29 transact surplus lines business.

1           (e) Each surplus lines broker license shall expire on  
2 December 31 of each year and shall be renewed before December 2 of  
3 each year upon payment of the annual fee, and compliance with other  
4 provisions of this section. A surplus lines broker who fails to apply  
5 for renewal of the license before December 2 shall pay a penalty of  
6 \$100. A surplus lines broker who fails to apply for renewal of the  
7 license before December 31 shall pay a penalty of \$250 and any other  
8 penalties provided in this title before the license may be renewed.

9           AS 21.34.150. SURPLUS LINES BROKERS MAY ACCEPT BUSINESS FROM  
10 OTHER BROKERS. A surplus lines broker may originate surplus lines  
11 insurance or accept surplus lines insurance from another broker or  
12 surplus lines broker licensed in this state as to the kind of insur-  
13 ance involved. The surplus lines broker may compensate the licensed  
14 broker or surplus lines broker for the insurance.

15           AS 21.34.160. RECORDS OF SURPLUS LINES BROKER. (a) Each sur-  
16 plus lines broker shall keep in the office a full and true record of  
17 each surplus lines insurance contract placed by or through the surplus  
18 lines broker, including a copy of the policy, certificate, cover note,  
19 or other evidence of insurance showing the following items as may be  
20 applicable:

- 21                   (1) amount of insurance and perils insured;
- 22                   (2) brief description of property insured and its location;
- 23                   (3) gross premium charged;
- 24                   (4) any return premium paid;
- 25                   (5) rate of premium charged upon the several items of  
26 property;
- 27                   (6) effective date of the contract, and the terms of the  
28 contract;
- 29                   (7) name and address of the insured;

- 1 (8) name and address of the insurer;
- 2 (9) amount of tax and other sums to be collected from the  
3 insured;
- 4 (10) any evidence of insurance issued in compliance with  
5 AS 21.34.160;
- 6 (11) identity of the producing broker;
- 7 (12) any confirming correspondence from the insurer or its  
8 representative; and
- 9 (13) the application.

10 (b) The record of each contract shall be kept open at all rea-  
11 sonable times to examination by the director without notice for a  
12 period of not less than five years following termination of the con-  
13 tract.

14 Sec. 21.34.170. MONTHLY REPORTS, SUMMARY OF EXPORTED BUSINESS.  
15 On or before the end of each month following each calendar month, each  
16 surplus lines broker shall file with the director, on forms prescribed  
17 by the director, a verified report in duplicate of all surplus lines  
18 insurance transacted during the preceding calendar month showing  
19 aggregate gross premiums written and aggregate return premiums by kind  
20 of insurance.

21 Sec. 21.34.180. SURPLUS LINES TAX. (a) Gross premiums charged,  
22 less any return premium, for surplus lines insurance are subject to a  
23 premium receipts tax as outlined in AS 21.09.210, which shall be  
24 collected by the surplus lines broker as specified by the director, in  
25 addition to the full amount of the gross premium charged by the in-  
26 surer for the insurance. The tax on any portion of the premium un-  
27 earned at termination of insurance having been credited by the state  
28 to the surplus lines broker shall be returned to the policy holder  
29 directly by the surplus lines broker or through the producing broker,

1 if any. The surplus lines broker is prohibited from absorbing the tax  
2 or any part of it and from rebating for any reason, the tax or any  
3 part of it.

4 (b) The surplus lines tax is due on the second day of March  
5 following the calendar year in which the premium is written. The tax  
6 will be paid to and reported on forms prescribed by the director, or  
7 upon the director's order paid to and reported on forms prescribed by  
8 the surplus lines association.

9 (c) If a surplus lines policy procured through a surplus lines  
10 broker covers risks or exposures only partially located or to be  
11 performed in this state, the tax payable shall be computed on the  
12 portions of the premium properly attributable to the risks or expo-  
13 sures located or to be performed in this state as follows:

14 (1) if the risk insured is real or personal property, the  
15 percentage of the entire tax that is due to this state is the same as  
16 the percentage of the entire risk that is located in this state,  
17 computed on the same basis as was employed to calculate the insurable  
18 value of the risk.

19 (2) if the risk insured is business operations, general  
20 liability or employee benefits, the percentage of the entire tax that  
21 is due to this state is the same as the percentage of the insured  
22 business operations or employees that are located in this state.

23 (d) This section shall not apply to insurance of risks of state  
24 government, its political subdivision, or an agency of state govern-  
25 ment or its political subdivisions.

26 (e) If a multi-state risk has a portion of that risk located  
27 within this state, the surplus lines broker will remit payment of  
28 taxes collected in this state in accordance with the provisions of (c)  
29 of this section.

1           Sec. 21.34.190. FILING FEE. The fee for filing the statement  
2 under AS 21.34.180(b) is an amount equal to one percent on gross  
3 premium charged less any return premiums during the preceding calendar  
4 year. The surplus lines broker shall pay the fee at the time of  
5 filing of the statement.

6           Sec. 21.34.200. COLLECTION OF TAXES AND FEES. (a) If the tax  
7 collectible under AS 21.34.180 or the fee collectible under AS 21.-  
8 34.190 by a surplus lines broker is not paid within the time pre-  
9 scribed, the tax, fee, or both along with appropriate penalties may be  
10 collected by distraint or by an action in court, against the surplus  
11 lines licensee and the surety on the bond filed under AS 21.34.140-  
12 (b)(4).

13           (b) The director may order that taxes collectible under AS 21.-  
14 34.180 and filings fees under collectible AS 21.34.190 be collected by  
15 the surplus lines association. The tax must be remitted to the state  
16 by the surplus lines association by April 1 following the calendar  
17 year in which the premium was written. When the surplus lines asso-  
18 ciation provides services listed in the order by the director for  
19 collection of taxes, it shall retain the filing fee described in  
20 AS 21.34.190, as payment of association expense.

21           (c) In addition to penalties provided in this chapter, failure  
22 to pay tax within the time prescribed is subject to penalties provided  
23 in AS 21.36.320.

24           Sec. 21.34.210. SUSPENSION, REVOCATION OR NON-RENEWAL OF SURPLUS  
25 LINES BROKER LICENSE. The director may suspend, revoke, or refuse to  
26 renew the license of a surplus lines licensee after notice and hearing  
27 as provided in AS 21.06.180 - 21.06.230 upon one or more of the fol-  
28 lowing grounds:

29           (1) removal of the resident surplus lines broker's office

1 from this state;

2 (2) removal of the resident surplus lines broker's accounts  
3 and records from this state during the period within which the ac-  
4 counts and records are required to be maintained under AS 21.34.160;

5 (3) removal of the nonresident surplus lines broker's  
6 accounts and records from the location described in the license appli-  
7 cation without approval of the director that are required to be main-  
8 tained under AS 21.34.160;

9 (4) closing of the surplus lines broker's office for a  
10 period of more than 30 business days, unless permission is granted by  
11 the director;

12 (5) failure to make the required reports;

13 (6) failure to transmit required tax or fee on surplus  
14 lines premiums;

15 (7) failure to maintain required bond;

16 (8) violation of a provision of this chapter; or

17 (9) for another cause for which an insurance license could  
18 be denied, revoked, suspended, or renewal refused under AS 21.27.

19 Sec. 21.34.220. ACTIONS AGAINST SURPLUS LINES INSURER-SERVICE OF  
20 PROCESS. (a) A surplus lines insurer may be sued upon a cause of  
21 action arising in this state under a surplus lines insurance contract  
22 made by it or evidence of insurance issued or delivered by the surplus  
23 lines broker under the procedure provided in AS 21.33. A policy  
24 issued by the surplus lines broker shall contain a provision stating  
25 the substance of this section and designating the person to whom the  
26 director shall mail process.

27 (b) Each surplus lines insurer assuming a surplus lines insur-  
28 ance shall be considered to have subjected itself to this chapter.

29 (c) The remedies provided in this section are in addition to

1 other methods provided by law for service of process upon insurers.

2 Sec. 21.34.230. PENALTIES. (a) In addition to any other pen-  
3 alty provided by law, a person that the director determines has vi-  
4 olated the provisions of this chapter is subject to a civil penalty of  
5 not more than \$1,000 for the first offense and not more than \$2,000  
6 for each succeeding offense.

7 (b) The penalties set out in this chapter are not exclusive  
8 remedies. Penalties may also be assessed under AS 21.33.320 - 21.33.-  
9 330.

10 Sec. 21.34.240. SEPARABILITY. If any provision of this chapter,  
11 or the application of a provision of this chapter to any person or  
12 circumstance, shall be held invalid, the remainder of the chapter and  
13 the application of the provision to persons or circumstances other  
14 than those as to which it is held invalid, shall not be affected.

15 Sec. 21.34.250. REGULATIONS. The director may promulgate regu-  
16 lations to implement, define, and enforce the provisions of this  
17 chapter.

18 Sec. 21.34.900. DEFINITIONS. As used in this chapter

19 (1) "admitted insurer" means an insurer that has been  
20 issued a certificate of authority by the director to transact insur-  
21 ance in this state;

22 (2) "capital" means funds paid in for stock or other evi-  
23 dence of ownership;

24 (3) "eligible surplus lines insurer" means a nonadmitted  
25 insurer with which a surplus lines broker may place surplus lines  
26 insurance under AS 21.34.040;

27 (4) "export" means to place surplus lines insurance with a  
28 nonadmitted insurer;

29 (5) "kind of insurance" means one of the types of insurance

1 required to be reported on in the annual statement that must be filed  
2 with the director by admitted insurers;

3 (6) "nonadmitted insurer" means an insurer that does not  
4 have a certificate of authority issued by the director to transact  
5 insurance in this state; this definition includes insurance exchanges  
6 authorized under the laws of various states;

7 (7) "producing broker" means the individual broker or  
8 surplus lines broker dealing directly with the party seeking insur-  
9 ance;

10 (8) "surplus," as used in the financial requirements of  
11 AS 21.34.040, means funds over and above liabilities and capital of  
12 the company for the protection of policy holders;

13 (9) "surplus lines broker" means a person licensed under  
14 this chapter to place insurance of risks resident, located or to be  
15 performed in this state with eligible surplus lines insurers;

16 (10) "surplus lines insurance" means any insurance in this  
17 state of risks resident, located or to be performed in this state,  
18 permitted to be placed through a surplus lines broker with a non-  
19 admitted insurer eligible to accept insurance, other than reinsurance,  
20 wet marine and transportation insurance, insurance independently  
21 procured, life insurance, disability insurance and annuity contracts;

22 (11) "transaction of insurance" means the solicitation,  
23 negotiation, procurement, effectuation, or renewal of insurance;  
24 forwarding of applications; delivery of policies or contracts; in-  
25 spection of risks; fixing of rates; investigation or adjustment of  
26 claims or losses; collection or forwarding of premiums; or, trans-  
27 action of matters subsequent to effectuation of the contract of in-  
28 surance and arising out of it;

29 (12) "wet marine and transportation insurance" means

1 (A) insurance upon, of interest in, or relating to  
2 vessels, crafts, hulls, except vessels of 50 displacement tons or  
3 less;

4 (B) insurance of marine builders risks, marine war  
5 risks and contracts of marine protection and indemnity insurance;

6 (C) insurance of freights and disbursements pertaining  
7 to a subject of insurance coming within this paragraph; and

8 (D) insurance of personal property and interests in  
9 personal property, in the course of exportation from or importa-  
10 tion into a country, or in the course of coastal or inland water  
11 transportation, including transportation by land, water or air  
12 from point of origin to final destination, in connection with any  
13 and all risks or perils of navigation, transit, or transporta-  
14 tion, and while being repaired for and while awaiting shipment,  
15 and during any delays, transshipment, or reshipment incident to  
16 them.

17 \* Sec. 22. AS 21.36 is amended by adding a new section to read:

18 Sec. 21.36.195. SURPLUS LINES BROKERS-PROHIBITED ACTS. A sur-  
19 plus lines broker may not fail to provide the evidences of insurance,  
20 affidavits, filings, or reports, or fail to maintain the records, or  
21 fail to pay the taxes and fees, required in AS 21.34.

22 \* Sec. 23. AS 21.39.0+0(f) is amended to read:

23 (f) Under regulations which the director [HE] shall adopt the  
24 director may, by written order, suspend or modify the requirement of  
25 filing on a kind of insurance, subdivision or combination of them  
26 [THEREOF], or on classes of risks, the rates for which cannot practi-  
27 cally be filed before they are used. The orders and regulations shall  
28 be made known to insurers and rating organizations affected by them.  
29 The director may make an examination which the director [HE] may

1 consider advisable to ascertain whether the rates affected by the  
2 order meet the standards set out in AS 21.39.030(a)(2).

3 \* Sec. 24. AS 21.39.040(h) is amended to read:

4 (h) An [NO] insurer may not make or issue a contract or policy  
5 except in accordance with the filings which are in effect for that  
6 insurer as provided in this chapter or in accordance with (f), [AND]  
7 (g) and (i) of this section. This subsection does not apply to  
8 contracts or policies for inland marine risks on which filings are not  
9 required.

10 \* Sec. 25. AS 21.39.040 is amended by adding a new subsection to read:

11 (i) An insurer may use a rate less than that provided by a  
12 filing otherwise applicable on a specific risk the insurance for which  
13 would otherwise be exported under AS 21.34. Within 30 days of this  
14 action the insurer shall file a report detailing that information  
15 required by the director on a form prescribed by the director.