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CHAIRMAN'S INFORMATION: SCS CSHB 522(L&C)

1) BILL TITLE: "An act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and provision of medical malpractice insurance for nurses and nurse midwives."

a) Introduced: Rep Sund

b) Co-sponsors:

2) INTENT: This measure contains portions of various insurance "reform" proposals which have been heard in committee this year. Among these are payments to brokers, cancellation notifications, and notification for nonrenewal of insurance policies. It also expands MICA provisions to offer insurance to nurses and nurse midwives. The version which passed the House contained language which would provide for a nurse or nurse midwife to hold a seat on the MICA Board, and I have deleted that provision in the SCS.

FISCAL NOTE: 0

3) ADDITIONAL REFERRALS: Judiciary and Rules

4) PUBLIC HEARINGS:

a) Sponsor:

b) Public Witnesses:

5) BILL ACTION:

a) Hold in committee?

b) Assign to sub committee for further review?

c) Move from committee?

d) Close public hearings?

6) COMMITTEE ACTION?

a) amendments?

b) CS adoption? Need to adopt the L&C SCS, plus the title change; An SCR was introduced this morning to effect that change.

OVERVIEW

Prepared by Rep. John Sund's office.
April 27, 1986

OBJECTIVE OF THE BILL

The purpose of House Bill 522 is to approach the effects of the insurance crisis through tightening various insurance regulations and expanding the Medical Indemnity Corporation of Alaska.

WHAT THIS BILL DOES

1. Regards premium payments to insurance brokers as payments directly to the insurance company. This will prevent alleged nonpayment of premium cancellations because a broker walked off with the payment.
2. Clarifies accepted reasons for canceling a personal line (auto and homeowner's) insurance policy and increases the time requirement for notification of cancellation from 20 days to 60 days with certain exceptions. It also requires a stated reason for the cancellation.
3. Establishes criteria for canceling a business or commercial insurance policy and requires 60 days notice of cancellation with certain exceptions. It also requires a stated reason for the cancellation.
4. Establishes a 45 day notice of nonrenewal for business and commercial policies.
5. Expands the Medical Indemnity Corporation of Alaska (MICA) to offer insurance to nurses and nurse midwives and adds a nurse or nurse midwife to the MICA board of directors.

WHY THIS BILL IS NEEDED

While we have been attacking the insurance crisis primarily from the tort reform angle and the pooling concept, we can also help the situation through insurance regulation reform.

Not only is it traumatic to have your insurance canceled, it is worse to have it canceled without adequate notice so that other coverage can be sought. We now have no law that requires advance notice of cancellation of business or commercial insurance. This bill would give the insured 60 days to find alternate coverage.

This bill also helps those nurses who are working in high-risk fields, such as childbirth, and cannot find insurance coverage. MICA would now be available to them.

The bill carries a zero fiscal note and is supported by the Division of Insurance.

CS HB 522 (Judiciary)

SECTIONAL ANALYSIS

Prepared by Rep. John Sund's office.

Section 1; Page 1, line 13: amends AS 21.27.200 (a) by stating that a broker is not an agent for the insurer, except as provided in (c) (see Section 2 below). Nothing in this section is intended to change common law on agency.

Section 2; Page 1, line 22: adds the new subsection (c) referred to above. This makes the broker the agent of the insurer for the purpose of collecting premiums.

This is important to the Division of Insurance and gives the insured more latitude in premium payments. When the broker receives a premium payment, it is treated as if the insurance company has received it. This protects the insured and prevents policy cancellation due to nonpayment of premiums because an unscrupulous broker walked off with the cash. According to the division, this section could save many thousands of dollars per year for the consumer.

Section 3; Page 1, line 28: amends present statute on limits on cancellation by clarifying that insurers cannot cancel a personal automobile insurance policy unless premiums aren't paid or the insured's license is revoked or suspended.

Section 4; Page 2, line 11: amends the reasons for which limits on cancellation in this section don't apply:

- 1) failure to renew a policy unless it was in force for less than 12 months. (This is already in statute.)
- 2) a policy that is less than 60 days old, unless it is a renewal.
- 3) an automobile assigned risk or automobile insurance plan.
- 4) a policy insuring more than four vehicles.
- 5) a policy covering a business related to automobiles.

Section 5; Page 2, line 28: amends present statute on limits on cancellation by specifying that the following limits apply only to personal insurance other than personal auto insurance:

- 1) nonpayment of premiums.
- 2) conviction of a crime that increases insured's risk.
- 3) discovery of fraud or misrepresentation by insured.
- 4) discovery of negligent act or omission that increases insured's risk.
- 5) physical change in insured's property making it

uninsurable.

Section 6; Page 3, line 19: places limits on cancellation of a business or commercial policy. No provisions now exist in law to limit commercial insurance cancellation. The limits are the same as in Section 6 (personal insurance), but additional reasons specific to commercial insurance are added.

This section also provides in (b), Page 4, line 23, for the director of the Division of Insurance to determine on a case by case basis whether a reason for cancellation not listed in this section is justified.

Section 7; Page 4, line 25: increases the notice of cancellation of a personal insurance policy from 20 days to 60 days before the cancellation date. If nonpayment of premium is the reason for cancellation, however, notice must be served within 10 days, which is present law.

This section also requires that the notice include a statement of the reason for cancellation.

Section 8; Page 5, line 9: requires the same time frame for cancellation of business or commercial insurance as that for personal lines as cited above.

Unearned premium must be returned or credited before the cancellation effective date unless the cancellation is for nonpayment. In that case, the unearned premium must be returned or credited within 45 days after the cancellation date.

Policy premiums subject to audit are also exempt from the above refund requirement. The audit must be done within 30 days of the cancellation date and the unearned premium must be returned or credited within 30 days of the audit completion.

Section 9; Page 6, line 2: clarifies that the present law requiring renewal of policies that are in force less than 12 months pertains only to personal lines.

This section also adds business and commercial lines to the requirements for notice of nonrenewal with a 45 day notice period. Personal lines require only 20 days notice of nonrenewal.

This section doesn't apply if the insurer in good faith was willing to renew, if premiums weren't paid on the expiring

policy, or if premiums weren't paid as required for renewal.

Section 10; Page 6, line 19: is housekeeping on the requirement to notify those denied auto liability insurance of the auto assigned risk plan.

Section 11; Page 6, line 29: Definitions.

Section 12; Page 8, line 24: amends the makeup of the Medical Indemnity Corporation of Alaska (MICA) board of directors by reducing the number of physicians from four to three and adding a licensed nurse or nurse midwife to the board. The reason for the change is that under this bill, nurses would be eligible for coverage through MICA (see section 14).

Section 13; Page 9, line 15: amends MICA statute by allowing nurses and nurse midwives to be a separate entity for coverage.

Section 14; Page 12, line 10: Definitions.

Section 15; Page 12, line 16: repeals statutes the intent of which are covered elsewhere in this bill.

CSHB 522(L&C): "An Act relating to payment of insurance premiums, cancellation of insurance policies, and the provision of medical malpractice insurance for nurse midwives; and providing for an effective date."

The Department favors passage of this proposed legislation.

Sections 1 & 2 of this bill would provide that, for purposes of receiving payment of an insurance premium, a broker is legally considered an agent of the insurance company. This legislation does not give the broker the ability to bind coverage with an insurance company that has not given him that authority. The insurance agent has a direct contractual relationship with the insurance company in which it places business. The effect of this is that when an agent receives premium from an insured, it is the same as though the insurance company had received the funds, even if the insurance company never receives the money.

The situation with a broker is not as clear. The broker by definition represents the insured, not the insurance company. While it is possible that a legal argument could be made to attempt to treat the broker as an agent of the insurer, this must be done in court on a case by case basis.

During the past two years, it has become clear that a similar law is needed for brokers. Two large broker insolvencies have occurred where insureds have paid the broker who in turn has failed to remit those funds to the insurer resulting in cancellation of coverage for nonpayment of premium. The insured then suffers a loss of coverage and monies. In most cases, the insured person did not know in which capacity the producer was acting, let alone understand and appreciate the distinction.

Sections 3 - 10 and 14 address cancellation of commercial insurance policies. Under existing law, there is a limitation on cancellation of personal lines policies such as automobile insurance policies and homeowners insurance policies. A part of this law also establishes minimum amounts of time when a cancellation is issued and requires a reason for any cancellation or nonrenewal of coverage. These minimums and reasons do not currently apply to business or commercial policies.

This proposal will provide for a 60 day notice time that a company must give when it cancels an insurance policy, other than personal lines of insurance. It also requires that any unearned premium shall be returned prior to the effective date of cancellation unless cancellation is for nonpayment of premium.

The need for this request arises from the tightening insurance markets. As companies are reducing the amount of insurance they are writing, they are eliminating entire classes of insurance from their book of business and they are often cancelling policies of those insureds who have suffered losses. The Alaskan consumer needs adequate notice in order to be able to find an alternate insurer in the event that his policy is cancelled.

To accomplish this, it is necessary to substantially rearrange AS 21.36.210 - AS 21.36.310. The changes do not revise the impact of those sections of law on personal lines. It does make some of those provisions applicable to business or commercial insurance.

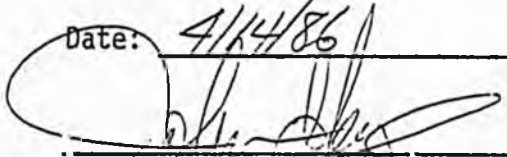
We recommend that the notice period for a nonpayment cancellation remain unchanged. This means removing the charge made on page 3, line 24. and changing the 20 days on page 4, line 4 to read 10 days. The logic for this is that a person about to receive notice for nonpayment generally knows that payment has not been made. 10 days is adequate.

Sections 11 - 13 provide that nurse midwives can purchase medical malpractice insurance from the Medical Indemnity Corporation of Alaska (MICA). This will provide an additional market that the nurse midwife would have available if required. We would recommend that Section 11 on page 7, lines 9 - 29 be omitted. There are 1200 physicians licensed by the state who are conceivably eligible for coverage from MICA while there are only 21 licensed nurse midwives who might be eligible for coverage from MICA with passage of this bill. That is not a reasonable basis for changing the makeup of the governing board of MICA. This feature should remain unchanged.



Loren H. Lounsbury, Commissioner
Department of Commerce & Economic
Development

Date: 4/14/86



John U. George, Director of Insurance

Date: 4/14/86

AMERICAN COLLEGE OF NURSE-MIDWIVES,
ALASKA CHAPTER

April 30, 1986

Senator Bettye Fahrenkamp
Chairman, Senate HESS Committee
Alaska State Legislature
Pouch D (MS 3100)
Juneau, Alaska 99811

MAY 7 1986

Dear Senator Fahrenkamp:

As a follow-up of my March letter, I am writing to inform you that an amendment for the MICA statute has been incorporated into House Bill 522, Judiciary version and is now on its way to the Senate. This bill would make it possible for certified nurse-midwives (CNM's) to obtain liability insurance from the Medical Indemnity Corporation of Alaska (MICA). Thank you for referring my request to the appropriate House committee.

I am now requesting that you spearhead a campaign to move it through the necessary channels in the Senate prior to the end of this legislative session.

As you know, certified nurse-midwives lost their liability insurance nationwide as of July 1985. (See enclosed congressional testimony entitled "Professional Liability Insurance for Certified Nurse-Midwives - Cost and Availability.") The national organization, the American College of Nurse-Midwives (ACNM) is trying to form its own insurance company but faces many obstacles. It is clearly going to take many months before a new program is in place. The certified nurse-midwives in Alaska do not have 'many months' before current policies expire.

Of the 29 certified nurse-midwives in Alaska, 13 are in clinical practices that include deliveries. Eight percent (1,048) of Alaskan births were attended by CNM's in 1985. Practices vary with one CNM attending 28% of the births at the Alaska Native Medical Center and four CNM's attending 20% of the births at Humana Hospital in Anchorage.

Three of the four CNM's with privileges at Humana face an uncertain future as their temporary liability policies will expire by September 30th. Their collaborative physicians do not carry liability insurance so these nurse-midwives do not have the option of being covered under the physician's 'umbrella' policy.

Two CNM's in Homer and a new CNM in Kenai are 'going bare' because they have no other options.

The Juneau CNM plans to close her practice this July unless an alternative liability policy becomes available.

Certified nurse-midwives did not lose their master policy due to high lawsuit rates among the membership. As I am sure you are aware, there is a general crisis in the entire liability insurance industry and we have simply become one of its victims. In the last 10 years, only six percent of the national membership has been sued. In contrast, 60% of the nation's obstetricians have had suits brought against them.

Insurance companies view us as a risk because we deliver babies and the long statute of limitations (21 years) makes it impossible for a company to predict its losses. In our favor is the fact that we are the experts of 'normal' childbirth. We have stringent criteria upon which we base our selection of clients and we consult and refer to collaborative physicians as needed. We are held to the highest medical standards or face de-certification if we do not meet them.

I find it ironic that certified nurse-midwives are being 'penalized' for their expertise in obstetrics and midwifery while the State passes legislation sanctioning lay midwifery that essentially allows lay midwives to practice with little interference or supervision.

Certified nurse-midwives have been providing Alaskan consumers a valuable, safe service for over 10 years. We want to continue to serve Alaskan women and infants but are facing our greatest professional challenge as the lack of liability insurance threatens our very existence. We find it practical and in the best interest of clients to cover ourselves with liability insurance. Please give your support to HB 522, Judiciary version when it reaches the Senate and provide for an immediate effective date. Our clients will thank you!

Sincerely,

Marilyn Pierce-Bulger

Marilyn Pierce-Bulger, RN, CNM
Chairman, Alaska Chapter, ACNM
Box 9416 Hiland Road
Eagle River, Alaska 99577
wk 265-9245 hm 694-6076

Enclosures & Petitions

cc: Members, Alaska State Senate

Professional Liability Insurance for
Certified Nurse-Midwives:
Cost and Availability

United States Senate
Committee on Commerce, Science
and Transportation
March 4, 1986

Good morning. My name is Karen Ehrnman and I represent the American College of Nurse-Midwives (ACNM). I have been invited to share with you the difficulties which certified nurse-midwives have in obtaining professional liability insurance coverage.

This testimony will chronicle the extensive yet unsuccessful steps the College has taken on behalf of its members to obtain professional liability insurance. Additionally, I shall describe the obstacles resulting from the decision made by the College to study our options to assist nurse-midwives in establishing an independent mutual insurance company.

The impact of this situation on America's small business community is twofold: approximately one-third of our members are in private practice; another segment of our membership either owns or provides most of the health care in the nation's 140 birth centers. Until now, accredited birth centers have been a success story in the small business world. During the first three years of their operation, only eight to ten percent of these centers fail. By contrast, twelve centers have closed in 1985 -- largely as a result of an inability to obtain professional liability insurance.

As a result of the unavailability of insurance from the private sector, the establishment of an insurance company providing professional liability coverage is the only option available to nurse-midwives. Without this company, nurse-midwives will be forced to end their services to mothers and children across the United States. Birth centers will close and private practitioners will seek other livelihoods.

Background on ACNM

The American College of Nurse-Midwives (ACNM) is the professional organization for nationally certified nurse-midwives (CNMs) in the United States. There are approximately 2,500 members of the ACNM, representing close to 85% of the profession. A full 95% of the members carry some type of professional liability insurance coverage.

Certified nurse-midwives are highly trained health professionals. Educated in both nursing and midwifery, they are specialists in maternal and child health care. They are licensed in all fifty states and provide care to the healthy woman before, during and after childbirth. They are experts in normal gynecologic and family planning care. Each member of the College has been officially certified through a national written examination.

The nurse-midwives work in a variety of settings -- such as private practices, university teaching hospitals, city hospitals, rural outreach centers, group health maintenance organizations, and health departments. Nurse-midwives deliver about three percent of the births in the United States. Approximately 75% of the births attended by certified nurse-midwives occur in hospitals, and another 15% occur in accredited birth centers.

Certified nurse-midwives work in clinical collaboration with physicians. ACNM standards require members to have an alliance agreement and health care protocols with a physician in order to practice. These agreements and protocols establish mechanisms for consultation and referral when complications arise.

ACNM also has reached a formal agreement outlining acceptable guidelines for working relationships with the American College of Obstetricians and Gynecologists.

Details of the Current Insurance Crisis

Since July, 1984, about 1400 CNMs have had professional liability insurance under a blanket ACNM policy written by the Mutual Fire, Marine and Inland Insurance Company. The remaining 1100 members of the College are

insured by their employers -- hospitals, health maintenance organizations, etc.

Mutual Fire notified ACNM in May, 1985 that the policy would not be renewed on July 1, 1985. ACNM's insurance was not renewed because of general conditions in the insurance industry -- the unavailability of reinsurance -- and not because of its members' professional performance. Suits have been filed against only six percent of all nurse-midwives -- a number not considered high among medical professionals. By comparison, 66.9 percent of obstetricians have been sued at least once according to the American College of Obstetricians and Gynecologists. In addition to the non-renewal of the blanket policy, over 300 individual certificates of insurance were cancelled this past July. These cancellations accounted for all of the individual certificates of insurance written after December 31, 1984; the remaining 1100 policies expired by December, 1985.

History of Insurance Coverage

Since the early 1970's, the American College of Nurse-Midwives has been able to obtain for its members a group policy that would pay up to one million dollars per claim. This one million dollar amount of insurance is the

amount which many hospitals require nurse-midwives to purchase in order to qualify for hospital privileges. It is this amount of insurance we want to make available to our members today.

Mutual Fire Marine and Inland Insurance was the third insurance carrier the ACNM has worked with in the past three years. The change in companies has been the result of three separate situations: 1) the inadequacy of the premium rate charged by one company; 2) the second company's withdrawal from the medical malpractice market; and 3) the nonrenewal of the reinsurance treaties for our most recent policy.

Steps Taken to Obtain New Insurance Policy

Early this year when ACNM received word that obtaining the master insurance policy might be difficult, we selected a "seasoned" broker with an excellent history of obtaining professional medical liability insurance. We believed that our broker understood what nurse-midwives are and that he would "market" us appropriately to the insurance industry. In search of a replacement for Mutual Fire we contacted 17 insurance companies in the United States. We were told that this represented most carriers in the U.S. who write professional liability

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large numbers of claims and skyrocketing awards. What was never actually said -- but implied -- was that the premium levels necessary to cover CNMs would be beyond the reach of professionals making an annual salary of \$25,000. Therefore, they offered no coverage at all.

But consumer groups, such as the National Insurance Consumer Organization (NICO), have accused the insurance industry of using misleading statistics in claiming a loss in 1985. Instead, NICO suggests the insurers have earned \$6.6 billion. The ACNM is not an insurance analyst; we do know that nurse-midwives are not part of the malpractice insurance problem because of our very low rate of suits. We believe that it would have been possible for an insurance company to write a policy for nurse-midwives at a reasonable rate and based upon sound actuarial data. In fact, as I shall discuss later in this testimony, our plan is to do just that -- to establish an independent mutual insurance company which will underwrite CNMs at a reasonable rate.

State Level Initiatives

Our next course of action was to send nurse-midwives to talk with professional liability insurance companies in their states. The response was still "no". Nurse-

midwives talked to governors, state legislators, and state insurance commissioners. To date only one state out of fifty -- New Jersey -- has been able to offer insurance from a private carrier.

Still focusing at the state level, nurse-midwives investigated joint underwriting authority (JUA) and lobbied state legislators to extend joint underwriting authority to include nurse-midwives. We have been successful in implementing this in a number of states. However, for the most part, either the premiums for this coverage have been excessive or the amount of insurance offered has been less than required.

Other Considerations

As we evaluated the situation, nurse-midwives had little hope of obtaining affordable insurance from either the traditional insurers or the state JUAs. While these two options had been under consideration, the College's Board of Directors also commissioned a feasibility study on various options for self-insuring. Although this study indicated that it would be "feasible" for nurse-midwives to form an insurance company, the Board of Directors decided last summer that the insurance business

was beyond the limited resources of nurse-midwives. The Board directed the staff of ACNM to look into working with other groups to self-insure or to join another group's self-insure program. The response to these inquiries was also "no", although ACNM continues to communicate with the American Nurses' Association (ANA) about forming a company for all nurses.

Another option involved asking Congress to consider establishing a nurse-midwife sponsored insurance program. At that time we had interested a primary insurer in writing the first layer of insurance coverage. That company would have written the first \$100,000 of coverage and the federal government would have provided the excess coverage from \$100,000 to one million dollars. Even as we discussed this with members of Congress, however, the primary insurer had a change of heart.

The Re-examination of Self-Insure

Consideration of all of the options discussed up to this point utilized an enormous amount of resources. The process also strengthened the resolve of the leaders of the profession that searching for insurance could not become an annual event. Therefore the College's Board of

Directors sought a second opinion on the self-insure options. This second evaluation confirmed the earlier one. In December, 1985, the Board of Directors decided to further study this option.

Forming an Insurance Company

The emotion which accompanied the decision to study helping certified nurse-midwives form an independent mutual insurance company was short-lived. Even after hiring consultants and attorneys, the road blocks before us are enormous.

Disregarding the very difficult financial problems, the following are some of the legal and technical complications which hinder the establishment of a company.

The Claims-Made Policy

One technical problem is the type of policy currently being written -- a claims-made policy. In the past professionals have been able to purchase occurrence policies. There is a very important distinction between these two types of policies -- a distinction which is critical to nurse-midwives as well as physicians.

An occurrence policy insures for all claims arising out of events which occurred during the covered

period regardless of when the claim is filed. A claims-made policy insures only those claims which are filed during the policy year no matter when the event occurred. Does it matter? Yes.

For example, under an occurrence policy issued in February 1986 - February 1987, the nurse-midwife would be covered for any claim related to a delivery during this calendar year, even if the family did not file the claim until the child entered elementary school or even college. A claims-made policy, on the other hand, would only cover those claims filed during the February 86 - February 87 calendar year. To be covered for claims filed after this time period the professional must purchase "tail coverage". What further complicates all of this is that in this insurance market it is impossible to buy a "tail" for 21 years -- the coverage that nurse-midwives and obstetricians need. In addition, insurance companies will not quote a price on a "tail" until it is needed, but we have been told it is likely to be two to three times the cost of a one year premium -- and can be more. We have been told by the insurance industry that primary insurers are switching to claims-made policies be-

cause reinsurers will not write occurrence policies. Reinsurers argue that it is easier to anticipate costs with a claims-made policy.

Regulatory Roadblocks in Forming an Insurance Company

Simply stated, we have been informed by our legal counsel that under the insurance laws of virtually all of the states, a new insurance company could not write insurance unless it became licensed in each of these states. This is a costly and time-consuming process that takes several years -- time we simply do not have. Also, the capital requirements of a few of the states exceed even our collective resources. Our legal counsel has reviewed the situation to see if exemptions from this licensing process exist, but none is available to us due to the number, size and geographic spread of our membership.

In 1981, Congress realized that this almost identical problem existed for small businessmen affected by the lack of product liability insurance, when it enacted the Risk Retention Act. This Act allowed groups of business to form risk retention groups to collectively insure the product liability risks of the members of the group without first becoming licensed as an insurer in any

jurisdiction other than that of the domicile of the risk retention group itself. In 1985, Congress again realized that a similar problem existed when the House and the Senate passed an almost identical bill (which is part of the Super Fund legislation now before Congress) to provide for risk retention groups for environmental impairment liability insurance.

We ask you to provide us with the same type of legislation to permit formation of a risk retention group for professional liability insurance for nurse-midwives and birthing centers.

Nurse-midwives Current Status: Temporary
Insurance Coverage

In considering practicing without insurance, most CNMs, as well as most physicians, feel both a moral and practical obligation to protect their patients and themselves from any unintentional human error. In addition, many CNMs must carry professional liability insurance to retain their employment and/or hospital privileges.

In an attempt to keep practicing, most of our members purchased insurance during this past year from one of two

nursing groups whose policies did not include an exclusion of nurse-midwives. These organizations are the American Nurses' Association (ANA) and the Nurses' Association of the American College of Obstetricians and Gynecologists (NAACOG). The insurers of both of the groups have subsequently written into the policies exclusions of nurse-midwives. An informal survey of our membership indicates that this temporary coverage will begin to run out this spring and by next December no CNMs will have insurance if not provided by their employers or state JUA.

Requested Actions

I am certain you will agree with us that the formation of the insurance company over the next few months is critical. Congress can help. We urge Congress to: amend the 1981 Risk Retention Act; address the problem of the unavailability of reinsurance; and establish the availability of occurrence-type policies.

1) Amend the 1981 Risk Retention Act:

An expansion of this law to allow groups such as ours to establish an insurance company is essential. The idea we seek to implement is after meeting the requirements in a selected state for establishing the company, the company would be able to write insurance in all fifty states. This is the

only way that we will be able to offer insurance to our members in all fifty states.

2) Address the problem of reinsurance unavailability:

Our problem began when Mutual Fire's reinsurance treaties were not renewed. Since then we have heard many insurers state that their capacity to write insurance is limited by the unavailability of reinsurance. A new company also cannot get reinsurance and this substantially increases both short and long term financial risks.

In this regard, the American College of Nurse-Midwives urges you to make reinsurance available. This could be done by legislating the plan for federally-based reinsurance which has been drafted by the National Insurance Consumers Organization, investigating U.S. business practices and legislating changes to encourage the establishment of U.S. owned reinsurance companies.

3) Make occurrence policies available.

Nurse-midwives cannot purchase an occurrence policy. Additionally, in studying the possible formation of a new company, we have been advised that

this company would also have to write a claims-made policy. The reason is that reinsurers will only reinsure the claim-made type policy. This situation must be changed.

Lastly, we need this assistance quickly. Although some private practices and birthing centers have already gone out of business, by spring the vast majority of these small businesses will be vulnerable. Thank you for your support and interest in this problem.

PAGE 8, LINES 8 - Page 9 - line 14;
SEC. 12 AS 21. 28. 030
CSHB 522
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Original sponsors: Sund, Koponen,
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IN THE HOUSE

BY THE LABOR AND
COMMERCE COMMITTEE

SENATE CS FOR CS FOR HOUSE BILL NO. 522 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

FOURTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to an insurance broker's receipt of premium payments, the cancellation or nonrenewal of insurance policies, and the provision of medical malpractice insurance for nurses and nurse midwives."

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

* Section 1. AS 21.27.200(a) is amended read:

(a) Except as provided in (c) of this section,

(1) a [A] broker, as such, is not an agent or other representative of an insurer, and does not have power as a broker to bind the insurer upon any risk or with reference to any insurance contract; and

(2) nothing [. NOTHING] in this section is intended to alter the common law of agency as applied to transactions under this title.

* Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

(c) For purposes of determining an insured's entitlement to coverage, a premium paid to the broker is considered to be received by the insurer, if the payment to the broker is designated for specific coverage from a specifically named insurer and is supported by competent evidence.

* Sec. 3. AS 21.36.210(a) is amended to read:

(a) An insurer may not exercise its right to cancel a policy of personal [AN] automobile insurance [POLICY] except for the following reasons:

1 (1) nonpayment of premium; or
2 (2) the driver's license or motor vehicle registration of
3 either the named insured or of an operator who resides in the same
4 household as the named insured or who customarily operates a motor
5 vehicle insured under the policy has been under suspension or revoca-
6 tion during the policy period or, if the policy is a renewal, during
7 its policy period or the 180 days immediately preceding its effective
8 date.

9 * Sec. 4. AS 21.36.210(d) is amended to read:

10 (d) This section does not apply to

11 (1) the failure to renew a policy, except as to coverage in
12 force for less than 12 months;

13 (2) a policy that has been in effect less than 60 days at
14 the time notice of cancellation is mailed or delivered by the insurer,
15 unless it is a renewal policy;

16 (3) a policy issued under an automobile assigned risk plan
17 or automobile insurance plan;

18 (4) a policy insuring more than four motor vehicles;

19 (5) a policy covering the operation of a garage; automobile
20 sales agency, repair shop, or service station; or public parking
21 place;

22 (6) a policy providing insurance only on an excess basis;

23 (7) any other contract providing insurance to the named
24 insured, even though the contract may incidentally provide insurance
25 with respect to motor vehicles.

26 * Sec. 5. AS 21.36.210(f) is amended to read:

27 (f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not
28 exercise its right to cancel a policy of personal insurance other than
29 personal automobile insurance, except for the following reasons [THE

1 TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDI-
2 TIONS OR CIRCUMSTANCES ARISES]:

3 (1) nonpayment of premiums, including nonpayment of addi-
4 tional premiums, calculated in accordance with the current rating
5 manual of the insurer, justified by a physical change in the insured
6 property or a change in its occupancy or use;

7 (2) conviction of the insured of a crime having as one of
8 its necessary elements an act increasing a hazard insured against;

9 (3) discovery of fraud or material misrepresentation made
10 by the insured or a representative of the insured in obtaining the
11 insurance or by the insured in pursuing a claim under the policy;

12 (4) discovery of a grossly negligent act or omission by the
13 insured that substantially increases the hazards insured against; or

14 (5) physical changes in the insured property that result in
15 the property becoming uninsurable.

16 * Sec. 6. AS 21.36 is amended by adding a new section to read:

17 Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COM-
18 Mercial INSURANCE POLICES. (a) Except as allowed by the director
19 under (b) of this section, an insurer may exercise its right to cancel
20 a policy of business or commercial insurance only for the following
21 reasons:

22 (1) nonpayment of premiums, including nonpayment of addi-
23 tional premiums, calculated in accordance with the current rating
24 manual of the insurer, justified by a physical change in the insured
25 property or a change in its occupancy or use;

26 (2) conviction of the insured of a crime having as one of
27 its necessary elements an act increasing a hazard insured against;

28 (3) discovery of fraud or material misrepresentation made
29 by the insured or a representative of the insured in obtaining the

1 insurance or by the insured in pursuing a claim under the policy;

2 (4) discovery of a grossly negligent act or omission by the
3 insured that substantially increases the hazards insured against;

4 (5) physical changes in the insured property that result in
5 the property becoming uninsurable;

6 (6) physical changes in the operations of the insured that
7 result in the property becoming uninsurable;

8 (7) changes in the reinsurance program of the insurer that
9 results in an increase of the insurer's retention of risk on a subject
10 of insurance;

11 (8) changes in the financial condition of the insurer
12 resulting in a violation of AS 21.12.010;

13 (9) a material change in the law that affects the coverage
14 provided under the policy; or

15 (10) an excessive number of claims by the insured.

16 (b) Before issuing a notice of cancellation, an insurer may
17 request the director to determine in a particular case whether a
18 reason for cancellation not specified in (a) of this section is a
19 valid reason for cancellation. The director may allow the insurer to
20 exercise its right to cancel if the director finds that the cancella-
21 tion is justified. The insurer may not implement the requested can-
22 cellation before receiving the approval of the director.

23 * Sec. 7. AS 21.36.220 is amended to read:

24 Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not
25 exercise its right to cancel a personal insurance policy unless a
26 written notice of cancellation is mailed or delivered to the named
27 insured, at the address shown in the policy, at least 60 [20] days
28 before the effective date of cancellation. However, if [, EXCEPT THAT
29 WHEN] cancellation is for nonpayment of premium, the notice must

1 [SHALL] be mailed or delivered to the named insured at the address
2 shown in the policy at least 10 days before the effective date of
3 cancellation, and must [SHALL] include or be accompanied by a state-
4 ment of the reason for the cancellation. [THIS SECTION DOES NOT APPLY
5 TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR
6 LESS THAN 12 MONTHS.]

7 * Sec. 8. AS 21.36.220 is amended by adding new subsections to read:

8 (b) An insurer may not exercise its right to cancel a policy of
9 business or commercial insurance unless a written notice of cancella-
10 tion is mailed or delivered to the named insured, at the address shown
11 in the policy, and to the agent or broker of record, at least ⁴⁵~~30~~ days
12 before the effective date of cancellation. However, if cancellation
13 is for nonpayment of premium, the notice must be mailed or delivered
14 to the named insured at the address shown in the policy and to the
15 agent or broker of record at least 10 days before the effective date
16 of cancellation, and must include or be accompanied by a statement of
17 the reason for the cancellation.

18 (c) If an insurer cancels a policy under (b) of this section, it
19 shall return or credit any unearned premium to the agent or broker of
20 record or directly to the insured or premium finance company, if
21 applicable, before the effective date of cancellation, except that

22 (1) if cancellation is for nonpayment of premium, any
23 unearned premium must be returned or credited within 45 days after the
24 notice of cancellation is given;

25 (2) if the policy premium is subject to audit the insurer
26 shall perform an audit within 30 days of the effective date of the
27 cancellation and return or credit any unearned premium within 30 days
28 of the completion of the audit.

29 * Sec. 9. AS 21.36.240 is amended to read:

1 Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to
2 renew a personal insurance policy in force for less than 12 months.
3 An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR
4 MORE] unless a written notice of nonrenewal is mailed or delivered to
5 the named insured, at the address shown in the policy, at least 20
6 days for a personal insurance policy, and at least 45 days for a
7 business or commercial insurance policy, before the expiration date of
8 the policy [,] or of the anniversary date of a policy written for a
9 term longer than one year or with no fixed expiration date. This
10 section does not apply

11 (1) if the insurer has in good faith manifested in any way
12 its willingness to renew;

13 (2) in case of nonpayment of premium for the expiring
14 policy; or

15 (3) if the insured fails to pay the premium as required by
16 the insurer for renewal.

17 * Sec. 10. AS 21.36.250 is amended to read:

18 Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automo-
19 bile liability insurance is cancelled, other than for nonpayment of
20 premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A
21 POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [AP-
22 PLIES], the insurer shall notify the named insured of possible eligi-
23 bility for automobile insurance through the automobile assigned risk
24 plan, or automobile insurance plan. The notification must [SHALL]
25 accompany or be included in the notice of cancellation or nonrenewal
26 required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

27 * Sec. 11. AS 21.36.310 is amended to read:

28 Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

29 (1) "business or commercial insurance" means insurance

1 other than personal insurance, life insurance, disability insurance,
2 fidelity and surety insurance, title insurance, or an annuity con-
3 tract;

4 (2) "nonpayment of premium" means failure of the named
5 insured to discharge when due any obligations of the named insured in
6 connection with the payment of premium on a policy, or any installment
7 of the premium, whether the premium is payable directly to the insurer
8 or its agent or indirectly under any premium finance plan or extension
9 of credit;

10 (3) "personal automobile insurance" means insurance not
11 related to business or commercial activities, covering [(2) "POLICY"
12 MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN
13 AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile
14 liability, uninsured/underinsured motorists [COVERAGE, UNINSURED
15 MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automo-
16 bile physical damage [COVERAGE], that is delivered or issued for
17 delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL
18 OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which
19 the insured vehicles are of the following types only:

20 (A) a motor vehicle of the private passenger or sta-
21 tion wagon type that is not used as a public or livery convey-
22 ance, nor rented to others; or

23 (B) any other four-wheel motor vehicle with a load
24 capacity of 1,500 pounds or less that is not used in the occupa-
25 tion, profession, or business of the insured, nor used as a
26 public or livery conveyance, nor rented to others;

27 (4) "personal insurance" does not include an annuity con-
28 tract or a policy of life insurance, disability insurance, or title
29 insurance; the term means personal automobile insurance, or insurance

1 covering

2 (A) loss of or damage to real property that is used
3 predominantly for residential purposes and that does not consist
4 of more than four dwelling units;

5 (B) loss of or damage to personal property, including
6 personal effects, household furniture, fixtures and equipment
7 located in not more than four dwelling units; or

8 (C) legal liability of natural persons for loss of,
9 damage to or injury to persons or property if the insurance does
10 not cover liability arising from or in connection with business
11 or commercial activities;

12 (5) [(3)] "renewal" or "renew" means

13 (A) the issuance and delivery by an insurer of a
14 policy replacing at the end of the policy period a policy previ-
15 ously issued and delivered by the same insurer,

16 (B) the issuance and delivery of a certificate or
17 notice extending the term of a policy beyond its policy period or
18 term, or

19 (C) the extension of the term of a policy beyond its
20 policy period or term under a provision for extending the policy
21 by payment of a continuation premium.

22 * Sec. 12. AS 21.88.050 is amended to read:

23 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
24 corporation shall

25 (1) in the form approved by the director, issue to all
26 physicians, nurses, nurse midwives, and hospitals who are found to be
27 acceptable risks under standards developed under (5) of this subsec-
28 tion, and who pay the premiums for it, a contract or contracts indem-
29 nifying physicians, nurses, nurse midwives, and hospitals and their

1 employees who are health care providers against loss by reason of
2 liability for covered claims for an act or omission in the delivery of
3 professional health care in this state, and agreeing to tender on
4 behalf of the physicians, nurses, nurse midwives, and hospitals and
5 their employees who are health care providers a defense to a covered
6 claim in a proceeding brought under AS 09.55.530 - 09.55.560; the
7 limits of liability for policies issued by the corporation shall be
8 approved by the director; the contract shall cover the defense against
9 but need not indemnify liability for punitive damages arising from a
10 covered claim; at the option of the corporation, if approved by the
11 director, and for an additional premium the contract may cover claims
12 against the physician, nurse, nurse midwife, or hospital that arise
13 out of professional services performed by the physician, nurse, nurse
14 midwife, or hospital for any period before the contract is issued,
15 except that coverage will not be provided for a claim already filed or
16 of which the physician, nurse, nurse midwife, or hospital had or
17 reasonably should have had notice at the time the retroactive insur-
18 ance was purchased;

19 (2) charge a premium for the protection provided by the
20 contracts issued by the corporation which shall be determined by the
21 board of governors in accordance with AS 21.86.080 and subject to the
22 approval of the director;

23 (3) comply with or be subject to AS 21.06.090, 21.06.120,
24 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,
25 21.09.280, AS 21.12.020(b)-(c), AS 21.18, AS 21.21, AS 21.24 and
26 AS 21.36; and shall be exempt from participation as a member insurer
27 in the Alaska Insurance Guaranty Corporation;

28 (4) carry out the obligations of the contracts issued by
29 the corporation by defending all covered claims made against insured

1 health care providers and by paying all liabilities that [WHICH] are
2 finally adjudicated against the insured health care provider or that
3 [WHICH] may in the opinion of the corporation reasonably be expected
4 to be finally adjudicated against the health care provider to the
5 extent of the contract obligation;

6 (5) establish standards for the acceptability of risks; in
7 establishing these standards the corporation may exclude an applicant
8 for insurance based on individual risk selection factors, but may not
9 exclude an applicant based only on the classification of the appli-
10 cant.

11 (b) The corporation may

12 (1) employ or retain persons, individual or corporate, to
13 discharge its obligations and pay reasonable compensation for these
14 services; employees of the corporation are not considered state em-
15 ployees;

16 (2) negotiate for and procure reinsurance from private
17 casualty insurers or reinsurers for any and all liability incurred by
18 contracts issued by it;

19 (3) provide coverage to insureds for other hazards custom-
20 arily included in medical malpractice insurance policies when there is
21 a finding by the director that this coverage is not available to
22 insureds of the Medical Indemnity Corporation of Alaska in the private
23 insurance market at a competitive price;

24 (4) borrow or advance funds necessary to carry out the
25 purposes of the corporation;

26 (5) negotiate and become a party to those contracts as are
27 necessary to carry out the purposes of the corporation;

28 (6) sue or be sued in the name of the corporation;

29 (7) provide risk management advice and services to

1 hospitals;

2 (8) negotiate and become a party to contracts for manage-
3 ment services for the corporation;

4 (9) perform all other acts necessary and proper to carry
5 out the duties of the corporation;

6 (10) in a form approved by the director and for an addition-
7 al premium determined under AS 21.88.080, issue endorsements which
8 provide indemnity for claims not yet reported which arise out of
9 professional services rendered during a period of continuous coverage
10 under the originally issued contract, to physicians, nurses, nurse
11 midwives, and hospitals who pay the premium for it and who are termi-
12 nating their original covered claims contract with the corporation for
13 a period of not less than one year;

14 (11) subject to approval by the director, extend coverage
15 to a person, entity, or facility that renders health care services in
16 the state under the supervision of a physician.

17 * Sec. 13. AS 21.88.900 is amended by adding new paragraphs to read:

18 (17) "nurse" means a nurse licensed under AS 08.68;

19 (18) "nurse midwife" means a registered professional nurse
20 who is certified as an advanced nurse practitioner under AS 08.68.-
21 410(1) and authorized to practice as a nurse midwife under regulations
22 adopted under AS 08.68.

23 * Sec. 14. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.
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28
29

Offered: 4/28/86
Referred: Rules

Original sponsors: Sund, Koponen,
and Gruenberg

1 IN THE HOUSE BY THE JUDICIARY COMMITTEE
2 CS FOR HOUSE BILL NO. 522 (Judiciary)
3 IN THE LEGISLATURE OF THE STATE OF ALASKA
4 FOURTEENTH LEGISLATURE - SECOND SESSION
5 A BILL

6 For an Act entitled: "An Act relating to an insurance broker's receipt of
7 premium payments, the cancellation or nonrenewal of
8 insurance policies, the composition of the board of
9 the Medical Indemnity Corporation of Alaska, and the
10 provision of medical malpractice insurance for nurses
11 and nurse midwives."

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

13 * Section 1. AS 21.27.200(e) is amended read:

14 (a) Except as provided in (c) of this section,

15 (1) a [A] broker, as such, is not an agent or other rep-
16 resentative of an insurer, and does not have power as a broker to bind
17 the insurer upon any risk or with reference to any insurance contract;
18 and

19 (2) nothing [. NOTHING] in this section is intended to
20 alter the common law of agency as applied to transactions under this
21 title.

22 * Sec. 2. AS 21.27.200 is amended by adding a new subsection to read:

23 (c) For purposes of determining an insured's entitlement to
24 coverage, a premium paid to the broker is considered to be received by
25 the insurer, if the payment to the broker is designated for specific
26 coverage from a specifically named insurer and is supported by compe-
27 tent evidence.

28 * Sec. 3. AS 21.36.210(a) is amended to read:

29 (a) An insurer may not exercise its right to cancel a policy of

1 personal [AN] automobile insurance [POLICY] except for the following
2 reasons:

3 (1) nonpayment of premium; or

4 (2) the driver's license or motor vehicle registration of
5 either the named insured or of an operator who resides in the same
6 household as the named insured or who customarily operates a motor
7 vehicle insured under the policy has been under suspension or revoca-
8 tion during the policy period or, if the policy is a renewal, during
9 its policy period or the 180 days immediately preceding its effective
10 date.

11 * Sec. 4. AS 21.36.210(d) is amended to read:

12 (d) This section does not apply to

13 (1) the failure to renew a policy, except as to coverage in
14 force for less than 12 months;

15 (2) a policy that has been in effect less than 60 days at
16 the time notice of cancellation is mailed or delivered by the insurer,
17 unless it is a renewal policy;

18 (3) a policy issued under an automobile assigned risk plan
19 or automobile insurance plan;

20 (4) a policy insuring more than four motor vehicles;

21 (5) a policy covering the operation of a garage; automobile
22 sales agency, repair shop, or service station; or public parking
23 place;

24 (6) a policy providing insurance only on an excess basis;

25 (7) any other contract providing insurance to the named
26 insured, even though the contract may incidentally provide insurance
27 with respect to motor vehicles.

28 * Sec. 5. AS 21.36.210(f) is amended to read:

29 (f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not

1 exercise its right to cancel a policy of personal insurance other than
2 personal automobile insurance, except for the following reasons [THE
3 TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CONDI-
4 TIONS OR CIRCUMSTANCES ARISES]:

5 (1) nonpayment of premiums, including nonpayment of addi-
6 tional premiums, calculated in accordance with the current rating
7 manual of the insurer, justified by a physical change in the insured
8 property or a change in its occupancy or use;

9 (2) conviction of the insured of a crime having as one of
10 its necessary elements an act increasing a hazard insured against;

11 (3) discovery of fraud or material misrepresentation made
12 by the insured or a representative of the insured in obtaining the
13 insurance or by the insured in pursuing a claim under the policy;

14 (4) discovery of a grossly negligent act or omission by the
15 insured that substantially increases the hazards insured against; or

16 (5) physical changes in the insured property that result in
17 the property becoming uninsurable.

18 * Sec. 6. AS 21.36 is amended by adding a new section to read:

19 Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COM-
20 Mercial INSURANCE POLICES. (a) Except as allowed by the director
21 under (b) of this section, an insurer may exercise its right to cancel
22 a policy of business or commercial insurance only for the following
23 reasons:

24 (1) nonpayment of premiums, including nonpayment of
25 additional premiums, calculated in accordance with the current rating
26 manual of the insurer, justified by a physical change in the insured
27 property or a change in its occupancy or use;

28 (2) conviction of the insured of a crime having as one of
29 its necessary elements an act increasing a hazard insured against;

1 (3) discovery of fraud or material misrepresentation made
2 by the insured or a representative of the insured in obtaining the
3 insurance or by the insured in pursuing a claim under the policy;

4 (4) discovery of a grossly negligent act or omission by the
5 insured that substantially increases the hazards insured against;

6 (5) physical changes in the insured property that result in
7 the property becoming uninsurable;

8 (6) physical changes in the operations of the insured that
9 result in the property becoming uninsurable;

10 (7) changes in the reinsurance program of the insurer that
11 results in an increase of the insurer's retention of risk on a subject
12 of insurance;

13 (8) changes in the financial condition of the insurer
14 resulting in a violation of AS 21.12.010;

15 (9) a material change in the law that affects the coverage
16 provided under the policy; or

17 (10) an excessive number of claims by the insured.

18 (b) Before issuing a notice of cancellation, an insurer may
19 request the director to determine in a particular case whether a
20 reason for cancellation not specified in (a) of this section is a
21 valid reason for cancellation. The director may allow the insurer to
22 exercise its right to cancel if the director finds that the cancella-
23 tion is justified. The insurer may not implement the requested can-
24 cellation before receiving the approval of the director.

25 * Sec. 7. AS 21.36.220 is amended to read:

26 Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not
27 exercise its right to cancel a personal insurance policy unless a
28 written notice of cancellation is mailed or delivered to the named
29 insured, at the address shown in the policy, at least 60 [20] days

1 before the effective date of cancellation. However, if [, EXCEPT THAT
2 WHEN] cancellation is for nonpayment of premium, the notice must
3 [SHALL] be mailed or delivered to the named insured at the address
4 shown in the policy at least 10 days before the effective date of
5 cancellation, and must [SHALL] include or be accompanied by a state-
6 ment of the reason for the cancellation. [THIS SECTION DOES NOT APPLY
7 TO THE FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR
8 LESS THAN 12 MONTHS.]

9 * Sec. 8. AS 21.36.220 is amended by adding new subsections to read:

10 (b) An insurer may not exercise its right to cancel a policy of
11 business or commercial insurance unless a written notice of cancella-
12 tion is mailed or delivered to the named insured, at the address shown
13 in the policy, and to the agent or broker of record, at least 60 days
14 before the effective date of cancellation. However, if cancellation
15 is for nonpayment of premium, the notice must be mailed or delivered
16 to the named insured at the address shown in the policy and to the
17 agent or broker of record at least 10 days before the effective date
18 of cancellation, and must include or be accompanied by a statement of
19 the reason for the cancellation.

20 (c) If an insurer cancels a policy under (b) of this section, it
21 shall return or credit any unearned premium to the agent or broker of
22 record or directly to the insured or premium finance company, if
23 applicable, before the effective date of cancellation, except that

24 (1) if cancellation is for nonpayment of premium, any
25 unearned premium must be returned or credited within 45 days after the
26 notice of cancellation is given;

27 (2) if the policy premium is subject to audit the insurer
28 shall perform an audit within 30 days of the effective date of the
29 cancellation and return or credit any unearned premium within 30 days

1 of the completion of the audit.

2 * Sec. 9. AS 21.36.240 is amended to read:

3 Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to
4 renew a personal insurance policy in force for less than 12 months.
5 An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR
6 MORE] unless a written notice of nonrenewal is mailed or delivered to
7 the named insured, at the address shown in the policy, at least 20
8 days for a personal insurance policy, and at least 45 days for a
9 business or commercial insurance policy, before the expiration date of
10 the policy [,] or of the anniversary date of a policy written for a
11 term longer than one year or with no fixed expiration date. This
12 section does not apply

13 (1) if the insurer has in good faith manifested in any way
14 its willingness to renew;

15 (2) in case of nonpayment of premium for the expiring
16 policy; or

17 (3) if the insured fails to pay the premium as required by
18 the insurer for renewal.

19 * Sec. 10. AS 21.36.250 is amended to read:

20 Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automo-
21 bile liability insurance is cancelled, other than for nonpayment of
22 premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A
23 POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [AP-
24 PLIES], the insurer shall notify the named insured of possible
25 eligibility for automobile insurance through the automobile assigned
26 risk plan, or automobile insurance plan. The notification must
27 [SHALL] accompany or be included in the notice of cancellation or
28 nonrenewal required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

29 * Sec. 11. AS 21.36.310 is amended to read:

1 Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

2 (1) "business or commercial insurance" means insurance
3 other than personal insurance, life insurance, disability insurance
4 fidelity and surety insurance, title insurance, or an annuity con-
5 tract;

6 (2) "nonpayment of premium" means failure of the named
7 insured to discharge when due any obligations of the named insured in
8 connection with the payment of premium on a policy, or any installment
9 of the premium, whether the premium is payable directly to the insurer
10 or its agent or indirectly under any premium finance plan or extension
11 of credit;

12 (3) "personal automobile insurance" means insurance not
13 related to business or commercial activities, covering [(2) "POLICY"
14 MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN
15 AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile
16 liability, uninsured/underinsured motorists [COVERAGE, UNINSURED
17 MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automo-
18 bile physical damage [COVERAGE], that is delivered or issued for
19 delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL
20 OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which
21 the insured vehicles are of the following types only:

22 (A) a motor vehicle of the private passenger or sta-
23 tion wagon type that is not used as a public or livery convey-
24 ance, nor rented to others; or

25 (B) any other four-wheel motor vehicle with a load
26 capacity of 1,500 pounds or less that is not used in the occupa-
27 tion, profession, or business of the insured, nor used as a
28 public or livery conveyance, nor rented to others;

29 (4) "personal insurance" does not include an annuity con-

1 tract or a policy of life insurance, disability insurance, or title
2 insurance; the term means personal automobile insurance, or insurance
3 covering

4 (A) loss of or damage to real property that is used
5 predominantly for residential purposes and that does not consist
6 of more than four dwelling units;

7 (B) loss of or damage to personal property, including
8 personal effects, household furniture, fixtures and equipment
9 located in not more than four dwelling units; or

10 (C) legal liability of natural persons for loss of,
11 damage to or injury to persons or property if the insurance does
12 not cover liability arising from or in connection with business
13 or commercial activities;

14 (5) [(3)] "renewal" or "renew" means

15 (A) the issuance and delivery by an insurer of a
16 policy replacing at the end of the policy period a policy previ-
17 ously issued and delivered by the same insurer,

18 (B) the issuance and delivery of a certificate or
19 notice extending the term of a policy beyond its policy period or
20 term, or

21 (C) the extension of the term of a policy beyond its
22 policy period or term under a provision for extending the policy
23 by payment of a continuation premium.

24 * Sec. 12. AS 21.88.030(a) is amended to read:

25 (a) The corporation shall exercise its powers through a board of
26 governors that [WHICH] is appointed by the governor of the state and
27 confirmed by the legislature. Members of the board of governors shall
28 be Alaska residents as follows:

29 (1) three [FOUR] physicians licensed in the state and

1 engaged in private practice in the state; no more than two of the
2 physicians shall practice or live in a municipality having a popu-
3 lation of more than 100,000, and two of the physicians must be indem-
4 nified against loss by reason of liability for an act or omission in
5 the delivery of professional health care by the Medical Indemnity
6 Corporation of Alaska;

7 (2) one nurse or nurse midwife;

8 (3) an administrator or senior executive officer employed
9 by a hospital licensed in the state;

10 (4) [(3)] two professionals from the insurance industry who
11 are authorized or licensed to do business in the state;

12 (5) [(4)] two persons who are not health care providers or
13 financially interested in the field of health care or representatives
14 of the insurance industry.

15 * Sec. 13. AS 21.88.050 is amended to read:

16 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
17 corporation shall

18 (1) in the form approved by the director, issue to all
19 physicians, nurses, nurse midwives, and hospitals who are found to be
20 acceptable risks under standards developed under (5) of this
21 subsection, and who pay the premiums for it, a contract or contracts
22 indemnifying physicians, nurses, nurse midwives, and hospitals and
23 their employees who are health care providers against loss by reason
24 of liability for covered claims for an act or omission in the delivery
25 of professional health care in this state, and agreeing to tender on
26 behalf of the physicians, nurses, nurse midwives, and hospitals and
27 their employees who are health care providers a defense to a covered
28 claim in a proceeding brought under AS 09.55.530 - 09.55.560; the
29 limits of liability for policies issued by the corporation shall be

1 approved by the director; the contract shall cover the defense against
2 but need not indemnify liability for punitive damages arising from a
3 covered claim; at the option of the corporation, if approved by the
4 director, and for an additional premium the contract may cover claims
5 against the physician, nurse, nurse midwife, or hospital that arise
6 out of professional services performed by the physician, nurse, nurse
7 midwife, or hospital for any period before the contract is issued,
8 except that coverage will not be provided for a claim already filed or
9 of which the physician, nurse, nurse midwife, or hospital had or
10 reasonably should have had notice at the time the retroactive
11 insurance was purchased;

12 (2) charge a premium for the protection provided by the
13 contracts issued by the corporation which shall be determined by the
14 board of governors in accordance with AS 21.88.080 and subject to the
15 approval of the director;

16 (3) comply with or be subject to AS 21.06.090, 21.06.120,
17 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,
18 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and
19 AS 21.36; and shall be exempt from participation as a member insurer
20 in the Alaska Insurance Guaranty Corporation;

21 (4) carry out the obligations of the contracts issued by
22 the corporation by defending all covered claims made against insured
23 health care providers and by paying all liabilities that [WHICH] are
24 finally adjudicated against the insured health care provider or that
25 [WHICH] may in the opinion of the corporation reasonably be expected
26 to be finally adjudicated against the health care provider to the
27 extent of the contract obligation;

28 (5) establish standards for the acceptability of risks; in
29 establishing these standards the corporation may exclude an applicant

1 for insurance based on individual risk selection factors, but may not
2 exclude an applicant based only on the classification of the appli-
3 cant.

4 (b) The corporation may

5 (1) employ or retain persons, individual or corporate, to
6 discharge its obligations and pay reasonable compensation for these
7 services; employees of the corporation are not considered state em-
8 ployees;

9 (2) negotiate for and procure reinsurance from private
10 casualty insurers or reinsurers for any and all liability incurred by
11 contracts issued by it;

12 (3) provide coverage to insureds for other hazards custom-
13 arily included in medical malpractice insurance policies when there is
14 a finding by the director that this coverage is not available to
15 insureds of the Medical Indemnity Corporation of Alaska in the private
16 insurance market at a competitive price;

17 (4) borrow or advance funds necessary to carry out the
18 purposes of the corporation;

19 (5) negotiate and become a party to those contracts as are
20 necessary to carry out the purposes of the corporation;

21 (6) sue or be sued in the name of the corporation;

22 (7) provide risk management advice and services to hospi-
23 tals;

24 (8) negotiate and become a party to contracts for
25 management services for the corporation;

26 (9) perform all other acts necessary and proper to carry
27 out the duties of the corporation;

28 (10) in a form approved by the director and for an addition-
29 al premium determined under AS 21.88.080, issue endorsements which

1 provide indemnity for claims not yet reported which arise out of
2 professional services rendered during a period of continuous coverage
3 under the originally issued contract, to physicians, nurses, nurse
4 midwives, and hospitals who pay the premium for it and who are
5 terminating their original covered claims contract with the
6 corporation for a period of not less than one year;

7 (11) subject to approval by the director, extend coverage
8 to a person, entity, or facility that renders health care services in
9 the state under the supervision of a physician.

10 * Sec. 14. AS 21.88.900 is amended by adding new paragraphs to read:

11 (17) "nurse" means a nurse licensed under AS 08.68;

12 (18) "nurse midwife" means a registered professional nurse
13 who is certified as an advanced nurse practitioner under AS 08.68.-
14 410(1) and authorized to practice as a nurse midwife under regulations
15 adopted under AS 08.68.

16 * Sec. 15. AS 21.36.210(c), 21.36.230, and 21.36.300 are repealed.

**STATE OF ALASKA 1986 LEGISLATIVE SESSION
FISCAL NOTE**

Revision Date: _____

REQUEST

Bill/Resolution No.: CSHB 522 (L&C)
 Title: Relating to payment of premiums, cancellation of policies, and medical malpractice insurance for nurse midwives
 Sponsor: Labor & Commerce
 Requester: _____
 Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
 BRU: Insurance
 Components: Public Protection

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
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REVENUE	-0-	-0-	-0-	-0-	-0-	-0-
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FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	-0-	-0-	-0-	-0-	-0-	-0-

ANALYSIS: Attach a separate page if necessary.

Prepared by: John L. George, Director
 Division: Division of Insurance

Phone: 465-2515
 Date: April 14, 1986

Approved by Commissioner: [Signature]
 Agency: Commerce and Economic Development

Date: April 14, 1986

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
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