

HB

46

A M E N D M E N T

TO: CSHB 46(Rules)

Page 16, after line 12:

Insert a new bill section to read:

"* Sec. 31. AS 21.36.090(d) is amended to read:

(d) A person may not practice or permit unfair discrimination against a person who provides a service covered under a group disability policy that extends coverage on an expense incurred basis, or under a group service or indemnity type contract issued by a nonprofit corporation, if the service is within the scope of the provider's occupational license. In this subsection, "provider" means a state licensed physician, dentist, osteopath, optometrist, chiropractor, [OR] nurse midwife, or other licensed health care practitioner."

Renumber remaining bill sections accordingly.

Page 31, line 5:

Delete "46"

Insert "47"

Page 31, line 7:

Delete "46"

Insert "47"

**SECTION BY SECTION COMMENTARY
CSHB 46 (RIs)
4/30/87**

**Prepared by: Alaska Division of Insurance
Date: 5/1/87**

OVERVIEW

This committee substitute encompasses about 13 insurance issues in one "omnibus" bill on insurance issues. Most of the items contained in the bill have, at one time or another, been requested by the Division of Insurance. The Division of Insurance supports this legislation.

The material that follows will attempt to identify each issue addressed by the bill, explain the purpose and to comment section by section.

For ease in tracking the various issues, we have provided page breaks following the commentary on each issue. The issues are:

- General Agents / Managers (Pages 2-3)**
- Continuous License (Pages 4-6)**
- Firm / Individual License (Pages 7-9)**
- Broker Bond (Page 10)**
- Broker as Agent (Pages 11-12)**
- Producer Financial / Fiduciary Accounts (Pages 13-14)**
- Alien Trusts Deposits (Page 15)**
- Commercial Cancellation (Pages 16-19)**
- Pro Rata on Cancellations (Page 20)**
- Nurse Coverage (Page 21)**
- Relocation of Definitions (Page 22)**
- Elimination of Domestic Tax Exemption (Page 23)**
- Removal of Obsolete or Duplicative Provisions (Page 24)**

GENERAL AGENTS / MANAGERS

This issue eliminates confusion with AS 21.09.280, which currently attempts to distinguish between "general agents" who are required to be licensed and "managers" who are not. It is a distinction that has been difficult to apply. The basic role of both entities is often the same, and the Alaska Insurance Code does not adequately make a distinction between the two. The bill eliminates references to managers and requires all general agents to be licensed. It then lists those specific entities that will not be considered general agents.

Section 1. (Page 1, Lines 9-20)

AS 21.09 deals with insurance companies that apply for and are issued a Certificate of Authority. These companies have elected to make themselves subject to regulation by the Alaska Director of Insurance and are referred to as admitted companies. The change in this Section makes it clear that an admitted company may only do business through persons or entities licensed by Alaska including general agents.

Section 2. (Page 1, Lines 21-29; Page 2, Lines 1-16)

This Section removes the references to managers. In §(b), the point that the general agent is licensed in the same manner as an agent licensed under AS 21.27, is clarified. This is a view that the Division has applied in practice, but is more than a little vague in statute.

In §(c), the reference to AS 21.27.500 is removed since its content is incorporated in the next Section.

Section 3. (Page 2, Lines 17-29; Page 3, Line 1-2)

§ (f) in this Section, moves a provision from AS 21.27.500. It provides that salaried employees of an insurance company are not subject to license for their activities on behalf of the insurer, even though that

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activity may have the same appearance as a general agent.

§(g) exempts persons or entities who perform general agent type services for an insurance company when that person or entity is:

- (1) a subsidiary of the insurance company;
- (2) the owner of the insurance company; or
- (3) owned by the holding company that owns the insurance company.

Section 46 (Page 31, Lines 1-4)

This Section includes a repeal of RS 21.27.500, on line 2.

CONTINUOUS LICENSE

This bill introduces a continuous insurance license for agents, brokers, solicitors, adjusters, and general agents, rather than the current system requiring annual renewal. All licensees, however, will still pay an annual fee, and failure to pay will result in revocation or suspension of the license. This change should reduce the paperwork currently handled by the Division.

Section 2. (Page 1, Lines 21-29; Page 2, Lines 1-16)

Continuous license language appears on Page 2, Lines 9-13.

Section 4. (Page 3, Lines 3-10)

Reference to renew is removed on Lines 5 & 6. The change on Lines 9 & 10 is not substantive.

Section 5. (Page 3, Lines 11-28)

RS 21.27.030(a)(1) is a controlled business prohibition. The substance of this paragraph has been moved to Section 6. §(a) is revised to deal with the new applicant. Reference to renewal has been removed.

Section 6. (Page 3, Line 29; Page 4, Lines 1-7)

This addition to RS 21.27.030 addresses the controlled business prohibition on an existing license.

Section 7. (Page 4, Lines 8-29; Page 5, Lines 1-9)

Reference to renewal removed on Page 5, Line 6.

Section 10. (Page 6, Lines 15-29; Page 7, Lines 1-3)

Reference to date of expiration is removed on Page 7, Line 2.

Section 12. (Page 7, Lines 26-29; Page 8, Lines 1-9)

This Section addresses licenses for vending machines that dispense policies of personal travel accident insurance. The only change of substance is that on Page 8, Line 3 where reference to annual continuation and expiration is removed.

Section 13. (Page 8, Lines 10-22)

The references to renewal are addressed on Lines 11-13.

Section 17. (Page 9, Lines 15-19)

The reference to renewal appears on Line 17.

Section 18. (Page 9, Lines 20-26)

The reference to date of expiration is removed on Line 24.

Section 22. (Page 11, Lines 11-27)

This Section has been completely reworked to reflect continuous licenses. In §(a) and §(b), annual fee dates differ in some cases from current renewal dates. Under present law, resident licenses expire on June 30, except for brokers, which expire on December 31. Nonresident agent and brokers expire a year from issue and nonresident adjusters on June 30. The continuation fee proposed would be due on all agents, solicitors, or adjusters on June 30, and all brokers on December 31.

The only other substantive change appears in §(d) where the surcharge for late renewal is established by regulation. This concept is already the case for all other fees of the Division of Insurance.

Section 24. (Page 12, Lines 16-29; Page 13, Lines 1-19)

The reference to refuse to renew is removed on Page 12, Line 18. Surplus lines broker licenses are not being changed to continuous license. This accounts for the inserted language on Lines 19 and 20. This type of licensee is the one that provides entry to the nonadmitted market place and is required to post a \$200,000 bond. Further, producers of business for risk retention groups or risk purchasing groups under the recently passed Federal law must have this type of license. We would prefer to see how things are going to shape up with the new Federal Act before we recommend a change

Section 26. (Page 13, Lines 25- 29; Page 14, Lines 1-7)

References relating to renewal removed.

Section 27. (Page 14, Lines 8-19)

References relating to renewal removed.

Section 28. (Page 14, Lines 20-29)

References relating to renewal removed.

Section 29. (Page 15, Lines 1-7)

Reference relating to expiration removed.

Section 42. (Page 24, Lines 16-22)

Reference relating to renewal removed.

FIRM / INDIVIDUAL LICENSE

This portion of the bill creates a new distinction between individual licenses issued to individual persons, and firm licenses issued to associations of individual licensees. Under current law, persons operating under a firm's license do not typically hold an individual license, but are named to act on the firm license. This renders individual accountability difficult. In some cases there is a constant activity on a firm's license file as individuals are added or deleted.

Also under current law, adjusting firms are not licensed, only individuals. We have experienced situations where firms have ignored Alaska Law to the detriment of the public and individual licensees within the firm. This extends the accountability principle to adjusting firms. It will give the Division of Insurance a better regulatory oversight of the industry by requiring that every person selling or adjusting insurance contracts, whether individual or firm, have the appropriate license.

Section 7. (Page 4, Lines 8-29; Page 5, Lines 1-9)

This Section concerning examination of applicants for insurance license has been changed to apply to individual licensees. Since each individual is licensed it is not necessary to require that a firm be examined. This is accomplished with insertions at Page 4, Line 10 and Page 5, Line 3.

Section 8. (Page 5, Lines 10-29; Page 6, Lines 1-8)

This Section addresses the qualifications for license. It has been modified to make it applicable to individual licensees. The language on Page 6, Lines 1 and 2, avoid additional paperwork by providing that a person acting on behalf of a firm is covered by the firm's appointment.

Section 9. (Page 6, Lines 9-14)

This Section also addresses the qualifications for license. It applies to firm licenses.

Section 10. (Page 6, Lines 15-29; Page 7, Line 1-3)

The only changes of substance in this Section are found on Page 6, Lines 22-25. The distinction between firm and corporation is removed. A definition for firm is introduced in Section 44 on Page 28, Lines 25-28. The only person to be named on a firm license will be the principal or manager of the firm.

Section 11. (Page 7, Lines 4-25)

This Section requires that the firm be licensed to the same extent as persons employed by the firm. Use by a firm of unlicensed persons who are required to be licensed is cause for reuocation or suspension.

Section 14. (Page 8, Lines 23-26)

This Section provides that the firm broker bond covers individual broker members of the firm.

Section 23. (Page 11, Lines 28-29; Page 12, Lines 1-15)

This Section addresses temporary licenses. It provides for a temporary license if the principal or manager should die. This is not a substantive change.

Section 25. (Page 13, Lines 20-24)

Since persons are no longer designated in the license to exercise its powers, the language has been revised to acting on behalf of the firm.

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Section 44. (Page 27, Lines 16-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-16)

Definition of "firm" introduced on Page 28, Lines 25-28.

Section 46. (Page 31, Lines 1-4)

AS 21.27.040(b) is repealed on Line 2. This is the subsection that requires firms to designate all individuals on the firm license.

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Prepared 5/1/87

BROKER BOND

This section proposes to increase the bond required of a broker from the current \$5,000 to \$10,000. The bond is available for the people of the state. The increased bond will have an increased cost, but the amount is not excessive. This is not a Division of Insurance proposal, but we have no objection to it.

Section 14. (Page 8, Lines 10-22)

The increased bond amount appears on Lines 16 and 18.

BROKER AS AGENT

Alaska currently licenses two kinds of insurance producer under AS 21.27, agent and broker. The agent represents an insurance company through appointment and contract. On the other hand, the broker represents the purchaser of insurance. It is typical for an insurance producer to hold both types of license. A purchaser of insurance usually does not know, under which license a producer is acting. Most insurance producers do try to balance the interests of the purchaser of coverage and the provider of coverage, and some do this quite well. Normally this is not an issue of concern, but when a producer becomes insolvent or has misused trust accounts, the issue can be very important.

If an agent collects premium funds for an insurer, the insurer is deemed to have received those funds whether they are sent to the insurer or not. When the insurer sends notice of cancellation for nonpayment of premium, the insured need only show his cancelled check and the coverage will be reinstated.

If a broker misappropriates premium funds, and does not pay them to the insurer or intermediary, and a notice is sent by the company which has not received payment, the coverages are generally not reinstated. The Division has had two major cases of this description and a number of smaller ones, where the public has been hurt. The resolution is to provide that when a broker places coverage which can be evidenced by a binder, issuance of a policy, or some acknowledgement from the insurer or its representative, then the insurer is considered to have received those funds whether it has or not. The broker is considered to be the agent of the company for purposes of premium collection.

An additional issue, is the need to have the producer collecting funds at the initiation of the transaction, clearly state that he is acting as a broker and coverages are not bound until confirmed by an insurer, or to return the funds to the purchaser of coverage.

Section 13. (Page 8, Lines 10-22)

This Section deals with the brokers' bond. One group of persons who could be adversely impacted with "agent as broker", is the wholesale broker or general agent who is in between the producing broker and the insurance company. It is possible that they might bear the financial brunt of this solution. Relief is offered by allowing them to access to the brokers' bond.

Section 15. (Page 8, Lines 27-29; Page 9, Line 1)

This Section makes clear the fact that the broker cannot bind an insurer.

Section 16. (Page 9, Lines 2-14)

This Section establishes the concept of "broker as agent for purposes of premium collection." (d) newly provides that a broker may not knowingly accept payment for coverage until that coverage is authorized by an insurer.

PRODUCER FINANCIAL / FIDUCIARY ACCOUNTS

The Division has been working with the Alaska Association of Independent Insurance Agents and Brokers concerning financial problems with some insurance agents and brokers and their handling of insurance premium monies. To this end, we have aided in developing some clarifications to those sections of the insurance code.

Agents and brokers are required to receive insurance premium monies in a fiduciary capacity. Unfortunately, the first sign that all is not well with an agents' or brokers' fiduciary account is when it is too late. One good indicator of a developing problem would be good accounting records accessible by the Division, which are required with this bill.

The Division has need of tools that can be used to resolve fiduciary and financial difficulties at an earlier point in time. One tool is the ability to review financial summaries or detail, such as trial balance, income statement, journal detail, etc. in a Division of Insurance office for examination when requested. These documents would be confidential.

The clarifications addressed in this issue coupled with the Broker as Agent resolution should maximize protection to insurance purchasers.

Section 19. (Page 9, Lines 27-29; Page 10, Lines 1-9)

This is a new requirement specifically requiring an agent or broker to have accounting and financial records and to maintain them in accordance with generally accepted accounting principles. These records are available for review and are confidential when in the possession of the director.

Section 20. (Page 10, Lines 10-21)

§(b) contains the requirement for a premium fiduciary account. The change clarifies the fact that other funds can not be commingled with

it except as specifically permitted in Section 21.

Section 21. (Page 10, Lines 22-29; Page 11, Lines 1-10)

§(d) permits a limited commingling of nonpremium funds in the fiduciary account for specific premium related purposes. Accounting for nonpremium funds is required.

§(e) makes clear that the premium funds required to be in the fiduciary account can not be used or represented to be asset funds. Funds optionally permitted to be in the fiduciary account, such as reserve funds are an asset of the agent or broker.

§(f) introduces a definition for "fiduciary account."

ALIEN TRUST DEPOSITS

This issue is considered the #1 priority legislative need this session and it relates to the trust fund requirements for alien surplus lines insurers wishing to business in Alaska. An alien insurer is one formed under the laws of a country other than the United States.

At the present time, AS 21.34.040(c) provides that an alien surplus lines insurer must maintain a trust fund for the benefit of policyholders in the United States in an amount not less than \$3.5 million. That \$3.5 million figure is scheduled to increase to \$5 million on June 20, 1987. This portion of the bill would eliminate this scheduled increase and reduce the trust fund requirement to \$1.5 million, the level required before June 20, 1985.

This proposal would avoid the necessity to declare as ineligible, approximately 95% of the alien surplus line companies doing business in the Alaska market. There is a great deal of concern about the reduction of available insurance markets for exposures in this state. If the current language in statute were to be enforced, many insurers who now provide valuable markets would be ineligible for use here. Alaska is out of step with the rest of the country on this issue where the norm is a deposit of \$1.5 million. This proposal does not impact the minimum capital and surplus required of alien insurers.

Section 30. (Page 15, Lines 8-29; Page 16, Lines 1-12)

The language to accomplish the change noted above appears on Page 15, Lines 21-22. Other changes are not substantive.

Section 48. (Page 31, Lines 8-9)

This Section is an immediate effective date for Section 30 only.

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Section 48. (Page 31, Lines 8-9)

This Section is an immediate effective date for Section 30 only.

COMMERCIAL CANCELLATION

AS 21.36.210 - 310 currently places a limitation on an insurance company's right to cancel in mid-term, personal lines of insurance, such as automobile insurance or homeowners insurance. This whole section of law deals with insurer initiated cancellations. The insurance crisis of the past few years, accented the need that this kind of protection should also be provided for commercial policies.

To accomplish this, it is necessary to substantially rework AS 21.36.210 - 310. A number of sections have been relocated and a distinction made between personal insurance and business or commercial insurance. The personal insurance limitation is unchanged except that notice period has been revised. This issue has been the one generating the most fine tuning during the hearing process.

The business or commercial insurance notice is similar to those in many states. This proposal preserves the insurers right to cancel but does require an adequate period of notice, a statement of the reasons for the cancellation, and requires, in most cases, that any unearned premium be returned to the insured before the effective date of cancellation. A notice requirement has been added for an increase of premium at renewal or a change in coverage. Notice must be given prior to expiration.

The normal period of notice for cancellation will be 30 days for personal lines and 60 days for commercial and business insurance policies. Notice for nonpayment will be 20 days. Notice for special reasons such as suspension or revocation of license, conviction of a crime related to the type of coverage provided, and material misrepresentation will have a 10 day notice. Notice of nonrenewal will remain at 20 days for personal insurance and will be 45 days for commercial nonrenewals.

Section 31. (Page 16, Lines 13-24)

No substantive change.

Section 32. (Page 16, Lines 25-29; Page 17, Lines 1-2)

No substantive change. This is merely a relocation of RS 21.36.300. Reference to some exceptions has been deleted since those will be picked up under the commercial or business definition.

Section 33. (Page 17, Lines 3-21)

No substantive change.

Section 34. (Page 17, Lines 22-29; Page 18, Lines 1-9)

This Section lists the notice periods for personal insurance.

Section 35. (Page 18, Lines 10-29; Page 19, Lines 1-29;
Page 20, Lines 1-2)

§(b) of this Section establishes the notice periods for business or commercial insurance.

§(c) requires the return of unearned premium prior to the effective date of cancellation. If the cancellation is for nonpayment, return of unearned premium must occur within 30 days after notice of cancellation is given. Audits on auditable policies must also be made before the effective date of cancellation and unearned premium returned before the expiration of the policy, where the reason for cancellation is other than nonpayment, and some specified exceptions.

While this may cause some difficulty for the insurer, it should be remembered that this speaks to an insurer initiated cancellation. Insurers can use tentative or projected numbers for the period following the notice of cancellation. They often know they are going to cancel, so usually they can also control the audit process. The insured with an auditable policy is entitled to the same protection as an insured with a nonauditable policy. The insurer may elect to waive an audit on cancellation, which is their right currently. If the Division

finds that the waiver is not in the insureds interest, it can require that an audit be made under §(d).

§(d) provides that the Director has the authority to order an audit waived by an insurer under §(c). This would be done when the director believes an insurer is acting unfairly to an insured.

§(e) clarifies that a reason for cancellation will be given in all cases.

Section 36. (Page 20, Lines 3-21)

This section provides for a notice to be given of a premium increase or of a coverage change 20 days before expiration in the case of personal insurance and 45 days before expiration in the case of business or commercial insurance. This does not apply to workers' compensation insurance.

Section 37. (Page 20, Lines 22-29; Page 21, Lines 1-12)

The notice of nonrenewal is unchanged for personal insurance at 20 days. The notice of nonrenewal for business or commercial insurance is 45 days. Failure to give required notice results in continued cover.

Section 38. (Page 21, Lines 13-22)

No substantive change.

Section 40. (Page 22, Lines 10-16)

This section requires that a notice of cancellation be sent to the last known address that the insurer have a post office receipt of mailing.

Section 41. (Page 22, Lines 17-29; Page 23, Lines 1-29;
Page 24, Lines 1-15)

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The definition of "business or commercial insurance" is new. The remainder of the changes in this Section are not substantive. The limit on cancellation will extend to vessels under 50 displacement tons which will cover most of Alaska's fishing fleet.

Section 46. (Page 31, Lines 1-4)

AS 21.36.210(c) is repealed as it is not needed.

AS 21.36.210(e) is repealed because it has been relocated in the definition of "personal insurance" on Page 23, Lines 18-29 and Page 24, Lines 1-4.

AS 21.36.230 is repealed as it is not needed.

AS 21.36.300 is repealed because it has been moved to Section 32.

PRO RATA ON CANCELLATIONS

There are two basic methods of computing return premium on a cancelled policy. In industry parlance, these are referred to as short rate and pro rata. Short rate is used on a cancellation initiated by the insured and has a built-in penalty. Pro rata is used on cancellations initiated by the insurance company and the earned portion of premium is proportionate to the period of coverage. The short rate method of computation is often a cause for complaint because of abuse. Most complaints deal with the size of the penalty provision.

Short rate penalty was originally intended to reflect an expense of the insurer that was, for the most part, beyond the insurers' control. It also provides some protection from severe market disruption. The Division has considered the elimination of short rate by regulation, but authority is vague. We would prefer to continue some form of short rate penalty but be able to address the abuses.

Section 39. (Page 21, Lines 23-29; Page 22, Lines 1-9)

This Section limits the short rate penalty to 7.5% of the unearned premium.

Section 47. (Page 31, Lines 5-7)

This Section makes clear that this new requirement does not affect in-force contracts, thus sidestepping potential constitutional conflicts.

NURSE COVERAGE

This proposal will add nurses to the list of health care professionals who can obtain professional liability insurance from the Medical Indemnity Corporation of Alaska which was formed under AS 21.88 in 1976. This is primarily a backup action since nurses have recently been able to put together a national program that appears to resolve their availability difficulties. The Division of Insurance has no objection to this proposal.

Section 43. (Page 24, Lines 23-29; Page 25, Lines 1-29;
Page 26, Lines 1-29; Page 27, Lines 1-15)

"Nurse" or "nurses", is added on Page 24, Line 27; Page 25, Lines 1, 4, 12, 13, & 16 and on Page 27, Line 9.

RELOCATION OF DEFINITIONS

Definitions in the Insurance Code (Title 21) are found in AS 21.90. In addition, chapters contain definitions that in some cases have a more general application. These should be located in the general definition chapter. The changes in this case are not substantive, but merely represent relocation with one exception, the definition of "firm," which has been already discussed on Page 8-9, under Sections 10 & 44.

Section 44. (Page 27, Lines 16-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-16)

§(1), "adjuster" on Page 27, Lines 19-25, was formerly AS 21.27.510(a).

§(2), "agent" on Page 27, Lines 26-29 and Page 28, Line 1, was formerly AS 21.27.470.

§(5), "broker" on Page 28, Lines 8-15, was formerly AS 21.27.480.

§(11), "firm" on Page 28, Lines 25-28 is new. See discussion on Page 8.

§(13), "independent adjuster" on Page 29, Lines 3-4, was formerly AS 21.27.510(b).

§(20), "solicitor" on Page 30, Lines 2-5, was formerly AS 21.27.490.

Section 45. (Page 30, Lines 17-29)

This Section was formerly AS 21.27.520. No substantive change.

Section 46. (Page 31, Lines 1-4)

AS 21.27.470, AS 21.27.480, AS 21.27.490, AS 21.27.510, & AS 21.27.520 are repealed as discussed in Sections 44 and 45 above.

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REMOVAL OF OBSOLETE OR DUPLICATIVE PROVISIONS

The present Insurance Code was adopted in 1966. At the time of adoption, there were a number of provisions intended to prevent disruption of, then, current activities. These provisions are no longer since some 20+ years have passed and the sections are obsolete. Included in the repeal is a section that duplicates provisions of the ethics bill adopted by the Fourteenth Legislature.

Section 46. (Page 31, Lines 1-4)

RS 21.03.030, RS 21.03.040, AS 21.03.050 and AS 21.06.040 are repealed.

ELIMINATION OF DOMESTIC TAX EXEMPTION

This item proposes to terminate a tax exemption presently granted to a domestic Alaska insurer during its first five years of existence. There is a potential constitutional issue with continuance of the tax exemption. In the past, large national insurance holding companies have taken advantage of this feature and in some cases, there has been a strong question about whether some of those companies were truly domestic Alaska insurers. The Division of Insurance has no objection to this proposal.

Section 46. (Page 31, Lines 1-4)

AS 21.09.210(c) is repealed on Line 3, eliminating the domestic tax exemption.

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Prepared by: Alaska Division of Insurance
Date: 5/1/87

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GENERAL AGENTS / MANAGERS

This issue eliminates confusion with AS 21.09.280, which currently attempts to distinguish between "general agents" who are required to be licensed and "managers" who are not. The distinction is difficult to apply, since definition is unclear. The bill requires all general agents to be licensed, and lists specific exceptions.

CONTINUOUS LICENSE

This bill introduces a continuous license for agents, brokers, solicitors, adjusters, and general agents, to replace annual renewal. All licensees will pay an annual fee with failure to pay resulting in revocation or suspension of license. This change should reduce the paperwork handled by the Division.

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This portion of the bill creates a new distinction between individual licenses issued to individual persons, and firm licenses issued to associations of individual licensees. License will be required for all individuals to provide individual accountability. This principle will also be extended to adjusting firms. We have experienced situations where firms have ignored Alaska Law to the detriment of the public and individual licensees within the firm.

BROKER BOND

This section proposes to increase the bond required of a broker from the current \$5,000 to \$10,000. The bond is available for the people of the state. The increased bond will have an increased cost, but the amount is not excessive.

BROKER AS AGENT

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This proposal provides that when a broker places coverage which can be evidenced by a binder, issuance of a policy, or some acknowledgement from the insurer or its representative, then the insurer is considered to have received those funds whether it has or not. The broker is considered to be the agent of the company for purposes of premium collection.

PRODUCER FINANCIAL / FIDUCIARY ACCOUNTS

The Division has been working with the Alaska Association of Independent Insurance Agents and Brokers concerning financial problems with some insurance agents and brokers and their handling of insurance premium monies. Unfortunately, the first sign that all is not well with an agents' or brokers' fiduciary account, in which he required to receive all premium, is when it is too late. One good indicator of a developing problem would be good accounting records accessible by the Division, which are required with this bill. This tool, coupled with other items in this bill should maximize public protection.

ALIEN TRUST DEPOSITS

This issue is our #1 priority legislative need this session and it relates to the trust fund requirements for alien surplus lines insurers. An alien insurer is one formed under the laws of another country.

Statute now requires that an alien surplus lines insurer maintain a trust fund for the benefit of policyholders in the United States in an amount not less than \$3.5 million. That \$3.5 million figure is scheduled to increase to \$5 million on June 20, 1987. This portion of the bill would eliminate this scheduled increase and reduce the trust fund requirement to \$1.5 million, the level required by the other 49 states.

This proposal would avoid the necessity to declare as ineligible, approximately 95% of the alien surplus line companies doing business in the Alaska market, with resultant reduction of available insurance markets for exposures in this state.

COMMERCIAL CANCELLATION

The insurance crisis of the past few years, accented the need to provide some kind of protection for commercial policies. This proposal preserves the insurers right to cancel but does require an adequate period of notice, a statement of the reasons for the cancellation, and requires, in most cases, that any unearned premium be returned to the insured before the effective date of cancellation. A notice requirement has been added for an increase of premium at renewal or a change in coverage. Notice must be given prior to expiration.

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PRO RATA ON CANCELLATIONS

There are two basic methods of computing return premium on a cancelled policy, which are referred to as pro rata and short rate. Pro rata is used on cancellations initiated by the insurance company and the earned portion of premium is proportionate to the period of coverage. Short rate is used on a cancellation initiated by the insured and has a built-in penalty. The short rate method of computation is often a cause for complaint because of abuse. Most complaints deal with the size of the penalty provision. This proposal places a reasonable limit on the size of the penalty.

NURSE COVERAGE

This proposal will add nurses to the list of health care professionals who can obtain professional liability insurance from the Medical Indemnity Corporation of Alaska. This is primarily a backup since nurses have been able to put together a national program that resolves their availability difficulties.

RELOCATION OF DEFINITIONS

Definitions in the Insurance Code (Title 21) are found in AS 21.90. In addition, chapters contain definitions that in some cases have a more general application. These should be located in the general definition chapter. The changes in this case are not substantive.

ELIMINATION OF DOMESTIC TAX EXEMPTION

This item proposes to terminate a tax exemption presently granted to a domestic Alaska insurer during its first five years of existence. There is a potential constitutional issue with continuance of the tax exemption.

REMOVAL OF OBSOLETE OR DUPLICATIVE PROVISIONS

The present Insurance Code was adopted in 1966. A number of provisions intended to prevent disruption of activities still remain in statute. These provisions are now obsolete. Included in the repeal is a section that duplicates provisions of the ethics bill adopted by the Fourteenth Legislature.

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Prepared 5/1/87

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CONTINUOUS LICENSE

- Section 2. (Page 1, Lines 21-29; Page 2, Lines 1-16)
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- Section 7. (Page 4, Lines 8-29; Page 5, Lines 1-9)
Section 8. (Page 5, Lines 10-29; Page 6, Lines 1-8)
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Section 25.

Section 44. (Page 27, Lines 16-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-16)

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BROKER BOND

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Section 30. (Page 15, Lines 8-29; Page 16, Lines 1-12)

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Section 31. (Page 16, Lines 13-24)

Section 32. (Page 16, Lines 25-29; Page 17, Lines 1-2)

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- Section 40. (Page 22, Lines 10-16)
Section 41. (Page 22, Lines 17-29; Page 23, Lines 1-29;
Page 24, Lines 1-15)
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- Section 39. (Page 21, Lines 23-29; Page 22, Lines 1-9)
Section 47. (Page 31, Lines 5-7)

NURSE COVERAGE

- Section 43. (Page 24, Lines 23-29; Page 25, Lines 1-29;
Page 26, Lines 1-29; Page 27, Lines 1-15)

RELOCATION OF DEFINITIONS

- Section 44. (Page 27, Lines 16-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-16)

§(1), "adjuster" on Page 27, Lines 19-25, was formerly AS 21.27.510(a).

§(2), "agent" on Page 27, Lines 26-29 and Page 28, Line 1, was formerly AS 21.27.470.

§(5), "brcker" on Page 28, Lines 8-15, was formerly AS 21.27.480.

§(11), "firm" on Page 28, Lines 25-28 is new. See discussion on Page 8.

§(13), "independent adjuster" on Page 29, Lines 3-4, was formerly AS 21.27.510(b).

§(20), "solicitor" on Page 30, Lines 2-5, was formerly AS 21.27.490.

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Section 45. (Page 30, Lines 17-29)

Section 46. (Page 31, Lines 1-4)

ELIMINATION OF DOMESTIC TAX EXEMPTION


Section 46. (Page 31, Lines 1-4)

REMOVAL OF OBSOLETE OR DUPLICATIVE PROVISIONS

Section 46. (Page 31, Lines 1-4)

MEMORANDUM

TO: Senate Labor and Commerce Committee

FROM: American Insurance Association, Thomas J. Slagle 

RE: CSHB46

DATE: May 6, 1987

The American Insurance Association, represents 171 property/casualty insurance companies in the United States. The AIA supports legislation on cancellation and non-renewal of commercial policies that will both provide reasonable protection for the commercial insurance consumers and provide companies with the flexibility they need to react to changes affecting individual risks.

There are several changes to HB46 that the AIA believes will improve the legislation, and that we urge you to consider. These concerns include:

Failure to Renew § 37

Historically, there has been no notice requirement for non-renewal of commercial policies. HB46 calls for a forty-five (45) day non-renewal notice on commercial and business policies. We suggest that a jump from no requirement to forty-five (45) days will place an unnecessary burden on the insurer, and will not serve the consumer. In other states which have a forty-five (45) day requirement for non-renewal notice, there simply has been massive non-renewal mailouts. We recommend that the period for non-renewal notice on business or commercial policies be shortened from forty-five (45) days to thirty (30) days (see page 20, line 29.)

The House Judiciary Committee incorporated a "rolling" provision which provides that "if notice of non-renewal is not given as required by this section, the existing policy shall continue until the insurer provides notice for the time period required by this section for that policy." We believe that this provision will benefit both the consumer and the insurer. The AIA would like,

Memorandum to Senate Labor and Commerce Committee
May 6, 1987
Page Two

in addition to that provision, that "earned premium for any period of coverage that extends beyond the expiration date shall be considered prorata based upon the previous year's rate." As a matter of equity, an insurer should not have to provide coverage without a premium return. (See page 21, line 6.)

Cancellation of Auditable Policies - § 35(c)(2)

This section requires the insurer to perform, or waive the audit before the effective date of cancellation and return or credit any estimated unearned premium before the effective date of cancellation. With many auditable policies, it is virtually impossible to perform an audit prior to cancellation, in particular if the policy premium is based on payroll or sales receipts. The AIA is concerned that if the returned premium is not adequate, that the courts may construe the cancellation to be ineffective. Taking into consideration the consumer's need for a return of premium to obtain a replacement policy, and the insurers' concerns with this section, the AIA suggests the following language: "Upon return or credit of the estimated unearned premium, the insurer or insured may request a post cancellation audit. Failure of the insurer to return the precise amount of unearned premium prior to completion of the audit shall not invalidate the cancellation." (See page 19, line 26.)

We would be willing to work with the Committee to implement these changes.

TJS#2:mb:59

FAMILY CARE CENTER

CLINIC DIRECTOR
Cary Jasper N.D.
Doctor of Naturopathic Medicine

MIDWIFERY DIRECTOR
Sherr Holley
Midwife

HIB-46

MAY 5 1987



May 4, 1987

Dear Senators Kelly and Uehling,

As you can see from the attached letter from Aetna, some insurance companies are discriminating against licensed Naturopathic Doctors because we are not specifically listed in A.S. 21.36.090 paragraph D.

Paragraph D was passed into law in 1984. The Naturopathic Licensing law was not passed until 1986, hence we were not listed. A.S. 21.36.090 paragraph D received no negative votes in either the House or Senate. Adding Naturopaths to the list of protected providers is not a controversial issue and will be greatly appreciated by the many policy holders who are being denied freedom of choice.

Please amend H.B. 46 to include Naturopaths in the list of providers in A.S. 21.36.090 paragraph D.

Thank you for your time and consideration.

Sincerely,

Cary Jasper N.D.

P.S. Don Koch of the Insurance Division supports this change. However, as per his request, we ask for this amendment ONLY if there will be other changes made requiring the House to concur. It is not our desire to slow this bill down if no other changes are planned.

PROPOSED AMENDMENT TO HB 46, "An Act relating to regulation of insurance; and providing for an effective date."

by SENATOR ABOOD

AS 21.36.090(d) is amended to read:

(d) A person may not practice or permit unfair discrimination against a person who provides a service covered under a group disability policy that extends coverage on an expense incurred basis, or under a group service or indemnity type contract issued by a nonprofit corporation, if the service is within the scope of the provider's occupational license. In this subsection, "provider" means a state licensed physician, dentist, osteopath, optometrist, chiropractor, naturopath, or nurse midwife.



January 6, 1987

C. Jasper, N D
1046 Mila
Anchorage, Alaska 99504

Dear Dr. Jasper:

In response to your inquiry concerning payments made by Aetna for services rendered by licensed naturopaths, under our standard medical insurance policies, such services would not be covered. Alaska statues 21.36.090, which sets forth unfair provider discrimination prohibitions, does not include naturopaths as a protected provider and therefore, Aetna does not recognize naturopaths as a covered provider.

Recent legislation in Alaska instituting licensing procedures for naturopaths did cause temporary confusion in our office and resulted in some claims for naturopathic services being benefitted in error. Because those payments were the result of our error, no effort will be made to recover those erroneous payments. However, we will not issue benefits for such services after December 30, 1986, since they are not covered under our policies.

We apologize for any inconvenience that may have been caused by this situation and regret that our decision on this claim could not have been more favorable to you.

If you have any further questions, please respond in writing and we will get back to you as soon as possible.

Sincerely,

Tana Witty
Cost Containment Consultant
Employee Benefits Division - Claim Dept.
Aetna Life Insurance Company

TW/ml

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We apologize for any inconvenience that may have been caused by this situation and regret that our decision on this claim could not have been more favorable to you.

If you have any further questions, please respond in writing and we will get back to you as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Tana Witty".

Tana Witty
Cost Containment Consultant
Employee Benefits Division - Claim Dept.
Aetna Life Insurance Company

TW/ml

CSHB 46 (Rules) is amended as follows:

- (1) p 31, lines 1 and 2
delete AS 21.09.210(c)
- (2) p 1, lines 9 through 12 insert the following:

Section I. AS 21.09.210(c) is amended to read:

Section 21.09.210(c). A domestic company which has filed with the division by July 1, 1987 for approval to organize is exempt from taxation under this section until ~~July 1, June 30~~ 1989. AS 21.09.210(c) is repealed effective July 1, 1989.

- (3) Renumber subsequent sections accordingly.

whichever
occurs
first.

for a period
of no more
than five
years from the
date of its
organization or

~~45 days~~
~~Pro-rated after~~
~~liquidation~~
~~audit/liquidation~~
~~incurs gets~~
~~a premium~~

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than five
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CS HB 46 (Rules)

Time Periods in Bill

10 days	Notice of cancellation by insurer due to insured's license suspension or revocation, conviction of a crime or fraud or misrepresentation. Page 18, Lines 5 and 27.		
20 days	Notice of cancellation by insurer due to nonpayment of premium or withholding of information needed to determine premium. Page 18, Lines 2 and 20.	Notice of policy or coverage change upon renewal of a personal line of insurance. Page 20, Line 12.	Notice of nonrenewal personal line of insurance. Page 20, Line 28.
30 days	Return of unearned premium after cancellation notice if cancellation is due to nonpayment of premium, license suspension or revocation, conviction of a crime, fraud or misrepresentation or withholding of information. Page 19, Line 5.	Notice of cancellation of a personal line of insurance by insurer. Note exceptions under 10 days and 20 days. Page 17, Line 27.	
45 days	Notice of policy or coverage change upon renewal of a commercial or business insurance policy. Page 20, Line 14.	Notice of nonrenewal of a commercial or business insurance policy. Page 20, Line 29.	
60 days	Permissible period for cancellation of personal auto policy -- if less than 60 days old. Page 16, Line 29.	Notice of cancellation of a commercial or business insurance policy by insurer. Note exceptions under 10 days and 20 days. Page 18, Line 14.	

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE HOUSE

2 HOUSE BILL NO. 304

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

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

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

8 * Section 1. AS 21.36.090(d) is amended to read:

9 (d) A person may not practice or permit unfair discrimination
10 against a person who provides a service covered under a group disabili-
11 ty policy that extends coverage on an expense incurred basis, or
12 under a group service or indemnity type contract issued by a nonprofit
13 corporation, if the service is within the scope of the provider's
14 occupational license. In this subsection, "provider" means a state
15 licensed physician, dentist, osteopath, optometrist, chiropractor,
16 [OR] nurse midwife, or other licensed health care practitioner.

MEMORANDUM

TO: Mark Johnson c/o Senator Tim Kelly
FROM: Thomas J. Slagle *TJS* American Insurance Association
RE: Meeting April 23, 1987 - 1:00 p.m.
DATE: April 22, 1987

As discussed in our telephone conversation, Steve Young from the AIA's San Francisco office will be with me for our meeting tomorrow. Steve's main purpose in coming to Juneau is simply to meet some of the key people in the legislative process. We would also like to discuss concerns with HB46, the so-called omnibus insurance bill, and HB36, which is currently in the Senate Labor and Commerce Committee.

I look forward to our meeting.

TJS:mb:29

Thomas J. Slagle, Esq.
(907) 586-3340