HB

425

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

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February 24, 1992

The Honorable Dave Donley
Alaska House of Representatives
Room 122, Capitol
P.O. Box V
Juneau, Alaska 99811

re: HB 425

Dear Representative Donley,

The enclosed article appeared in the February 10, 1992 issue of "Insurance Week." As you can see other states are going through the same process we are and are very aggressive about it.

Of particular concern is the highlighted portion at the end of the article which points out that Washington "could be in even better shape - and ahead of its insurance-department brethren in the West - by the end of the summer." Alaska already loses a significant amount of its market to Outside brokers and we hope to reverse that trend with the passage of HB 425 and the national accreditation which the bill will allow us to seek.

Your committee is, of course, very busy with many pieces of critical legislation. However, prompt consideration of HB 425 will allow us to get a spot on the NAIC accreditation team's schedule for this year. Delay may mean that we will not be on the schedule for this year, thus fulfilling the prophecy of the Washington department to the detriment of Alaskan businesses and consumers.

Please consider early scheduling and passage of HB 425. As always, if you have any questions or if I can ever be of service, please do not hesitate to contact me.

Sincerely,

Dave Walsh

David J. Walsh

If Legislation Passes, Accreditation Could Come by Late Summer

Wash. DOI Aims for Billing as Part of NAIC's Solvency Police

By Richard Rambeck
Editor

OLYMPIA, Wash. — It is a process that could contain all the rigors of a doctoral dissertation combined with the pain and suffering of a root canal.

Bring it on, says the Washington Department of Insurance, rigor, pain, suffering and all. The DOI is gearing up to have its operations, procedures, regulations — heck, even its working papers — placed under a microscope by a team stone-turners from the National Association of Insurance Commissioners.

The Washington DOI is aiming to receive the NAIC stamp of approval and membership in the association's Financial Regulation Standards and Accreditation Program, designed to give state insurance departments the regulatory mechanisms and teeth to effectively monitor insurer solvency.

"Frankly," says Washington Insurance Commissioner Richard Marquardt, sounding a bit like a man facing a three-foot-long needle filled with Novocain, "we want it, we need it, we want to get it done."

They are about six months, one piece of legislation and a passing grade on the onerous NAIC exam away from getting with the program. Optimism is reasonably high at the DOI that the department will soon join the nine states currently accredited in the NAIC's insurer-solvency-regulation program.

None of those states is in the West, and Washington seems the best bet from the region to be the first to obtain thumbs up from the NAIC. But despite the appearance of being a little ahead of the game, Washington DOI officials know that time is of the essence.

After Jan. 1, 1994, states that have been accredited by the NAIC will no longer accept the results of financial-solvency examinations conducted by non-accredited states. As such, carriers domiciled in non-accredited states could be refused authority to sell insurance in accredited states or be subject to reaudit, likely at the insurers' expense, by accredited states.

The key element for most states in the accreditation process is passing legislation to establish minimum NAIC financial-regulation standards. Some Western states — Oregon, Montana and Nevada — won't have legislative sessions in 1992, which essentially means that those states face in all-or-nothing fight during the 1993 lawmaking session to get the needed statutes in place for NAIC accreditation time to meet the Jan. 1, 1994, deadline.

Fortunately for the Washington DOI, the state Legislature convenes in 1992 and 1993, providing two opportunities to pass the necessary bill. But Scott Jarvis, deputy insurance commissioner and legislative liaison, wants to get it done this session.

"We don't want to wait another year," Jarvis said. "If we miss something, we have a year to fine-tune it" with legislation in 1993.

The DOI has introduced a 144-page bill — "most of it is existing law with amendments added," Jarvis says — that, if passed, would bring the Washington department up to speed on the 19 areas of laws and regulations that encompass the NAIC financial standards.

Of those 19, the DOI is asking for statutorial revision of 11, including regulations relating to holding companies, producer-controlled property/casualty insurers, reinsurance intermediaries, managing general agents, exams and examination authority, capital and surplus requirements, risk limitation, valuation of investments, receiverships, liabilities and reserves, and risk retention.

Marquardt says he tells legislators that the crux of the bill's provisions is to "keep money in the company where it belongs," so that when the need arises, claims can be paid.

Roger Polzin, deputy insurance commissioner in charge of management services, says the bill has no fiscal impact during the current biennium. (During the next biennium, the DOI would need funds to hire three additional examiners.)

At this point, the department's legislation has "no opposition that we know of to the concept," Jarvis says, explaining that some specific elements of the bill may require negotiation, but that the DOI will attempt to adhere as closely as possible to the NAIC standards.

"The industry has been generally supportive," Jarvis says. "There's no logical reason it shouldn't go through."

Logic and legislatures, however, often are mutually exclusive, but DOI staffers at this point are expecting to be able to welcome an NAIC review team to Olympia sometime this summer.

If the review team does come to Olympia — something that won't happen if the bill doesn't pass — the DOI's examination practices and procedures, as well as the quality and quantity of its financial-examination staffing will be probed in depth.

"We're fortunate to be in good shape in these areas," Polzin said.

If all goes well, the Washington DOI could be in even better shape — and ahead of its insurance department brethren in the West — by the end of the summer.

InsuranceWeek FEB 10, 1992 P13

MEMORANDUM

State of Alaska

TO: Dave Walsh
Director
Division of Insurance

DATE: February 21, 1992

SUBJECT: Amendments
SB 376

FROM: Stan Garlington
Insurance Market Analyst
Division of Insurance
Department of Commerce
and Economic Development

Summary of Proposed Changes

Third Party Administrator Registration
The American Council of Life Insurers requested that third party administrators be licensed more in line with the NAIC Model Third Party Administrator Statute rather than as managing general agents. The division was able to develop acceptable consensus language for third party administrator registration Changes 1, 3, 4, 7, 9, 10, 11, 17, and 19 impliment this addition.

Attorney-in-fact License
Concern expressed regarding the lack of specifics in the proposed bill has been addressed by providing licensing procedures and qualifications. The effective date of the license requirement has been changed to 1/1/94 to accommidate a smooth transition. Changes 13, 14, and 20.

Premium Refund
Language is clarified that the 30 days begins 30 days from receipt of the request for cancellation or the effective date of cancellation, which ever is later. Change 12.

Mandatory Appraisal
Language is changed to address legislative concerns and public testimony before House Labor and Commerce. Change 15.

Misc Cleanup
Changes 2, 5, 6, 8, 16 and 18

DOI
2/21/92

AMENDMENT

OFFERED IN THE SENATE
TO: SB 376

1. Page 34, line 23, after "who":

Insert: "for residents of this state, or for residents of another jurisdiction from a place of business in this state, performs administrative functions such as claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance only in regard to life insurance, disability insurance, or annuities is not required to be additionally licensed as a managing general agent if the person is registered under this chapter as a third party administrator or only investigates and adjusts claims and is licensed under this chapter as an independent adjuster."

Delete: "performs administrative functions, including claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance in regard to insurance as a third-party administrator shall be licensed as a managing general agent unless the person only investigates and adjusts claims and is licensed under this chapter as an independent adjuster."

2. Page 66, line 30, after "bond"

Delete "with admitted insurers authorized to transact surety insurance"

3. Page 73, line 8,

Insert: "Sec.___. AS 21.27 is amended by adding a new section to read:

ARTICLE 4. THIRD PARTY ADMINISTRATORS.

Sec. 21.27.640. REGISTRATION REQUIRED. (a) A person may not act as or represent to be a third party administrator in this state or relative to a subject resident, located, or to be performed in this state unless registered under this chapter or by another juridiction under AS 21.27.660. A person may not act as or represent to be a third party administrator representing an insurer domiciled in this state regarding a risk located outside this state unless registered by this state.

(b) A third party administrator may not transact business for a kind or class of insurance for which the person is not registered.

(c) A person who performs administrative functions, including claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance in regard to insurance as a third party administrator shall be registered as a third party administrator unless the person only investigates and adjusts claims and is licensed under AS 21.27 as an independent adjuster.

(d) A third party administrator may not use a fictitious name or alias unless the licensee's legal name and fictitious name or alias are on the registration.

(e) A person who is an employee of an admitted insurer, who acts within the course and scope of that employment, and within the scope of the insurer's certificate of authority is not required to be registered under this section.

(f) A person who performs management services for an admitted insurer is not required to be registered as a third party administrator if the person's compensation is not based on the volume of premium written and the person

(1) is a wholly-owned subsidiary of the admitted insurer;

(2) wholly owns the admitted insurer;

(3) is a wholly-owned subsidiary of the insurance holding company that owns or controls the admitted insurer;

(4) is a United States manager of the United States branch of an alien admitted insurer; or

(5) is the manager of a group, association, pool, or organization of admitted insurers that does joint underwriting if it is subject to examination by the authorized insurance regulator in the state in which the person's principal place of business is located.

(g) A credit union or a financial institution subject to supervision or examination by federal or state banking authorities, or a mortagage lender, that performs no functions other than advancing premiums to the insurer and collecting a debt from the insured is not required to be registered as a third party administrator

(h) A credit card issuing company that performs no functions, including adjustment or settlement of claims, other than advancing and collecting premiums from its credit card holders who have authorized collection is not required to be registered as a third party administrator

(i) A person who exclusively provides services to bona fide employee benefit plans that are established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted under the Employee Retirement Income Security Act of 1974, is not required to be additionally registered as a third party administrator if the person certifies to the director on or before February 1 of each year its exempt status.

(j) A third party administrator shall

(1) apply for registration under the procedures of AS 21.27.040;

(2) renew its registration under the procedures of AS 21.27.380; and

(3) be subject to hearings and orders on violations; denial, nonrenewal, suspension, or revocation of registration; penalties; and surrender of registration under the procedures of AS 21.27.405-21.27.460;

Sec. 21.27.650. THIRD PARTY ADMINISTRATOR QUALIFICATIONS. (a) For the protection of the people of this state, the director may not issue or renew a registration except in compliance with this chapter and may not issue a registration to a person, or to be exercised by a person, found by the director to be untrustworthy, incompetent, financially irresponsible, or

who has not established to the satisfaction of the director that the person is qualified under this chapter.

(b) To qualify for issuance or renewal of a registration, an applicant or registrant shall comply with this title and

(1) be a trustworthy person;

(2) have active working experience in administrative functions which, in the director's opinion, exhibits the ability to competently perform the administrative functions of a third party administrator;

(3) not have committed an act that is a cause for denial, nonrenewal, suspension, or revocation of a registration in this state or another jurisdiction;

(4) if a corporation or partnership,

(A) maintain a lawfully established place of business as described in AS 21.27.330 in this state, except as provided in AS 21.27.270;

(B) disclose to the director all officers, directors, or partners, and whether or not they are licensed in this state or another jurisdiction;

(C) designate an officer or partner responsible for the firm's compliance with the insurance statutes and regulations of this state.

(5) provide in or with its application

(A) all basic organizational documents of the third party administrator, including any articles of incorporation, articles of association, partnership agreement, trade name certificate, trust agreement, shareholder agreement and other applicable documents and all endorsements to such documents;

(B) the bylaws, rules, regulations or similar documents regulating the internal affairs of the administrator;

(C) the names, mailing addresses, physical addresses, official positions, and professional qualifications of persons who are responsible for the conduct of affairs of the third party administrator; including all members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of partnership or association;

shareholders holding directly or indirectly 10 per cent or more of the voting securities of the third party administrator; and any other person who exercises control or influence over the affairs of the third party administrator;

(D) certified financial statements for the prior two years prepared by an independent certified public accountant which establish that the applicant is solvent, that the applicant's system of accounting, internal control, and procedure is operating effectively to provide reasonable assurance that money is promptly accounted for and paid to the person entitled to the money, and any other information that the director may require to review the current financial condition of the applicant; and

(E) a statement describing the business plan including information on staffing levels and activities proposed in this state and in other jurisdictions and providing details establishing the third party administrator's capability for providing a sufficient number of experienced and qualified personnel in the areas of claims handling, underwriting, and record keeping;

(6) provide to the director documents necessary to verify the statements contained in or in connection with the application;

(7) notify the director within 30 days in writing by certified mail of a change in principal or manager, residence, place of business, mailing address, phone number; suspension or revocation of an insurance license or registration by another state or jurisdiction; or a conviction of a misdemeanor or felony of the third party administrator, its officers, directors, partners, owners, or employees; and

(8) provide the director on January 1, April 1, July 1, and October 1 of each year

(A) a list of current employees, identifying those transacting business in this state or upon subjects resident, located or to be performed in this state;

(B) a list of current insurers under contract; and

(C) other information the director may require.

(c) The director may adopt regulations establishing additional education or experience requirements for applicants or registrants under this chapter.

(d) The director may require that a third party administrator maintain

(1) a bond as described in AS 21.27.190 in an amount acceptable to the director and conditioned in that the third party administrator will conduct business as required by this title; and

(2) an errors and omissions insurance policy acceptable to the director.

(e) If the director finds that the applicant or registrant is qualified and that application, registration, or renewal fees have been paid, the director may issue or renew the registration.

Sec. 21.27.660. OPERATING REQUIREMENTS FOR THIRD PARTY ADMINISTRATORS. (a) An insurer may not transact business with a third party administrator unless

(1) the insurer holds a certificate of authority in this state;

(2) the third party administrator is registered under this chapter or, when the third party administrator is operating only for a foreign insurer, is registered as a third party administrator by the third party administrator's resident insurance regulator in a state that the director has determined has enacted provisions substantially similar to those contained in AS 21.27.640 - 21.27.660 and that is accredited by the National Association of Insurance Commissioners, if the third party administrator provides the director on January 1, April 1, July 1, and October 1 of each year

(A) a list of current employees, identifying those transacting business in this state or upon subjects resident, located or to be performed in this state;

(B) a list of current insurers under contract; and

(C) other information the director may require.

(3) a written contract is in effect between the parties that establishes the responsibilities of each party, indicates both party's share of responsibility for a particular function, and specifies the division of responsibilities;

(4) a written contract between an insurer and a third party administrator contains the following provisions:

(A) the insurer may terminate the contract for cause upon written notice sent by certified mail to the third party

administrator and may suspend the underwriting authority of the third party administrator during a dispute regarding the cause for termination; but the insurer must fulfill all lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the third party administrator.

(B) the third party administrator shall render accounts to the insurer detailing all transactions and remit all money due under the contract to the insurer at least monthly;

(C) all money collected for the account of an insurer shall be held by the third party administrator in a fiduciary account as described under AS 21.27.360;

(D) the third party administrator shall comply with all applicable fiduciary account statutes and regulations;

(E) a fiduciary account shall be used for all payments on behalf of the insurer;

(F) the third party administrator may not retain more than three months estimated claims payments and allocated loss adjustment expenses;

(G) the third party administrator shall maintain separate records for each insurer in a form usable by the insurer; the insurer or its authorized representative shall have the right to audit and the right to copy all accounts and records related to the insurer's business; the director, in addition to authority granted in this title, shall have access to all books, bank accounts, and records of the third party administrator in a form usable to the director; any trade secrets contained in books and records reviewed by the director, including the identity and addresses of policyholders and certificateholders, shall be kept confidential, except that the director may use the information in a proceeding instituted against the third party administrator or the insurer.

(H) the contract may not be assigned in whole or in part by the third party administrator;

(I) if the contract permits the third party administrator to do underwriting, the contract must include the following:

(i) the third party administrator's maximum annual premium volume;

(ii) the rating system and basis of the rates to be charged;

(iii) the types of risks that may be written;

(iv) maximum limits of liability;

(v) applicable exclusions;

(vi) territorial limitations;

(vii) policy cancellation provisions;

(viii) the maximum policy term; and

(ix) that the insurer shall have the right to cancel or not renew a policy of insurance subject to applicable state law;

(J) if the contract permits the third party administrator to settle claims on behalf of the insurer, the contract must include the following:

(i) written settlement authority must be provided by the insurer and may be terminated for cause upon the insurer's written notice sent by certified mail to the third party administrator or upon the termination of the contract, but the insurer may suspend the settlement authority during a dispute regarding the cause of termination;

(ii) claims shall be reported to the insurer within 30 days;

(iii) a copy of the claim file shall be sent to the insurer upon request or as soon as it becomes known that the claim has the potential to exceed an amount determined by the director or exceeds the limit set by the insurer, whichever is less; involves a coverage dispute; may exceed the third party administrator's claims settlement authority; is open for more than six months; involves extra contractual allegations; or is closed by payment in excess of an amount set by the director or an amount set by the insurer, whichever is less;

(iv) each party to the contract shall comply with unfair claims settlement statutes and regulations;

(v) transmission of electronic data must occur at least monthly if electronic claim files are in existence; and

(vi) claim files shall be the sole property of the insurer; upon an order of liquidation of the insurer, the third party administrator shall have reasonable access to and the right to copy the files on a timely basis;

(K) the contract may not provide for commissions, fees, or charges contingent upon savings effected in the adjustment, settlement, and payment of losses covered by the insurers obligations; but a third party administrator may receive performance-based compensation for providing hospital or other auditing services or may receive compensation based on premiums or charges collected or the number of claims paid or processed;

(L) if the insurer is domiciled in this state or the third party administrator has a place of business in this state, a copy of the contract must be filed with and approved by the director at least 30 days before the third party administrator transacts business on behalf of the insurer; and

(M) if the contract is not required to be approved in advance by the director, the insurer shall provide written notification to the director within 30 days of the entry into or termination of a contract with a third party administrator; the notice must include a statement of duties to be performed by the third party administrator on behalf of the insurer, the kinds and classes of insurance for which the third party administrator has authorization to act, and other information required by the director.

(b) If the contract provides for the third party administrator to receive or collect premiums, payment by or on behalf of the insured of premiums for insurance to the third party administrator shall be deemed to have been received by the insurer; payment of return premiums or claim payments forwarded by the insurer to the third party administrator shall not be deemed to have been received by the person entitled to the money until the payments are received by the insured or claimant; nothing in this subsection limits the rights that the insurer may have against the administrator resulting from the failure of the administrator to make payments to persons entitled to money.

(c) Policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the third party administrator for delivery to the insured or covered individuals shall be delivered by the third party administrator within 10 days after receipt of instructions from the insurer to deliver them.

(d) When the services of a third party administrator are utilized, the third party administrator shall provide a written notice approved in writing by the insurer to a covered person advising the person the identity and relationship among the third party administrator, the policyholder, and the insurer;

(e) The third party administrator may not

(1) bind reinsurance or retrocessions on behalf of the insurer;

(2) commit the insurer to participate in insurance or reinsurance syndicates;

(3) appoint a subagent unless the scope of the subagent's license as an insurance producer includes the kinds and classes of insurance for which the subagent is appointed and there is in effect a written agency agreement that specifically sets out the duties, functions, powers, authority, and compensation of all parties to the contract;

(4) pay or commit the insurer to pay a claim, net of reinsurance, the amount of which exceeds one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year without the prior written approval of the insurer for the settlement and the approval is received after the insurer has been notified in writing that the claim settlement will exceed one percent of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;

(5) collect a payment from a reinsurer or commit the insurer to a claim settlement with a reinsurer without prior written approval of the insurer, but if prior written approval is given, a complete report must be forwarded to the insurer within 30 days;

(6) serve on the insurer's board of directors;

(7) jointly employ an individual who is employed by the insurer;

(8) delegate third party administrator authority to another person;

(9) solicit applications for insurance or renewals of insurance directly through employees or by appointments of insurance producers as its subagents under the procedures of AS 21.27.100 - 21.27.110 unless its employees or the insurance producers are licensed for the kinds or classes of insurance and the solicitation or renewals are within the scope of authority granted by the insurer contracting with the third party administrator; or

(10) advertise the business underwritten by an insurer unless the advertising has been approved in writing by the insurer in advance of its use.

(f) In a form acceptable to the director, a third party administrator shall annually provide and an insurer shall annually obtain a copy of certified financial statements prepared by an independent certified public accountant of each third party administrator with which the insurer has done business.

(g) In addition to any other required loss reserve certification, if a third party administrator establishes loss reserves, the insurer shall annually obtain the opinion of an independent qualified actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the third party administrator. The insurer retains an independent responsibility to determine the adequacy of its loss reserves, including those established by its third party administrators.

(h) If a third party administrator provides services for more than 100 certificateholders on behalf of an insurer, the insurer shall at least semiannually conduct a review of the operations of the third party administrator, at least one of which must be an on-site review.

(i) A third party administrator shall maintain records as described in AS 21.27.350.

(j) An insurer may not appoint to its board of directors an officer, director, employee, subagent, insurance producer, or controlling shareholder of its third party administrator.

(k) An actual or apparently authorized act of the third party administrator is considered to be the act of the insurer upon whose behalf the third party administrator is acting.

(l) A third party administrator may be examined by the director under AS 21.06.120 as if it were the insurer.

(m) If the director determines after a hearing under AS 21.06.170 - 21.06.240 that a third party administrator caused loss arising out of a violation of AS 21.27.640 - 21.27.660 to an insurer, the director may order the third party administrator to reimburse the insurer, the rehabilitator, or the liquidator of the insurer for the loss. Reimbursement ordered under this subsection is in addition to any other liability of the third party administrator and does not affect the rights of a policyholder, claimant, creditor, or third party.

(n) In addition to any other penalty provided by law, a person who violates this section is subject to the penalties provided under AS 21.27.440 and an insurer's certificate of authority may be suspended or revoked."

4. Page 73, line 8, after "ARTICLE":

Insert: "5"
Delete: "4"

5. Page 73, line 16, after "(1)"

Delete "an in-force, unimpaired"

6. Page 73, line 16, after "bond"

Delete "with admitted insurers authorized to transact surety insurance"

7. Page 77, line 14, after "ARTICLE":

Insert: "6"
Delete: "5"

8. Page 77, line 30, after "bond"

Delete "with admitted insurers authorized to transact surety insurance"

9. Page 84, line 19, after "ARTICLE":

Insert: "7"
Delete: "6"

10. Page 87, line 10, after "ARTICLE":

Insert: "8"
Delete: "7"

11. Page 90, line 9, after "ARTICLE":

Insert: "9"
Delete: "8"

12. Page 114, line 11

Insert " (A) within 30 days of receipt of the request for cancellation or the effective date of cancellation, which ever is later, on a policy not subject to audit; or

(B) within 30 days completion of an audit; the insurer shall perform and complete an audit within 30 days of receipt of the request for cancellation or the effective date of cancellation, which ever is later, unless the audit cannot reasonably be completed using due diligence and the insured is advised in writing of the reason why additional time is necessary to complete the audit and when the audit will be completed.

Delete " (A) within 30 days on a policy not subject to audit; or

(B) within 30 days of completion of an audit; the insurer shall perform and complete an audit within 30 days unless the audit cannot reasonably be completed using due diligence and the insured is advised in writing of the reason why additional time is necessary to complete the audit and when the audit will be completed.

13. Page 129, line 13, after "ATTORNEYS-IN-FACT"

Insert "(a)"

14. Page 129, line 21, after "insurer."

Insert "(b) For the protection of the people of this state, the director may not issue or renew a license to a person, or to be exercised by a person, found by the director to be untrustworthy, incompetent, financially irresponsible, or who has not established to the satisfaction of the director that the person is qualified under this chapter.

(c) To qualify for issuance or renewal of a license, an applicant or license shall comply with this title and

(1) be a trustworthy person;

(2) have active working experience in administrative functions which, in the director's opinion, exhibits the ability to competently perform the administrative functions of an attorney-in-fact;

(3) not have committed an act that is a cause for denial, nonrenewal, suspension, or revocation of a license in this state or another jurisdiction;

(4) have and maintain a lawfully established place of business physically accessible to the public where the attorney-in-fact principally conducts transactions under the license in this state, or if for a foreign reciprocal, in the state domicile;

(5) disclose to the director all officers, directors, partners, principals, or manager and whether or not they are licensed in this state or another jurisdiction;

(6) designate an officer, partner, or principal responsible for the firm's compliance with the insurance statutes and regulations of this state.

(7) provide certified financial statements for the prior two years prepared by an independent certified public accountant which establish that the applicant is solvent, that the applicant's system of accounting, internal control, and procedure is operating effectively to provide reasonable assurance that money is promptly accounted for and paid to the person entitled to the money, and any other information that the director may require to review the current financial condition of the applicant; and

(8) provide to the director documents necessary to verify the statements contained in or in connection with the application;

(9) notify the director within 30 days in writing by certified mail of a change in officer, director, partner, principal, or manager; place of business; mailing address; phone number; suspension or revocation of an insurance license by another state or jurisdiction; or a conviction of a misdemeanor or felony of the attorney-in-fact, its officers, directors, partners, owners, or employees; and

(d) The director may adopt regulations establishing education requirements, experience requirements, or examination requirements for applicants or licensees under this chapter.

(e) The director may require that an attorney-in-fact maintain an errors and omissions insurance policy acceptable to the director.

(f) If the director finds that the applicant or licensee is qualified and that application, license, or renewal fees set under AS 21.06.250 have been paid, the director may issue or renew the license.

(g) The license shall be renewed each year by the attorney-in-fact when the annual statement is filed under AS 21.75.130.

(h) An attorney-in-fact shall be subject to hearings and orders on violations; denial, nonrenewal, suspension, or revocation of license; penalties; and surrender of license under the procedures of AS 21.27.405 - 21.27.460."

15. Page 143, line 25, after "APPRAISAL"

Insert "A motor vehicle or similar policy, a policy providing property coverage, or any other policy providing first party property, casualty, or inland marine coverage, issued or delivered in this state, must include an appraisal clause providing a contractual means to resolve a dispute between the insured and the insurer over the value of a covered first party loss for real property, personal property, business property, or similar risks. If the insured and the insurer fail to agree on the amount of such a covered first party loss, either may make written demand upon the other to submit the dispute for appraisal. Within 10 days of the written demand, the insured and insurer must notify the other of the competent appraiser each has selected. The two appraisers will promptly choose a competent and impartial umpire. No later than 15 days after the umpire has been chosen, unless the time period is extended by the umpire, each appraiser will separately state in writing the amount of the loss. If the appraisers submit a written report of agreement on the amount of the loss, the agreed amount will be binding upon the insured and insurer. If the appraisers fail to agree, the appraisers will promptly submit their differences to the umpire. A decision agreed to by one of the appraisers and the umpire will be binding upon the insured and insurer. All expenses and fees, not including counsel or adjuster fees, incurred because of the appraisal shall be paid as determined by the umpire. Except as specifically provided, nothing in this section is intended to or shall in any manner limit or restrict the rights of insureds or insurers or confer any rights to such persons."

Delete "An automobile, homeowner, or dwelling policy issued or delivered in the state must include an appraisal clause providing a contractual means to pursue a dispute over the value of an insured's property loss. The appraisal right shall be the insured's first right of appeal. The insured may invoke the right of appraisal by giving written notice to the insurer of the insured's intent. The notice must include the name, address, and phone number of an appraiser of the insured's choice. Within 10 working days from receipt of information, the insurer shall provide the name, address, and phone number of an independent appraiser of the insurer's choice to the insured. The appraiser shall provide final appraisals within 30 working days from the date of the

written demand by the insured to invoke the appraisal provision. If a mutual value is not agreed upon by the two appraisals, the appraisers shall select a third appraiser. A valuation in writing agreed upon by two of the three appraisers shall determine the amount of the loss. The insured and insurer shall pay the cost of their own appraisals and the expense of a third appraiser shall be divided equally between them

16. Page 147, line 7, after "more"

Insert "admitted"

17. Page 147, line 11, after "issuance":

Delete: "'managing general agent' includes a third-party administrator"

18. Page 148, line 5, after "assuming"

Insert "admitted"

19. Page 148, line 27, after "who"

Insert: "for residents of this state, or for residents of another jurisdiction from a place of business in this state, performs administrative functions such as claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance in regard to life insurance, disability insurance, or annuities;"

Delete: "performs administrative functions such as claims administration and payment, marketing administrative functions, premium accounting, premium billing, coverage verification, underwriting authority, or certificate issuance in regard to insurance;"

20. Page 149, line 22, after "94"

Insert ", 95, and 188"

Delete "and"

BIGHAM ENGLAR JONES & HOUSTON

14 WALL STREET

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(212) 732-4646

Date: April 1, 1992

Telefax # (212) 227-9491
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T E L E F A X C O V E R P A G E

TO: Rep. David Donley, Chairman
House Judiciary Committee
State Capitol
Juneau, AK 99801-1182

From: Marilyn L. Lytle, Esq.

Fax #: (907) 465-2299

 # Of Pages: 4
including cover page

Your File No:

Our File No: 027289-30

SENT: A.M._____ ATTY'S CODE_____

P.M._____ OPER. INITIALS_____

MESSAGE:

Dear Representative Donley:

Please see attached urgent message regarding H.B. 425 and S.B. 376 from the American Institute of Marine Underwriters.

MARILYN L. LYTLE

AIMU

April 1, 1992

Re: Alaska H. 425

Representative David Donley, Chairman
House Judiciary Committee
State Capitol
Juneau, AK 99801-1182

Dear Representative Donley:

Alaska H. 425 presents serious problems for American ocean marine insurers. Section 144 of the bill would delete the exemption for wet marine and transportation insurance from the definition of business or commercial insurance. This step contravenes the unique international character of ocean marine insurance. As a result of this proposed change, ocean marine would be subject to the cancellation and non-renewal provisions of the code which could seriously disrupt trade and commerce in Alaska.

Ocean marine insurance encompasses insurance protection for exports or imports while in transit (known as cargo insurance), hull coverages, various marine liability exposures, and war risks at sea on both hull and cargo risks. Through marine exemptions, both the state and federal governments have recognized the international, extra-territorial nature of ocean marine risks as well as the strong competition found not only within the domestic market but with foreign marine insurance markets as well.

One of the many unique features of the marine insurance market is the "open" cargo insurance policy. An open cargo policy is usually issued to cover all of the shipments of an

AMERICAN INSTITUTE OF MARINE UNDERWRITERS
14 WALL STREET ★ NEW YORK, NEW YORK 10005 ★ ✆ 212•233•0550 ★ FAX: 212•227•5102

insured regardless of destination. Open policies facilitate trade by providing for automatic coverage without the necessity of individually negotiating and insuring each shipment. The policies are issued without an expiration date and coverage attaches to each shipment when it is declared to the insurer. H. 425 would require a marine cargo insurer to continue on an open policy ad infinitum because there is no renewal date. [Notice of non-renewal must be sent 45 days before expiration of the policy pursuant to Alaska Insurance Code §21.36.235(a)(2)].

Since the marine cargo insurance market in the United States is intensely competitive and coverage is readily available at very low cost, these new requirements would create an unnecessary burden on American insurers and may place them at a competitive disadvantage with foreign markets. We doubt that consideration was given to the application of these new statutes to ocean marine policy forms and practices.

Application of the cancellation and non-renewal provisions to wet marine insurance may also created an immediate problem with respect to war risk coverages. War risk insurance protects against risk of loss or damage at sea caused by an outbreak of hostilities. A cargo war risk policy is a separate policy with no expiration date, written today (peacetime) for a very low premium. Because of this, marine insurers require the flexibility to respond to rapidly changing political conditions to protect themselves from catastrophic accumulation of risk, inadequate premium or disappearance of reinsurance.

Throughout the world, cargo war risk policies provide that either party may cancel on 48 hours notice for shipments not yet in transit. Such cancellations do not affect goods already at risk. In the event that the United States were to go to war, there exists a stand-by federal war risk insurance program which would replace private war risk insurance (as it did in

World War II and Dessert Storm). Other major governments have similar programs.

American companies writing war risk insurance generally are subject to a seven day notice of cancellation from their reinsurers. Those reinsurers, many of whom are foreign, would not be subject to the cancellation and renewal provisions. Application of the new statutes to marine war risk insurers will subject them to the possibility of being compelled, without reinsurance, to continue to insure shipments into areas where armed conflict is in progress. Under these circumstances, it would be necessary for them, if they were to stay in the market at all, to apply much higher rates (wartime premiums for peacetime shipments). In fact, the practical effect would be to force war risk cover to go to foreign insurers. As a further consequence, much of the marine cargo insurance would go abroad with it. Service to the insureds in Alaska could be reduced and, of course, the U.S. balance of payments problems would be intensified. We cannot believe such was the intent.

AIMU urges that H. 425 be amended to preserve the marine exemption in Code §21.36.310(i). If you have any questions about the effect of this legislation upon the ocean marine industry, please do not hesitate to contact us. We would welcome the opportunity to discuss these matters with you.

The American Institute of Marine Underwriters is a trade association representing the American ocean marine insurance industry.

Very truly yours,

Ward L. Mauck
President

ALASKA STATE LEGISLATURE

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Juneau, Alaska 99801-1182
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SENATOR SAM COTTEN

March 2, 1992

Peter C. Huycke
Huycke General Agency
2904 Boniface Parkway
Anchorage, AK 99504

Dear Peter:

Thank you for your letter of February 24, concerning House Bill 425/Senate Bill 376.

House Bill 425 is currently before the House Judiciary Committee for consideration. Senate Bill 376 is before the Senate Labor & Commerce Committee for consideration.

I have sent a copy of your comments to the chairs of these committees so that your concerns are made a part of the record. I appreciate the comments and suggestions contained in your letter.

Sincerely,

Sam Cotten
State Senator

cc: Senator Drue Pearce (w/enclosure)
Chair, Senate Labor & Commerce Committee

Representative Dave Donley (w/enclosure)
Chair, House Judiciary Committee

Huycke General Agency

AAMGA

2904 Boniface Parkway
Anchorage, Alaska 99504

FAX 907–338-7234

907–338-0491

February 24, 1992

Honorable Senator Sam Cotten
P.O. Box V
Juneau, Alaska 99811

Re: HB 426/SB 376

Dear Senator Cotten:

You will recall I had briefly visited with you about these Omnibus Insurance bills. I had indicated my support for these, explaining they were a result of generally acceptable compromises worked out by the Division of Insurance and the insurance industry representatives. And that the general purpose of these bills is to enable the State of Alaska Division to be accredited by the National Association of Insurance Commissioners.

Have finally had an opportunity to go through and digest the almost 150 pages. I noted several discrepancies, which possibly occurred in the legal translation from our working drafts to what was presented to you.

The first is on Bonds, Section 70, page 46-47. The Division had accepted my request to insert "or an alternative indemnity" on line 12. Existing statute does not define the nature of the bond. This revision does so define a bond. The problem is with the size of the indemnity ($200,000. for a Surplus Lines Broker). Few bond insurers are willing to write this bond for smaller Surplus Lines Brokers.

I fall into this category. At least once in the past, I have had to resort to obtaining a Letter of Credit from a local bank as a substitute. What concerns me is the wording presented to you on lines 29-31; "may adopt, by regulation." I request the word "may" be replaced by "shall." If I again have to resort to a LOC, I think the Director should have to recognize that a LOC from First National Bank of Anchorage is as good as, if not superior to a bond provided by some of the "admitted" insurers presently working the market.

The other concern I have is on Return Premiums, Section 143, page 114. First, if insurers generally are not paid until 45 days (after the close of the current accounting month), why the choice of 30 days from the policy cancellation date? I can see instances where this would require the insurer to make a refund before it has even been paid!

Secondly, this 30 day requirement ignores requirements elsewhere in statute that insurers give specific cancellation notice to interested third parties. These requirements are regardless of who is requesting cancellation. To be required to issue a refund before the policy is even cancelled does not make any sense to me.

Instead, if the insured requests cancellation, I suggest the wording be changed to 45 days after the insurer has discharged its obligation to notify all interested third parites that the policy is being cancelled.

Thank you for your interest, and

Very truly yours,

Peter C. Huycke

PCH:jsh

vending machine license for each machine to be used. The license must specify the name and **mailing** address of the insurer and **insurance producer** [AGENT], the name of the policy to be sold, the serial number of the machine, and the **physical location** [PLACE] where the machine is to be in operation. The **special vending machine** license is subject to **nonrenewal,** suspension, or revocation coincidentally with that of the **insurance producer** [AGENT]. The director shall also revoke the license on a machine if the director finds that the conditions upon which the machine was licensed, under (a) of this section, no longer exist. Proof of the existence of a license shall be displayed on or about each vending machine in use in the manner the director may [REASONABLY] require.

* Sec. 70. AS 21.27.190 is repealed and reenacted to read:

Sec. 21.27.190. BOND. (a) In addition to any other requirements in this title, a bond or an alternative indemnity permitted under this section shall meet the following requirements:

(1) it shall be continuous in form;

(2) it shall remain in force until the licensee is released from liability by the director or until cancelled by the issuer;

(3) without prejudice to any liability accrued before the effective cancellation, it may be cancelled if the director receives 60 days advance written notice;

(4) the amount required to be maintained must be maintained unimpaired; and

(5) it shall be in favor of insurers, insureds, and this state.

(b) A bond may only be issued by an admitted insurer authorized to transact surety insurance in this state that is acceptable to the director.

(c) For a firm licensee, a single bond or an alternative indemnity permitted under this section may combine the sureties required

(1) by separate sections of this title; and

(2) for separate places of business.

(d) An individual in the firm who acts solely on behalf of a firm that has and maintains a bond or an alternative permitted under this section may not be required to also have and maintain a bond if the individual in the firm deposits all money into the firm's fiduciary account.

(e) Except as provided in this title, the director may adopt, by regulation, a deposit of cash, a certificate of deposit, or letter of credit as an alternative to a bond if the deposit of cash, certificate of deposit, or letter of credit meets the requirements of this section, other provisions

practices in the conduct of the business of insurance found by the director to be unfair or deceptive.

* **Sec. 143.** AS 21.36.255(a) is amended to read:

(a) If an insurance policy is cancelled, rejected, or rescinded by the

(1) insurer, the insurer shall refund the unearned premium paid to the insured or premium finance company; or

(2) insured, the insurer shall return any unearned premium paid to the insured or premium finance company, less a cancellation fee not to exceed 7.5 percent of the unearned premium; a cancellation fee may not be charged unless the fee is clearly stated in the policy; **the insurer shall return or credit the unearned premium less a lawful cancellation fee**

(A) within 30 days on a policy not subject to audit; or

(B) within 30 days of completion of an audit; the insurer shall perform and complete an audit within 30 days unless the audit cannot reasonably be completed using due diligence and the insured is advised in writing of the reason why additional time is necessary to complete the audit and when the audit will be completed.

* **Sec. 144.** AS 21.36.310(1) is amended to read:

(1) "business or commercial insurance" means insurance other than personal insurance, reinsurance, life insurance, disability insurance, fidelity and surety insurance, title insurance, [WET MARINE AND TRANSPORTATION INSURANCE AS DEFINED IN AS 21.34.900,] or an annuity contract;

* **Sec. 145.** AS 21.36.320(a) is amended to read:

(a) On the complaint of a person or on the motion of the director, the director may conduct an investigation to determine whether a person [IN THIS STATE] is engaged in an unfair method of competition or unfair or deceptive act or practice prohibited by this chapter.

* **Sec. 146.** AS 21.36.320(c) is amended to read:

(c) **If the director determines that a person violated** [ON A FINDING OF A VIOLATION OF] this chapter, the director shall serve upon the person charged an order requiring that person to **cease and desist from engaging in the act or practice** [STOP THE ACTS OR PRACTICES].

* **Sec. 147.** AS 21.36.320(d) is amended to read:

Huycke General Agency

FEB 2 6 1992

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2904 Boniface Parkway
Anchorage, Alaska 99504

FAX 907–338-7234

907–338-0491

February 24, 1992

Honorable Representative Bettye Davis
P.O. Box V
Juneau, Alaska 99811

Re: HB 425/SB 376

Dear Representative Davis:

You will recall I had briefly visited with you about these Omnibus Insurance bills. I had indicated my support for these, explaining they were a result of generally acceptable compromises worked out by the Division of Insurance and the insurance industry representatives. And that the general purpose of these bills is to enable the State of Alaska Division to be accredited by the National Association of Insurance Commissioners.

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Thank you for your interest, and

Very truly yours,

Peter C. Huycke

PCH:jsh