

HB

246

Adopted
4-22-02

AMENDMENT #1

OFFERED IN THE HOUSE

BY

TO: CS FOR HOUSE BILL NO. 246 (L&C)

1 Page 9, Line 6:

2 Insert a new bill section to read:

3 *Sec. 23. AS 21.27.330(b) is amended to read:

4 (b) If a licensee that is a firm transacts business at more than one place of business,
5 [IN THIS STATE], the licensee shall pay a license fee for each place of business that transacts
6 business in this state or relative to a subject resident, located or to be performed in this
7 state.

Amendment to AS 21.27.330(b)

Changes to the producer licensing laws were made last year to eliminate the requirement that each branch location transacting Alaska business obtain separate licenses consistent with the intent of the Gramm-Leach-Bliley Act (GLBA). This amendment was to be revenue neutral to the Division with only the "main office" receiving a license, but with all branch offices transacting Alaska business paying a fee.

In the drafting process the words "in this state" were mistakenly added to the provision in AS 21.27.330(b). The result is that the provision now implies that a branch office would not be required to pay a fee if the branch office is not actually located in Alaska, even though the branch office transacts Alaska business. This drafting error could mean unintentional loss of revenue for the Division.

The proposed amendment corrects this drafting error and clarifies that each branch office that transacts Alaska business is required to pay a fee.

ALASKA STATE LEGISLATURE

Representative Lisa Murkowski Chair
Representative Andrew Halero Vice-Chair
Representative Pete Kott
Representative Kevin Meyer
Representative Norman Rokeberg
Representative Harry Crawford
Representative Joe Hayes



Alaska State Capitol
Juneau, AK 99801-1182
Telephone: (907) 465-4954
Fax: (907) 465-2293
Representative_Lisa_Murkowski@legis.state.ak.us

HOUSE LABOR AND COMMERCE COMMITTEE Sponsor Statement House Bill 246 Omnibus Insurance Reform

Regulatory Structure for MEWAs: Sections 1, 44 and 56. A Multiple Employer Welfare Arrangement (MEWA) is an employee welfare benefit plan established for the benefit of employees of two or more employers to provide health care or other welfare benefits to employees and dependents. Under current statute a MEWA is regulated as an insurer. The provisions in House Bill 246 establish a more appropriate regulatory structure for MEWAs, in particular, a more reasonable and appropriate capital and surplus, reserving and financial reporting requirements.

Confidentiality of Records: Sections 2-5, 50, 57. These provisions clarify that documents determined to be confidential by law or by the director of insurance are not subject to inspection, copying, or subpoena but may be used by the director in regulatory or legal proceedings and may be shared with other law enforcement or regulatory agencies. The director may receive confidential information from other regulatory or law enforcement agency and maintain the confidentiality and may enter into information sharing agreements. Information designated as confidential includes personally identifiable information, trade secret or proprietary business information, and information the director finds the withholding of which is necessary to protect a person or is in the public interest.

Late Payment of Premium Taxes: Sections 13, 49. These provisions establish late payment fees for all entities that pay premium taxes including insurers and surplus lines brokers for when premium taxes are not received by the division when due.

Annual Fee to Operate as a Joint Insurance Arrangement: Section 51. This provision establishes an annual fee to offset the cost to the division of insurance of enforcing of AS 21.76 on joint insurance arrangement.

Revision of Property-Casualty Guaranty Fund Assessment: Sections 53-55. These provisions revise the formula for assessing member insurance companies for funds to pay claims and operate the guaranty fund. The revision provides for a redistribution of payments due in the year following an assessment based on the premiums written by insurers in the Alaska market. It also allows for the surcharge to policyholders for the assessment to be determined by the association as a percentage of premium.

Stop Loss Insurance Standards: Section 35 The changes establish minimum specific and aggregate attachment points (i.e. retention limits) for stop loss insurance policies. These minimums will provide greater protections to smaller employers who chose to self-fund their health care plans. Without these minimums insurers are able to sell health insurance under the guise of stop loss insurance that is not required to comply with state health care insurance laws including benefit mandates, guarantee issue and portability requirements.

Correction/Clarification of Existing Statutes: Sections 6-12, 14-34, 36-43, 45-49, 52. Please see sectional analysis for explanation of changes.

CS HB 246 (L&C) Sectional Analysis

Regulation of Multiple Employer Welfare Arrangements

Sections 1, 44 and 56 establish a regulatory framework for Multiple Employer Welfare Arrangements (MEWA). A MEWA is defined under federal law and is an employee welfare benefit plan established for the benefit of employees of two or more employers to provide health care or other welfare benefits to employees and dependents. States are given authority under the federal Employee Retirement Income Security Act (ERISA) to regulate MEWAs under state insurance law.

Section 1. AS 21.03.021. Regulation of MEWAs, page 1.

These new subsections provide the authority for the Alaska Division of Insurance to regulate MEWAs. Subsection (b) specifies that an entity that is offering medical coverage is under the jurisdiction of the Alaska Division of Insurance unless it is under another governmental agency. Subsection (c) provides authority to conduct an examination to determine what the entity is and whether it is subject to Title 21. Subsection (d) requires that while an examination to determine jurisdiction is being conducted any transaction of insurance business must advise the purchaser that the coverage is not regulated under Alaska insurance statutes and is not covered by a guaranty fund in Alaska.

Confidentiality of Records

Sections 2 – 5, 50, and 57 add specific statutory clarification of the confidentiality of records maintained within the division. The language clarifies that documents determined to be confidential by law or by the director of insurance are not subject to inspection, copying, or subpoena but may be used by the director in regulatory or legal proceedings and may be shared with other law enforcement or regulatory agencies. The director may receive confidential information from other regulatory or law enforcement agencies and maintain the confidentiality and may enter into information sharing agreements. Information that is designated as confidential includes personally identifiable information, trade secret or proprietary business information, and information that the director finds the withholding of which is necessary to protect a person or is in the public interest.

Section 2. AS 21.06.060. Confidential documents, page 2.

The amendment to this subsection adds a reference to the new subsections in Section 3 on confidential documents.

Section 3. AS 21.06.060. Confidential documents, page 2.

New subsection (b) explains that documents that are confidential or not available for public inspection, are not subject to inspection, copying or subpoena, may be used in a regulatory or legal proceeding, may be released if the person who provided the information consents or releases incomplete or misleading information on the same topic.

New subsection (c) specifies that a person working for the director may not be required to testify about confidential information.

New subsection (d) specifies that providing confidential information to the director does not waive any claim of privilege.

New subsection (e) allows the director to disclose confidential information to the legislature, regulatory or law enforcement agencies or the NAIC if the entity will maintain the confidentiality. The director may also receive information from regulatory or law enforcement agencies or the NAIC and will maintain the confidentiality of the information if requested to do so or given notice that the records are confidential by law of the supplying agency. The director may enter into agreements with other regulatory or law enforcement agencies or the NAIC consistent with this section.

New subsection (f) specifies that the following documents are confidential:

- personally identifiable consumer information unless disclosure is necessary to resolve a consumer complaint;
- information shown to be trade secret or proprietary business information including health insurance claim cost data and usual, customary and reasonable charge determinations;
- information provided by a person not subject to regulation by the director if the information is identified as confidential by the director; and
- financial analysis ratios and examination synopses from the NAIC.

New subsection (g) gives the director authority to withhold information from public inspection if the director finds it is necessary to protect a person against unwarranted injury or is in the public interest.

Section 4. AS 21.06.150(g). Confidential documents, page 4.

This subsection was repealed and reenacted to specify that examination workpapers are confidential. The director continues to be able to publish the examination report in a newspaper or electronically if it is determined to be in the public interest to do so.

Section 5. AS 21.06.210. Close a hearing, page 4.

This new subsection (h) allows the director to close a hearing to the public when it is necessary to protect a person against unwarranted injury or is in the public interest. This includes a sentence from the existing AS 21.06.150(g) that is lost when the section is repealed and reenacted in Section 4 of the bill.

Correction of Wording

Section 6 is amended to correct wording in a section adopted by the legislature in 2000.

Section 6. AS 21.07.040(c), Correction of Wording, page 5.

This amendment to subsection (c) changes wording to a phrase that more properly reflects the meaning of the subsection. The change removes "a current or former person" and replaces it with "a person currently or formerly"

Limit on Processing Time for Certificate of Authority Applications

Section 7 is amended to change the processing time for applications from an insurer for a certificate of authority from 30 days to 60 days.

Section 7. AS 21.09.120(a). Limit on Processing Time, page 5.

This amendment to (a) changes the processing time for a certificate of authority application from 30 days to 60 days. The recommended processing time for the uniform certificate of authority application adopted by the National Association of Insurance Commissioners is 60 days. The division is participating in the uniform application process and needs to adopt the uniform goal on time to effectively process an application.

Payment of Premium Taxes and Fees

Sections 8, 10, and 13 through 17 address several areas of premium taxes and fees payable to the state. Sections 8 and 10 expand the director's authority to specify the form of payment of certificate of authority continuation fees and financial statement filing fees which was granted for premium tax collection in 1998. Section 13 provides for a late fee payment when premium taxes are not received when due. Section 14 clarifies that tax credit statutes apply to taxpayers under AS 21.09.210. Sections 15 through 17 clarify language on taxation of jumbo life policy premiums and exemption from retaliatory fees, both of which were adopted in the 1998 Legislative Session.

Section 8. AS 21.09.130(a). Fee Payment, page 5.

The amendment to subsection (a) gives the director authority to specify the method of payment of certificate of authority continuation fees by electronic or other means. This same authority was given to the director in 1998 on the collection of premium taxes.

Section 10. AS 21.09.200(d). Fee Payment, page 6.

The amendment to subsection (d) gives the director authority to specify the method of payment of annual statement filing fees by electronic or other means. This same authority was given to the director in 1998 relative to the collection of premium taxes.

Section 13. AS 21.09.210(g). Late Fee, page 6.

The amendment to subsection (g) adds a late payment fee for late payment of premium tax required under AS 21.09.210 and late payment of retaliatory fee required under AS 21.09.270. The fee is the greater of \$100 per day or 25% of the tax due. In addition interest is charged at 1% per month or partial month.

Section 14. AS 21.09.210(i). Tax Credit, page 6.

The amendment to subsection (j) adds the fire safety standards counsel charitable contribution premium tax credit to the education charitable contribution tax credit and clarifies that the provision applies to payers of tax under this section.

Section 15. AS 21.09.210(m). Jumbo life policy taxation, page 6.

This amendment to subsection (m) makes it clearer that individual life policy premium is taxed at 2.7% up to \$100,000 and premium above \$100,000 is taxed at 0.1%.

Section 16. AS 21.09.270(b). Exemption from retaliatory fee, page 7.

This amendment to paragraph (b)(2) clarifies that the exemption from payment of retaliatory fee is only for health care insurance premium received by an insurance company from a state, municipality, city or borough school district, a regional educational attendance area, University of Alaska or community college.

Section 17. AS 21.09.270. Exemption from retaliatory fee, page 7.

This new subsection (f) clarifies that the retaliatory fee calculation does not include taxes paid on health care insurance premiums received from the state, political subdivisions, or University of Alaska. This is a clarification of an exemption adopted in 1998 to more carefully show the extent of the intended exemption.

Authority for Filing of Financial Statements

Sections 9, 11 through 12 provide authority for the director to allow filing of financial statements only on an electronic basis at the place of the director's designation. This authority will allow the division to reduce the resources necessary to maintain paper files of insurance company annual financial statements. Section 12 changes the filing due date from 60 days after the end of the quarter to 45 days after the end of the quarter to make it consistent with the due date in the majority of other state insurance departments.

Section 9. AS 21.09.200(a). Electronic Filing of Financial Statements, page 6.

This amendment allows the director to designate where the financial statement required in the statute is to be filed. The location of the filing will be published by the director at least annually by bulletin.

Section 11. AS 21.09.200(e). Electronic Filing of Financial Statements, page 6.

This amendment allows the penalty in statute to be charged when the financial statement is not sent to the location designated by the director. The penalty is \$100 per day until properly filed.

Section 12. AS 21.09.205(b). Filing of Quarterly Financial Statements, page 6.

This amendment modifies the due date for the filing of the quarterly financial statement from 60 days after the end of the quarter to 45 days after the end of the quarter. Most states and the

National Association of Insurance Commissioners require the quarterly financial statements to be filed 45 days after the end of the quarter

Clarification of Contents of US Branch Financial Statement

Section 18 clarifies that the US Branch financial statement filed with the division must include all insurance activity within the United States.

Section 18. AS 21.09.310(n). US Branch Financial Statement Contents, page 7.

The amendment to subsection (n) clarifies that the US Branch financial statement shall have only US Branch insurance activities and must include all insurance transactions conducted within the United States.

Clarify the application of RBC Mandatory Control Level Actions

Section 19 clarifies that the actions in AS 21.14.050 required when an insurer reaches the Mandatory Control Level only apply to domestic insurance companies.

Section 19. AS 21.14.050(a). RBC Mandatory Control Level actions, page 8.

This amendment to subsection (a) clarifies that this section that requires an insurer to be placed under regulatory control when the insurer reaches the Mandatory Control Level only applies to domestic insurers. Actions for foreign insurers are included in AS 21.14.070.

Compliance Officers, Compensation, and Clarification of the Firm License

Amendments in Section 20 to 25 make changes to licensing statutes and clarifies who can receive compensation. Sections 20 and 22 clarify that a producer firm may have more than one compliance officer with all compliance officers covering all the powers conferred by the firm's license and requires the compliance officer to be licensed as an individual in the firm for specific lines and classes of authority. Section 21 rewords a section that requires the scope of the firm license to include all lines and class of authority of each individual in the firm. Section 23 makes small amendments to AS 21.27.370(c) on unlicensed compensation to clarify the meaning of this section that was adopted in 2001. Sections 24 and 25 provide better definitions for "compliance officer" and "class of license".

Section 20. AS 21.27.020(c). Compliance officer, page 8.

This amendment to subsection (c) clarifies that qualification for a firm license will allow the designation of more than one compliance officer to be responsible for the firm's compliance with Alaska statutes and regulations.

Section 21. AS 21.27.140(a). Firm License, page 8.

The repeal and reenactment of subsection (a) results in clarification that the scope of the firm license is to include all lines and classes of authority of the individuals working in the firm.

Section 22. AS 21.27.140(b). Compliance officer, page 8.

The repeal and reenactment of subsection (b) results in clarification that the firm may not be licensed unless each individual in the firm is licensed. In addition, it specifies that each compliance officer must also be licensed as an individual in the firm for a specific line and class of authority and, if there is more than one compliance officer, each area of the firm's license authority shall be covered by a compliance officer.

Section 23. AS 21.27.370(c). Compensation, page 9.

Amendments to subsection (c) clarify that a person who discusses specific terms and conditions of a policy or a person who gives opinions or advice regarding insurance is not eligible for compensation without first having a license.

Section 24. AS 21.27.900(4). Definition, page 9.

The amendment to the definition of "compliance officer" in (4) adds that the compliance officer must be designated for a specific line and class of authority.

Section 25. AS 21.27.900. Definition, page 9.

The addition of a new paragraph is to define a "class of authority" to mean one or more designations of authority such as insurance producer, managing general agent, reinsurance intermediary manger, reinsurance intermediary broker, surplus liens broker, or independent adjuster, or third party administrator.

Exemption from Premium Tax and Payment in Lieu of Premium Tax

Sections 26 through 30 clarify language in the area of premium tax exemptions and exemption from other state or local taxes. Sections 26, 28, and 30 clarify that exemptions are for aircraft that are primarily engaged in interstate or foreign commerce instead of regularly engaged in such business. Sections 27 and 29 amend the sections to clarify what other state taxes are not payable when an entity pays premium tax under these statutes.

Section 26. AS 21.33.037(b). Aircraft exemption from licensing, page 9.

This amendment clarifies that the prohibition of a person acting as an agent for an unauthorized insurer in this state does not apply to unauthorized insurance transactions for the property or operations of railroads or aircraft primarily engaged in interstate or foreign commerce.

Section 27. AS 21.33.055(a). Premium tax payment in lieu of other taxes, page 10.

This amendment to subsection (a) clarifies that only the premium taxes paid by an insurance company for unauthorized insurance business allowed in AS 21.33 are in lieu of all other taxes. Exemption from other taxes given in Title 21 is for insurance companies only.

Section 28. AS 21.33.055(c). Aircraft exemption from unauthorized insurer premium tax, page 11.

This amendment clarifies that aircraft that is primarily engaged instead of regularly engaged in interstate or foreign commerce is exempt from the unauthorized insurer premium tax. This will help determine when the exemption applies.

Section 29. AS 21.33.061(c). Premium tax payment in lieu of other taxes, page 11.

This amendment to subsection (c) removes the statement that the premium receipts tax is in lieu of other taxes. Exemption from other taxes given in Title 21 is for insurance companies only.

Section 30. AS 21.33.061(g). Aircraft exemption from independently procured premium tax, page 12.

This amendment clarifies that aircraft that is primarily engaged instead of regularly engaged in interstate or foreign commerce is exempt from the independently procured premium tax. This will help determine when the exemption applies.

Exemption from Premium Tax

Sections 31 and 32 clarify premium tax payments and exemptions for surplus lines placements.

Section 31. AS 21.34.180(a). Admitted insurance exemption from surplus lines premium tax, page 12.

This amendment clarifies that for subscription policies the portion of premium taxes submitted to the division by the admitted insurer does not need to also be submitted to the division by the surplus line broker. This will avoid double payment of premium taxes.

Section 32. AS 21.34.180(d). Aircraft exemption from surplus lines premium tax, page 12.

This amendment clarifies that aircraft that is primarily engaged instead of regularly engaged in interstate or foreign commerce is exempt from the independently procured premium tax.

Payment of Premium Taxes and Fees

Section 33 establishes a late fee payment for when premium taxes for surplus lines insurance placements are not received by the division when due.

Section 33. AS 21.34.180(f). Late Fee, page 12.

The new subsection (f) adds a fee for late payment of the premium tax required under AS 21.34.180 for surplus lines insurance placements. The fee is the greater of \$100 per day or 25%

of the tax due. In addition interest is charged at 1% per month or partial month. Remaining subsections are renumbered.

Insurable Interest

Section 34 clarifies the application insurable interest to life, annuity or health insurance.

Section 34. AS 21.42.020(d). Insurable interest, page 12.

AS 21.42.020 is intended to apply to life, health and annuity insurance. However, the term "personal insurance" is used and is not defined in AS 21.42. It is a particularly confusing term to use since "personal insurance" is defined in AS 21.36.310 only for purposes of 36.210-310 and it is defined to exclude life, health, and annuity insurance. Therefore, the change to this section deletes the reference to personal insurance and replaces it with life, health and annuity insurance.

Stop Loss Insurance Regulation

Section 35 regulates the issuance of stop loss insurance policies by setting standards for such policies.

Section 35. AS 21.42.145. Stop Loss Insurance, page 13.

This new section added to Chapter 42 prohibits a health insurer from issuing a stop loss insurance policy that allows payment at claim levels below \$10,000 for an individual or for a large employer plan is \$4000 times the number of individuals covered in a plan or 120% of claims for a plan or \$20,000, whichever is greater, or pays claims at lower than 110% of expected claims, or provides direct coverage of health care expenses. This provides a definition between health insurance and stop loss insurance policies covering health risks. The new section allows adjustment of the standards set and allows adoption of a regulation to implement the section. The new section defines terms used in the section.

Health Insurance

Section 36 through 43 makes small changes to health insurance policy benefits, requirements for insurers discontinuing health products in this state, and small employer insurers.

Section 36. AS 21.42.363. Eye care under health insurance, page 14.

AS 21.89.040 requires an insurer to provider reimbursement for services provided by an optometrist if the plan covers services within the scope of practice of an optometrist. This provision should be in AS 21.42 where the other coverage mandates are located. This section simply moves the provision to a new section AS 21.42.363.

Section 37. AS 21.42.365(b). Health policy benefits, page 14.

Under AS 21.42.365(b) the director is required to make adjustments to the alcohol and drug abuse limits on January 1 every three years using the prior calendar years. It is not possible to

use the prior calendar years and make the adjustment on January 1, since the CPI data is not available until after January 1. The change to this section removes the requirement that the adjustment be based on the prior calendar years so that the director can make the adjustment, effective on January 1, based on available CPI data.

Section 38. AS 21.42.390(b). Diabetes benefits, page 14.

This subsection is repealed and reenacted to require insurers to provide not less than \$1,500 for diabetes outpatient self-management education. HB 298 was signed into law this year with a limitation provision that is ambiguous. The change in this section modifies the provision to more clearly reflect the intent.

Section 39. AS 21.42.500(5). Definitions, page 15.

When the HIPAA provisions were added in 1997, the mandated benefit provisions in AS 21.42 were amended to use terms consistent with the HIPAA group definitions. The HIPAA definition of individual health coverage was not defined in our statute, since we used the CHIA as the alternative mechanism, which made most of the individual health provisions in HIPAA inapplicable. However, using the group definitions of health insurance coverage did not reflect the exclusion for individual short-term medical coverage as provided in the individual health HIPAA provisions. The unintended consequence is that individual short-term medical coverage (non-renewal health care coverage for less than 1 year) must comply with health benefit mandates. Most of these do not make sense for a short-term medical coverage such as annual screening exams. This section amends the definition of health care insurance plan in order to exclude short-term individual health coverage from the benefit mandates.

Section 40. AS 21.42.500. Definitions, page 15.

This new paragraph refers to already existing definitions given in AS 21.51 in the area of health insurance.

Section 41. AS 21.51.090. Claim forms, page 15.

This amendment clarifies that the insurer has 10 working days to furnish claimant forms when notified of a claim. The changes to this section modify AS 21.51.090 (individual health insurance), which became effective in 1966, to be consistent with the unfair claim practice regulation requirement regarding claim communication.

Section 42. AS 21.51.110. Time of payment of claims, page 15.

This amendment clarifies that indemnities will be paid within 30 days of receipt of written proof of loss. The changes to this section modify AS 21.51.110 (individual health insurance), which became effective in 1966, to be consistent with the unfair claim practice regulation requirement regarding claim payment.

Section 43. AS 21.54.130(c). Discontinuing health care plans, page 16.

Under HIPAA, insurers are allowed to exit the small group, large group or both markets. However, the current statutory language implies that they must exit from both markets. The change to this section clarifies that an insurer can exit just one or both of the group markets.

Section 44. AS 21.55.010. Regulation of MEWAs, page 16.

This amendment adds a licensed self-funded MEWA to the membership of the Comprehensive Health Insurance Association set out in Chapter 55.

Small Employer Health Insurance

Sections 45 and 46 clarify two areas of the small employer health insurer provisions in AS 21.56.

Section 45. AS 21.56.120(c). Small employer insurer, page 16.

Prior to the HIPAA modifications in 1997 this section required the actuary to certify to compliance with the renewal requirements because they were in Chapter 56. The 1997 HIPAA changes moved this section to AS 21.54 without modifying the references so that under current law the actuary is no longer required to certify to compliance with the renewal requirements (because it is no longer in the chapter as referenced in AS 21.56.120). The change to this section corrects this error and also adds the requirement that the actuary certify to all the HIPAA provisions in AS 21.54 as they relate to small group coverage as was intended.

Section 46. AS 21.56.140(c). Small employer insurers, page 17.

The intent of AS 21.56.140(c) is to require that insurers exclude any employee who has existing comprehensive medical coverage in determining whether an employer has met established minimum participation requirements. The use of the term "similar existing coverage" does not clearly reflect this intent and therefore the change to this section modifies this to "existing creditable coverage". Creditable coverage is a clearly defined term under AS 21.54.

Consumer Credit Insurance

Sections 47 and 48 clarify information that must be provided in notices to a debtor before consumer credit insurance is purchased and information that must be provided in the policy.

Section 47. AS 21.57.055(a). Consumer credit insurance, page 17.

These two amendments clarify that the creditor must allow the debtor to provide any other creditor required insurance through existing policies or other insurers and state whether or not benefits will pay off the debt at the time of death, disability or unemployment. An insurer may require insurance but not necessarily credit insurance. The current disclosure requirement is incorrect in that it implies that an insurer may provide coverage for unearned premium payments. However, AS 21.57.040 does not allow coverage of unearned premium. Therefore,

the change in this section modifies the provision to clarify the insurer must disclose whether benefits will completely pay off debt existing at the time of death, disability, or unemployment.

Section 48. AS 21.57.060(b). Consumer credit insurance, page 19.

Credit unemployment was left out of this disclosure requirement in error. The change to this section adds credit unemployment to the disclosure statement.

Late Fee for Late Payment of Title Insurance Premium Tax

Section 49 provides for a late fee when the premium tax on title insurance business written during the year is not paid by the due date in statute.

Section 49. AS 21.66.110(c). Late Fee, page 19.

The new subsection (c) adds a late payment fee for late payment of the premium tax required under AS 21.66.110 on title insurance. The fee is the greater of \$100 per day or 25% of the tax due. In addition, interest is charged at 1% per month or partial month.

Section 50. AS 21.66.380(b). Confidential documents, page 20.

This amendment specifies that information provided to the division that could identify the experience of a particular title insurance limited producer is confidential.

Annual Fee for Joint Insurance Arrangements

Section 51 sets an annual fee for an entity operating as a joint insurance arrangement under Chapter 76.

Section 51. AS 21.76.130. Annual Fee, page 20.

This new subsection adopts an annual fee to be paid by each entity operating under Chapter 76 as a joint insurance arrangement. The annual fee is to compensate the division for services performed in determining that an entity is staying within the authority given in Chapter 76. An entity that is found to be operating outside of Chapter 76 must be appropriately licensed as an insurer or producer under other provisions of Title 21.

Claim Priority in Liquidation Proceeding

Section 52 corrects the classification of claims by government by removing them from stockholders claims class 8.

Section 52. AS 21.78.260(5). Claim Priority in Liquidation Proceeding, page 20.

This amendment to paragraph (5) moves claims of a government entity for penalties out of Class 8 Stockholder Claims to Class 7. Class 8 are residual payments to stockholders of the defunct company and Class 7 are for payment of miscellaneous claims such as surplus notes,

premium refunds on assessable policies, and payments to members of a mutual company. Specific penalty claims as a part of residual claims as the statute currently reads provides an impossible allocation of remaining funds in a liquidation estate.

Revision of Property-Casualty Guaranty Fund Assessment

Sections 53 through 55 amend AS 21.80 to revise the formula for assessing member insurance companies for funds to pay claims and operate the guaranty fund. The revision provides for a redistribution of payments due in the year following an assessment based on the premiums written by insurers in the Alaska market. It also allows for the surcharge to policyholders for the assessment to be determined by the association as a percentage of premium.

Section 53. AS 21.80.060. Guaranty Fund Assessment, page 20.

The amendment to this section revises the assessment formula and applies it to information in annual statements as filed by the insurers on March 1. Assessments are charged to member insurers to generate funds for claims and administration costs. The assessment paid is a percentage of the premium written by the insurer in Alaska in the prior calendar year. That initial assessment percentage is used to adjust the final amount due after completion of the calendar year following the year used to calculate the initial assessment. The adjustment would result in additional payment by insurers who have recently written premium in the Alaska market and a lowering of the payment for insurers who have collected less premium in the Alaska market. Insurers would be billed or credited for the adjustment. If the association determines that funding is necessary the initial assessment shall be made during November of each year and the association may use the services of an independent actuary to assist in determining the amount of the assessment.

The section is also amended to make it clear that excess funds in the association may be used to reduce future assessments unless the association determines that there are significant excess funds. If there are significant excess funds the association shall return amounts to individual policyholders through procedures established by the association. The procedures shall have the association reimbursing member insurers for issuing uniform rate credits against premiums charged during the next calendar year.

Section 54. AS 21.80.070. Guaranty Fund Assessment, page 24.

The amendments to this section require the association to establish procedures in its Plan of Operation for determining uniform surcharge percentages that member insurers would apply to policies issued. The amendments also require the association to establish procedures so that the surcharge percentages shall match adjusted assessments as closely as possible for the calendar year. Any mismatch between the adjusted assessment paid and the maximum allowable surcharge which could be collected shall be taken into consideration when determining future surcharge percentages.

Section 55. AS 21.80.140. Guaranty Fund Assessment, page 26.

The amendment to this section allows the use of surcharge rates that may be added to policy premium that are sufficient to offset the adjusted assessments to an insurer. The amendment

also sets a procedure for the director to be notified of the surcharge percentage set by the association and that such percentage shall be the maximum surcharge rate which member insurers may apply to policies. The amendment does allow an insurer to apply to the director directly for a higher surcharge rate.

Section 56. AS 21.85. Regulation of MEWAs, page 26.

This new Chapter in Title 21 provides the details of regulation of self-funded MEWAs operating in the state of Alaska.

AS 21.85.010. Certificate of authority required

This new section requires that a MEWA may not exist unless a certificate of authority is obtained from the director. The section defines when a self-funded MEWA is established or maintained in the state and thereby required to obtain a certificate authority.

AS 21.85.020. Name

This new subsection provides rules for the name of a self-funded MEWA such that the name does not imply that the MEWA is an insurer and that the name is not similar to another MEWA such that it would mislead the public.

AS 21.85.030. Qualifications for a certificate of authority.

This new subsection sets out in (a) the standards that must be met to obtain a certificate of authority. The employers must be members of an association in a related trade, profession or industry. The employers must exercise direct control of the arrangement. The MEWA must be nonprofit and provide only allowable benefits along with life insurance that meets the Alaska insurance statutes. The MEWA must have adequate facilities and competent personnel and the arrangement must cover not less than 2 employer and not less than 75 employees. The MEWA must not solicit participation from the general public but may associate with a licensed insurance producer to enroll employers. The arrangement may not be used solely to collect premiums and forward premiums to an insurance company except in the case of life insurance.

The new subsection (a) sets some solvency requirements. The MEWA must deposit \$100,000 with the director for payment of claims if the arrangement should become insolvent and the arrangement must provide the director a written plan of operation that ensures financial integrity if the director requests such a document. The MEWA must demonstrate that it has the ability to remain solvent. The methods open to the director for determining that the MEWA has the ability to remain solvent are

- pro forma financial statements
- types and levels of stop-loss insurance
- deposit requirement for each employee equal to at least one month cost of providing benefits
- management experience
- other factors the director considers relevant.

The new subsection (b) allows the director to require documents which describe the rights and obligations of the participants to say that those participants are liable for a pro rata share of all liabilities that are unpaid.

The new subsection (c) requires that the MEWA must have stop loss insurance coverage for 100% of claims in excess of the attachment point recommended by a qualified actuary.

AS 21.85.040. Application for a certificate of authority.

This new section sets out the items that must be submitted in an application for a certificate of authority. The items include the submission of an application showing detailed information of the MEWA along with a fee. The application must also have the following

- a copy of all documents describing rights and obligations of the employers, employees and beneficiaries of the arrangements,
- copy of the summary plan description files with the US Department of Labor,
- evidence of coverage or intent to cover at least 2 employers and at least 75 employees
- copy of the most recent annual financial statement or pro forma financial statement including an actuarial opinion
- proof of fidelity bonds
- copy of any stop-loss insurance policies in place or proposed
- biographical reports evidencing trustworthiness and competence of each managing employee or fiduciary
- a statement that the information provided is true and correct and that the arrangement is in compliance with specific state and federal laws, and
- base contribution rates for participation for the initial year of operations.

AS 21.85.050. Minimum reserves.

This new section requires that a self-funded MEWA maintain reserves equal to at least 30% of unpaid claim liability or the amount certified by an actuary, whichever is greater.

AS 21.85.060. Investments.

This new section requires that the MEWA maintain an amount of funds equal to 85% of net unpaid claim liability in cash, cash equivalents, insured bank deposits, bank certificate of deposits, insured share or savings accounts of a savings and loan or rated credit instruments issued or guaranteed by the US or Canada or by a government-sponsored enterprise of the US or Canada if the instrument is guaranteed or is backed by the full faith and credit of the US or Canada. The bank certificate of deposit is subject to review of the director to determine if the investment is sound. If it is not determined to be sound the director may require liquidation of the portion found to be unsound.

AS 21.85.070. Contribution rates.

This new section requires that the self-funded MEWA maintain contribution rates that fund the greater of the amount certified by a qualified actuary, or the sum of projected claims liability for the year, plus all projected costs of operation for the year, plus an amount equal to deficiency of reserves for the prior year minus an amount equal to reserves in excess of minimum required levels of reserves. The contribution rates must also be not excessive, inadequate or unfairly discriminatory.

AS 21.85.080. Reporting requirements.

This new section sets out requirements for the filing of financial statements with the director. The statements must be a statement of the financial condition, transactions and affairs as of the preceding December 31 on forms required by the director. The financial statement as a whole must include

- statement of financial condition (balance sheet);
- a statement of change in financial condition (income statement) accompanied by an actuarial opinion by a qualified actuary certifying that the unpaid claim liability meets the requirements for health coverage reserves in Chapter 18 of the Alaska insurance statutes, including a recommended level of specific and aggregate stop loss insurance, and a description of actuarial soundness with recommendations for improvement;
- Statement of contribution rates for next year;
- Certified financial statements for the prior two years if payments to the arrangement by participants during the prior year exceeded \$2 million; and
- Additional information the director finds necessary to determine financial integrity.

New subsection (b) requires a quarterly statement to be filed within 60 days of the end of each quarter which must include:

- statement of financial condition,
- statement of change in financial condition since the prior year end
- report of number of participating employeers and number of covered lives at the end of the quarter and contributions received during the quarter, and
- any other information required by the director.

The new subsection (c) requires that the self-funded MEWA must also file with the director a copy of each Form 5500, with attachments, filed with the Internal Revenue Service.

AS 21.85.090. Consumer information notice.

This new section requires that a notice be given to each participating employee, in writing at the time coverage becomes effective that is clear and conspicuous, no smaller than 10 point type, and that states that the coverage is issued by a self-funded MEWA ; coverage is not protected by the Alaska Life and Health Insurance guaranty Association; and if claim payment is not made by the MEWA the employer or employee may be responsible for payment.

AS 21.85.100. Applicability of other provisions.

This new section sets out what other provisions of the Alaska insurance statutes apply to self-funded MEWAs. The sections include requirements for examinations, managed care insurance plans, unsound management, issuance and continuance of the certificate of authority, disciplinary action against the certificate of authority, filing of financial statements, payment of premium tax, filing of changed information, retaliatory fee, reporting of material transaction, maintenance of records, health insurance reserves, requirements for unauthorized insurers, trade practices and frauds, approval of policy forms, coverage mandates, requirements for group life insurance, requirements for health insurance, participation in small employer health insurance and high risk health insurance, requirements for rehabilitation or liquidation.

AS 21.85.500. Definitions.

This new section defines the terms used throughout Chapter 85. It also defines "self-funded multiple employer welfare arrangement" as used in this chapter to be a MEWA that does not provide for benefit payment under a policy of insurance issued by authorized insurance companies.

Section 57. AS 21.87.190(b). Confidential documents, page 36.

This amendment specifies that detailed rate justifications and rating formulas are confidential without a specific determination by the director.

Section 58. AS 21.87.340. Applicability of other provisions, page 36.

This amendment clarifies that the Alaska Patients' Bill of Rights and the minimum health insurance reserves standards apply to hospital and medical service corporations.

Repeal of Sections

Section 59 repeals several sections because of statute changes included in this bill.

Section 59. Repealing sections, page 36.

The section repeals AS 21.33.045(d) that exempted life, health and annuity insurers from providing information if the director had reason to believe the coverage was placed with a nonadmitted insurer. Life, health and annuity insurers who write business in Alaska and were not admitted in Alaska would be treated like all other insurers and required to provide information to the director. The section repeals AS 21.87.340(17) because it references repealed section AS 21.89.040. The section repeals current section AS 21.89.040 due to the optometric services provision being added as a new section AS 21.42.363 in Sec. 36 of this bill.

Section 60. Revisor instruction, page 36.

The revisor is instructed to change the title of AS 21.42.020 to reflect the change made in Section 31 of this bill.

Section 61. Effective date, page 36.

This section provides for an effective date of July 1, 2002 for all sections of this bill.

FISCAL NOTE

STATE OF ALASKA
2002 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: CSHB 246(L&C)
 (H) Publish Date: 4/17/02

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
 Title Omnibus Insurance Bill BRU Insurance (116)
 Component Insurance Operations
 Sponsor House Labor & Commerce by Request
 Requester House Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 GF Receipt Supported Services						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2002) cost: 0.0
 Check this box (X) if funding for this bill is included in the Governor's FY 2003 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr, Director Phone 907-269-7900
 Division Insurance Date/Time 4/11/02 11:55 AM
 Approved by: Deborah B. Sedwick, Commissioner Date 4/11/2002
 Agency Department of Community & Economic Development