

SB

357

SFIN

FILE

SENATE FINANCE COMMITTEE REPORT

DATE: 3/24/04

REPORTED OUT
APR 02 2004
SENATE FINANCE
COMMITTEE
SENATE BILL NO. 357

FURTHER:

DATE TURNED IN TO OFFICE: 2 April 2004

Finance Committee considered

SB 357 INSURANCE

"An Act relating to the regulation of insurance, insurance licenses, qualifications of insurance producers, surplus lines, fraud investigations, electronic transactions, and compliance with federal law and national standards; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 357 (FIN)
- adopt previous _____ CS CS forthcoming (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:
 Same Title
 New Title

House Bill:
 Same Title
 Technical Title Change
 New Title w/ SCR # _____

NEW FISCAL NOTE(S):

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero.	FN#

Department	Date	Fiscal	Indet.	Zero.	FN#
DCED	3/5/04			✓	#1

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	Do PASS	Do NOT PASS	No REC	AMEND
<i>Frank Poyser</i>			✓	
<i>Thomas McLean</i>			✓	
<i>Tom B. West</i>			✓	
<i>Ben Stevens</i>	✓			
COCHAIR: <i>Gary Walker</i>	✓			
COCHAIR: <i>Sylvia Green</i>	✓			

FISCAL NOTE

REPORTED OUT

APR 02 2004

SENATE FINANCE
COMMITTEE

STATE OF ALASKA
2004 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 357(L&C)
(S) Publish Date: 3/24/04

Revision Date/Time (Note if correction): _____ Dept. Affected: DCED
Title Insurance RDU Insurance (116)
Component Insurance Operations
Sponsor Senate Labor & Commerce
Requester Senate Labor & Commerce Component No. 354

Expenditures/Revenues (Thousands of Dollars)

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

OPERATING EXPENDITURES	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
Personal Services						
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 ()						
------------------------	--	--	--	--	--	--

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2004) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This legislation makes changes to Title 21 that are necessary to ensure that state statutes are consistent with federal law, the National Association of Insurance Commissioners (NAIC) model acts, standards and guidelines, and updates procedures and transactions related to electronic communications. It has no fiscal impact on the operations of the division.

Prepared by: Linda S Hall, Director Phone (907) 269-7900
Division Insurance Date/Time 3/5/04 12:44 PM
Approved by: Edgar Blatchford, Commissioner Date 3/5/2004
Agency Department of Community & Economic Development

SENATE FINANCE
COMMITTEE

adopted

Amendment Number: # 1

23-LS1684\D.1

Bill Number: SB 357

Bullock

Sponsor: Wilken Date: 3/31/04

3/22/04

Logged In By: Mindy

AMENDMENT

OFFERED IN THE SENATE

TO: SB 357

Sponsored by
Sen. Wilken by request

1 Page 2, following line 11:

2 Insert a new bill section to read:

3 **"* Sec. 2.** AS 21.07.010(b) is amended to read:

4 (b) A contract between a participating health care provider and a managed
5 care entity that offers a group managed care plan may not contain a provision that

6 (1) has as its predominant purpose the creation of direct financial
7 incentives to the health care provider for withholding covered health care services that
8 are medically necessary; nothing in this paragraph shall be construed to prohibit a
9 contract between a participating health care provider and a managed care entity from
10 containing incentives for efficient management of the utilization and cost of covered
11 health care services;

12 (2) requires the provider to contract for all products that are currently
13 offered or that may be offered in the future by the managed care entity; or [AND]

14 (3) requires the health care provider to be compensated for health care
15 services performed at the same rate as the health care provider has contracted with
16 another managed care entity."
17

18 Renumber the following bill sections accordingly.

19

20 Page 29, line 22:

21 Delete "Section 53"

22 Insert "Section 54"

23

- 1 Page 29, line 23:
- 2 Delete "sec. 55"
- 3 Insert "sec. 56"

SENATE FINANCE COMMITTEE
SB 35 / 2003 COMMITTEE ACTION

Bill Number	SB 35		
Amendment	#1		
Motion	adopt		
<u>Motion by</u>	Wilken		
<u>Objection by</u>	Wilken		
<u>Removed</u>	✓		
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Hoffman			
Senator Olson			
Senator Stevens			
Senator Bunde			
Senator Dyson			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	Pass		



Official Business

Alaska State Senate

Senate Finance Committee

Mail Stop 3100
State Capitol
Juneau, Alaska 99801-1182

FAX COVER SHEET

DATE: 2 April 2004 TIME: 9:15 am

TO: Legal Services

NUMBER OF PAGES, INCLUDING COVER SHEET: 1

FROM: MINDY ROWLAND
SENATE FINANCE COMMITTEE SECRETARY
PHONE: 465-4935
FAX: 465-2187

NOTES: Final Please
CS SB 357 (FIN)
23-LS1684\H
plus one amendment: 23-LS1684\D.1

Thanks
Mindy

CS FOR SENATE BILL NO. 357(FIN)
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE FINANCE COMMITTEE

Offered:
Referred:

Sponsor(s): SENATE LABOR AND COMMERCE COMMITTEE

A BILL
FOR AN ACT ENTITLED

1 "An Act relating to the regulation of insurance, insurance licenses, qualifications of
2 insurance producers, surplus lines, fraud investigations, electronic transactions, and
3 compliance with federal law and national standards; and providing for an effective
4 date."

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

6 * Section 1. AS 21.06.120(c) is amended to read:

7 (c) In place of an examination by the director, the director may accept a full
8 report of the last recent examination of a foreign or alien insurer, issued [CERTIFIED
9 TO] by the insurance supervisory official of another state, territory, commonwealth, or
10 district of the United States. The director may require that the

11 (1) insurance regulatory agency conducting the examination be, at the
12 time of the examination, accredited by the National Association of Insurance
13 Commissioners;

14 (2) examination be performed under the supervision of an insurance

1 regulatory agency accredited by the National Association of Insurance
2 Commissioners; and the supervising examiner, after a review of the examination work
3 papers and report, state under oath that the examination and report comply with the
4 standards and procedures required by their accredited state insurance regulatory
5 agency; or

6 (3) examiner conducting the examination be employed by an insurance
7 regulatory agency accredited at the time of the examination by the National
8 Association of Insurance Commissioners and that the examiner, after review of the
9 examination work papers and report, state under oath that the examination and report
10 comply with the standards and procedures required by the accredited insurance
11 regulatory agency.

12 * Sec. 2. AS 21.07.010(b) is amended to read:

13 (b) A contract between a participating health care provider and a managed
14 care entity that offers a group managed care plan may not contain a provision that

15 (1) has as its predominant purpose the creation of direct financial
16 incentives to the health care provider for withholding covered health care services that
17 are medically necessary; nothing in this paragraph shall be construed to prohibit a
18 contract between a participating health care provider and a managed care entity from
19 containing incentives for efficient management of the utilization and cost of covered
20 health care services;

21 (2) requires the provider to contract for all products that are currently
22 offered or that may be offered in the future by the managed care entity; or [AND]

23 (3) requires the health care provider to be compensated for health care
24 services performed at the same rate as the health care provider has contracted with
25 another managed care entity.

26 * Sec. 3. AS 21.07.040(a) is amended to read:

27 (a) Medical [NOTWITHSTANDING AS 21.86.280, MEDICAL] and
28 financial information in the possession of a managed care entity regarding an applicant
29 or a current or former person covered by a managed care plan is confidential and is not
30 subject to public disclosure.

31 * Sec. 4. AS 21.07.040(a) is amended by adding a new subsection to read:

Amend.
#1

1 (d) This section does not apply to a managed care entity that is subject to
2 AS 21.36.

3 * Sec. 5. AS 21.09.110(a) is amended to read:

4 (a) To apply for an original certificate of authority, an insurer shall file with
5 the director its application, accompanied by the applicable fees set under
6 AS 21.06.250, showing its name, location of its home office, or principal office in the
7 United States if an alien insurer, kinds of insurance to be transacted, date of
8 organization or incorporation, form of organization, state or country of domicile, and
9 additional information that the director may reasonably require, together with the
10 following documents, as applicable:

11 (1) if a foreign insurer, a copy of its corporate charter or articles of
12 incorporation, with all amendments certified by the public officer with whom the
13 originals are on file in the state or country of domicile;

14 (2) if a reciprocal insurer, copies of the power of attorney of its
15 attorney-in-fact and of its subscribers' agreement, if any, certified by its attorney-in-
16 fact;

17 (3) a copy of its financial statement as of the preceding December 31
18 and all subsequent quarterly financial statements, sworn to by at least two executive
19 officers of the insurer or certified by the public insurance supervisory official of the
20 insurer's state of domicile or of entry into the United States;

21 (4) a copy of the report of last examination, if any, made of the insurer,
22 issued [CERTIFIED] by the insurance supervisory official of its state of domicile or
23 of entry into the United States;

24 (5) appointment of the director under AS 21.09.180 [,] as its attorney
25 to receive service of legal process;

26 (6) if a foreign or alien insurer, a certificate of the public official
27 having supervision of insurance in its state or country of domicile, or state of entry
28 into the United States, showing that it is authorized to transact the kinds of insurance
29 proposed to be transacted in this state;

30 (7) if an alien insurer, a copy of the appointment and authority of its
31 United States manager, certified by its officer having custody of its records; and

1 (8) if a foreign insurer, a certificate as to deposit if it is to be tendered
2 under AS 21.09.090.

3 * **Sec. 6.** AS 21.09.170 is repealed and reenacted to read:

4 **Sec. 21.09.170. Duration of suspension, insurer's obligations, and**
5 **reinstatements.** (a) Suspension of an insurer's certificate of authority shall be for a
6 fixed period of time determined by the director, or until the occurrence of a specific
7 event necessary for remedying the reasons for suspension. The director may modify,
8 rescind, or reverse a suspension under this section.

9 (b) During the period of suspension, the insurer

10 (1) may not solicit or write any new business in this state;

11 (2) shall file its annual statement and pay fees, licenses, and taxes
12 required under this title; and

13 (3) may service its outstanding business in force in this state as if the
14 certificate had continued in full force.

15 (c) If the suspension of the certificate of authority is for a fixed period of time
16 and the certificate of authority has not been otherwise terminated, upon expiration of
17 the suspension period, the insurer's certificate of authority shall be reinstated unless
18 the director finds that the insurer is not in compliance with the requirements of this
19 title. The director shall promptly notify the insurer of any reinstatement, and the
20 insurer may not consider its certificate of authority reinstated until notified by the
21 director. If not reinstated, the certificate of authority expires at the end of the
22 suspension period or at the time the insurer fails to continue the certificate during the
23 suspension period under (b) of this section, whichever event occurs first.

24 (d) If the suspension of the certificate of authority continues until the
25 occurrence of a specific event and the certificate of authority has not been otherwise
26 terminated, upon the presentation of evidence satisfactory to the director that the
27 specific event has occurred, the insurer's certificate of authority shall be reinstated
28 unless the director finds that the insurer is not in compliance with the requirements of
29 this title. The director shall promptly notify the insurer of any reinstatement, and the
30 insurer may not consider its certificate of authority reinstated until notified by the
31 director. If satisfactory evidence as to the occurrence of the specific event has not

1 been presented to the director within five years after the date of suspension, the
 2 certificate of authority expires five years from the date of suspension or upon failure
 3 of the insurer to continue the certificate during the suspension period under (b) of this
 4 section, whichever occurs first.

5 (e) The authority of the agents in this state to represent the insurer is reinstated
 6 upon reinstatement of the insurer's certificate of authority.

7 (f) The director shall promptly notify an insurer's agents in this state, as shown
 8 by records of the director, of any reinstatement.

9 * Sec. 7. AS 21.09.210(a) is amended to read:

10 (a) Each authorized insurer, and each formerly authorized insurer with respect
 11 to premiums written [RECEIVED] while an authorized insurer in this state, shall file
 12 with the director, on or before March 1 in each year, a report of all insurance business
 13 written or contracted in the state, with proper proportionate allocation of premium for
 14 the property, subjects, or risks in the state insured under policies or contracts covering
 15 property, subjects, or risks located or resident in more than one state, during the
 16 preceding year ending December 31. The report must show

17 (1) the amounts paid policyholders on losses;

18 (2) the total direct premium income including policy membership and
 19 other fees, premiums paid by application of dividends, refunds, savings coupon, and
 20 similar returns or credits to payment of premiums for new or additional or extended or
 21 renewed insurance, charges for payment of premium in installments, and all other
 22 consideration for insurance from all kinds and classes of insurance whether designated
 23 a premium or otherwise;

24 (3) the amounts paid policyholders as returned premiums;

25 (4) the amounts paid policyholders as dividends.

26 * Sec. 8. AS 21.09.210(b) is amended to read:

27 (b) Each insurer, and each formerly authorized insurer with respect to
 28 premiums written [RECEIVED] while an authorized insurer in this state, shall pay a
 29 tax on the total direct premium written [INCOME RECEIVED] during the year
 30 ending on the preceding December 31 and paid for the insurance of property or risks
 31 resident or located in the state, other than wet marine and transportation insurance,

1 after deducting from the total direct premium income the applicable cancellations,
2 returned premiums, the unabsorbed portion of any deposit premium, all policy
3 dividends, unabsorbed premiums refunded to policyholders, refunds, savings, savings
4 coupons, and other similar returns paid or credited to policyholders with respect to
5 their policies. Deductions may not be made of cash surrender value of policies.
6 Considerations received on annuity contracts are not included in the direct premium
7 income and are not subject to tax. The tax shall be paid to the director at least
8 annually but not more often than once each quarter on the dates specified by the
9 director. The method of payment must be by the electronic or other payment method
10 specified by the director. Except as provided under (m) of this section, the tax is
11 computed at the rate of

12 (1) for domestic and foreign insurers, except hospital and medical
13 service corporations, 2.7 percent;

14 (2) for hospital and medical service corporations, six percent of their
15 gross premiums less claims paid.

16 * Sec. 9. AS 21.09.210(g) is repealed and reenacted to read:

17 (g) An insurer shall pay to the division a late payment fee of \$50 a month plus
18 five percent of the tax due each calendar month or part of a month during which the
19 insurer fails to pay the full amount of the tax, or a portion of the tax, and interest at the
20 rate of one percent of the tax due each calendar month or part of a month for the
21 period the insurer fails to pay the premium tax in this section or in AS 21.09.270. The
22 late payment fee, not including interest, may not exceed \$250 plus 25 percent of the
23 tax due. The tax payment shall be made in the form required by the director, or a
24 penalty shall be added to the tax of 25 percent of the tax due, not to exceed \$2,000,
25 with a minimum penalty of \$100. In addition to any other penalty provided by law, a
26 civil penalty may be assessed of not more than \$10,000 if an insurer wilfully violates
27 this section. The director may suspend or revoke the certificate of authority of an
28 insurer that fails to pay taxes, a penalty, or a late payment fee as required under this
29 section.

30 * Sec. 10. AS 21.09.210(m) is amended to read:

31 (m) The tax imposed under this section for an individual [POLICY OF] life

1 insurance policy shall be computed at the rate of

2 (1) 2.7 percent of policy year premium up to \$100,000; and

3 (2) one-tenth of one percent of policy year premium exceeding
4 \$100,000.

5 * **Sec. 11.** AS 21.09.210 is amended by adding a new subsection to read:

6 (o) Premiums on which taxes are paid under (m)(2) of this section are not
7 subject to AS 21.09.270.

8 * **Sec. 12.** AS 21.09.310(b) is amended to read:

9 (b) An alien insurer may apply for a certificate of authority to use this state as
10 a state of entry to transact the business of insurance in the United States by

11 (1) qualifying as an insurer licensed to do business in this state;

12 (2) establishing a trust under a trust agreement approved in writing by
13 the director with a United States bank acceptable to the director in an amount not less
14 than the greater of

15 (A) the minimum basic capital or basic guarantee surplus and
16 additional maintained surplus required under AS 21.09.070; or

17 (B) the authorized control level risk based capital under
18 AS 21.14;

19 (3) submitting a copy of its charter and bylaws, if any, currently in
20 force, and other documents necessary to show the kind of business it is authorized to
21 transact in its domiciliary jurisdiction; documents submitted under this paragraph must
22 be attested to as accurate and complete by the insurance supervisory official in the
23 domiciliary jurisdiction, and must include an English translation, if in a language other
24 than English;

25 (4) submitting a full statement, subscribed and affirmed as true by two
26 officers or equivalent responsible representatives in a manner that the director
27 prescribes, of its financial condition as of the close of its latest fiscal year, showing its
28 assets, liabilities, income disbursements, business transacted, and other facts required
29 to be shown in its annual statement, as reported to the insurance supervisory official in
30 its domiciliary jurisdiction; all documents submitted under this paragraph must include
31 an English translation if in a language other than English;

1 (5) submitting to an examination under AS 21.06.120(b) at its
 2 principal office within the United States, and elsewhere if necessary, unless the
 3 director accepts a report of the insurer's recent examination and the report has been
 4 issued [CERTIFIED] by the insurance supervisory official of the insurer's domiciliary
 5 jurisdiction; and

6 (6) payment of fees established under AS 21.06.250.

7 * **Sec. 13.** AS 21.12.020(a) is amended to read:

8 (a) Credit for reinsurance transactions shall be allowed a domestic ceding
 9 insurer as either an asset or a deduction from liability on account of reinsurance ceded
 10 only with respect to cessions of a kind or class of business that the assuming
 11 insurer is licensed or permitted to write or assume in its state of domicile or, in
 12 the case of a United States branch of an alien assuming insurer, in the state
 13 through which it is entered and licensed to transact insurance or reinsurance and
 14 only if the reinsurance is ceded to an

15 (1) assuming insurer that is licensed to transact insurance or
 16 reinsurance in this state;

17 (2) assuming insurer that is accredited as a reinsurer in this state; an
 18 accredited reinsurer is one that

19 (A) files evidence of submission to this state's jurisdiction,
 20 submits to this state's authority to examine its books and records under
 21 AS 21.06.120, is licensed to transact insurance or reinsurance in at least one
 22 state that is accredited by the National Association of Insurance
 23 Commissioners, or, in the case of a United States branch of an alien admitted
 24 insurer, is entered through and licensed to transact insurance or reinsurance in
 25 at least one state that is accredited by the National Association of Insurance
 26 Commissioners;

27 (B) maintains at least \$20,000,000 in policyholder surplus and
 28 whose accreditation has not been denied by the director within 90 days after
 29 [OF] application to the director, or maintains less than \$20,000,000 in
 30 policyholder surplus and whose application for accreditation has been
 31 approved by the director; and

1 (C) files annually with the director a copy of the reinsurer's
2 annual financial statement filed with the insurance department of the
3 reinsurer's state of domicile or state of entry and a copy of the reinsurer's most
4 recent audited financial statement;

5 (3) assuming insurer that is domiciled in a state, or, in the case of a
6 United States branch of an alien assuming insurer, is entered through a state accredited
7 by the National Association of Insurance Commissioners that employs standards
8 regarding credit for reinsurance ceded substantially similar to those applicable under
9 (1) and (2) of this subsection, the assuming insurer maintains a policyholder surplus of
10 at least \$20,000,000, and the assuming insurer submits to the authority of this state to
11 examine its books and records; the surplus requirements in this paragraph do not apply
12 to reinsurance ceded and assumed under a pooling arrangement among insurers in the
13 same holding company system;

14 (4) assuming alien insurer that

15 (A) maintains a trust fund in a qualified United States financial
16 institution for the payment of the valid claims of its United States
17 policyholders and ceding insurers, and their assigns and successors in interest,
18 that conforms to the following requirements:

19 (i) the trust and each amendment to the trust shall be
20 established in a form approved by the insurance supervisory official
21 of the state where the trust is domiciled or the insurance
22 supervisory official of another state who, under the terms of the
23 trust instrument, has accepted responsibility for regulatory
24 oversight of the trust; the form of the trust and each trust
25 amendment shall be filed with the insurance supervisory official of
26 every state in which the beneficiaries of the trust are domiciled
27 [THE DIRECTOR]; the trust instrument must provide that contested
28 claims are valid and enforceable upon the final order of any court of
29 competent jurisdiction in the United States; the trust shall vest legal
30 title to its assets in the trustees of the trust for its United States
31 policyholders and ceding insurers, their assigns, and successors in

1 interest; the trust and the assuming insurer are subject to examination as
2 determined by the director, and the assuming insurer shall submit to
3 examination of its books and records by the director and bear the
4 expense of examination; the trust must remain in effect for so long as
5 the assuming insurer has outstanding liabilities due under the
6 reinsurance agreements subject to the trust;

7 (ii) on or before March 1 of each year the trustees shall
8 report in writing to the director on the balance of the trust and list the
9 trust's investments at the end of the preceding year, and shall certify the
10 date of termination of the trust, if so planned, or certify that the trust
11 does not expire before the following December 31;

12 (iii) in the case of a single assuming insurer, the trust
13 shall consist of trust money representing the assuming insurer's
14 liabilities attributable to business written in the United States and, in
15 addition, include a trust surplus of not less than \$20,000,000; the single
16 assuming insurer shall make available to the director an annual
17 certification of the insurer's solvency by an independent certified public
18 accountant or an accountant holding a substantially equivalent
19 designation as determined by the director;

20 (iv) in the case of a group, including incorporated and
21 individual unincorporated insurers, the trust shall consist of trust money
22 representing the group's liabilities attributable to business ceded by the
23 United States domiciled ceding insurers [WRITTEN IN THE
24 UNITED STATES] and, in addition, include a trust surplus not less
25 than \$100,000,000 held jointly for the benefit of the United States
26 domiciled ceding insurers or any member of the group for all years
27 of account; the incorporated members of the group may not be engaged
28 in any business other than underwriting as a member of the group and
29 are subject to the same level of solvency regulation and control by the
30 group's domiciliary regulator as are the unincorporated members;
31 within 90 days after its financial statements are due to be filed with

1 the group's domiciliary regulator, the group shall make available to
2 the director an annual certification of the solvency of each insurer by
3 the group's domiciliary regulator or, if the certification is unavailable,
4 financial statements, prepared [AND] by an independent certified
5 public accountant, or an accountant holding a substantially equivalent
6 designation as determined by the director, for each underwriter
7 member of the group;

8 (v) in the case of a group of incorporated insurers under
9 common administration that complies with the reporting requirements
10 contain 1 in (ii) of this subparagraph, that has continuously transacted
11 an insurance business outside the United States for at least three years
12 immediately before making application for accreditation, that submits
13 to this state's authority to examine its books and records and bears the
14 expense of the examination, and that has aggregate policyholders'
15 surplus of \$10,000,000,000, the trust shall be in an amount equal to the
16 group's several liabilities attributable to business ceded by United
17 States domiciled ceding insurers to a member of the group under
18 reinsurance contracts issued in the name of the group, and the group
19 shall maintain a joint trustee surplus, of which \$100,000,000 shall be
20 held jointly for the benefit of United States domiciled ceding insurers
21 of a member of the group as additional security for the group's
22 liabilities, and, within 90 days after its financial statements are due
23 to be filed with the group's domiciliary regulator, each member of
24 the group shall make available to the director an annual certification of
25 the underwriter member's solvency by the member's domiciliary
26 regulator and financial statement of each underwriter member
27 prepared by its [THE MEMBER'S] independent certified public
28 accountant, or an accountant holding a substantially equivalent
29 designation as determined by the director; and

30 (B) reports annually to the director information substantially
31 the same as that required to be reported on the National Association of

1 Insurance Commissioners' annual statement form by licensed insurers to
2 enable the director to determine the sufficiency of the trust fund;

3 (5) assuming insurer that does not meet the requirements of (1) - (4) of
4 this subsection, but only with respect to the insurance of risks located in jurisdictions
5 where the reinsurance is required by applicable law or regulation of that jurisdiction.

6 * **Sec. 14.** AS 21.12.020(c) is amended to read:

7 (c) A reduction from liability, for reinsurance ceded to an assuming insurer
8 not meeting the requirements of (a) of this section, shall be allowed in an amount not
9 exceeding the liabilities carried by the ceding insurer. The reduction shall be equal to
10 the amount of money held by or on behalf of the ceding insurer, including money held
11 in trust for the ceding insurer, under a reinsurance contract with the assuming insurer
12 as security for the payment of obligations under it, if the security is held in the United
13 States subject to withdrawal solely by, and under the exclusive control of, the ceding
14 insurer, or, in the case of a trust, held in a qualified United States financial institution.
15 The security must be in the form of

16 (1) cash;

17 (2) securities listed by the Securities Valuation Office of the National
18 Association of Insurance Commissioners that qualify as admitted assets under
19 AS 21.21;

20 (3) clean, irrevocable, unconditional letters of credit that contain an
21 evergreen clause issued or confirmed by a qualified United States financial institution
22 not later than December 31 in the year for which filing is made, and in the possession
23 of, or in trust for, the ceding insurer on or before the filing date of the ceding
24 insurer's annual statement; letters of credit meeting applicable standards of issuer
25 acceptability as of the dates of their issuance or confirmation shall, notwithstanding
26 the issuing or confirming institution's subsequent failure to meet applicable standards
27 of issuer acceptability, continue to be acceptable as security until their expiration,
28 extension, renewal, modification, or amendment, whichever occurs first; or

29 (4) other security acceptable to and approved in advance by the
30 director.

31 * **Sec. 15.** AS 21.12 is amended by adding a new section to read:

1 **Sec. 21.12.025. Assumption reinsurance.** (a) A nondomestic admitted
2 insurer may not carry out an agreement of assumption reinsurance with a nonadmitted
3 insurer that would transfer Alaska policyholders unless

4 (1) the nonadmitted insurer applies for and obtains a certificate of
5 authority from the director; or

6 (2) the admitted insurer files the assumption agreement with the
7 director and obtains approval to apply the assumption agreement to Alaska policies or
8 certificates.

9 (b) The director shall approve an assumption agreement involving the
10 assumption of Alaska insurance business by a nonadmitted insurer if

11 (1) the ceding insurer is in supervision, conservation, or liquidation
12 and the assuming insurer is in good standing in its state of domicile; or

13 (2) approval would be in the public interest of the Alaska
14 policyholders.

15 * **Sec. 16.** AS 21.14.010 is amended by adding a new subsection to read:

16 (f) The requirements of this chapter supplement other provisions of this title
17 and do not preclude or limit other powers or duties of the director.

18 * **Sec. 17.** AS 21.22.030(a) is amended to read:

19 (a) The director shall approve a merger or other acquisition of control referred
20 to in AS 21.22.010 unless, after a public hearing, the director finds that

21 (1) after the change of control, the domestic insurer referred to in
22 AS 21.22.010 would not be able to satisfy the requirements for the issuance of a
23 license to write the line or lines of insurance for which it is presently licensed;

24 (2) the effect of the merger or other acquisitions of control would be
25 substantially to lessen competition in insurance in this state or tend to create a
26 monopoly in this state;

27 (3) the financial condition of an acquiring party is such that it might
28 jeopardize the financial stability of the insurer or prejudice the interest of its
29 policyholders or the interests of any remaining securityholders who are unaffiliated
30 with the acquiring party;

31 (4) the terms of the offer, request, invitation, agreement, or acquisition

1 referred to in AS 21.22.010 are unfair and unreasonable to the securityholders of the
2 insurer;

3 (5) the plans or proposals that the acquiring party has to liquidate the
4 insurer, sell its assets, or consolidate or merge it with any person, or to make any other
5 material change in its business or corporate structure or management, are unfair and
6 unreasonable to policyholders of the insurer and not in the public interest; [OR]

7 (6) the competence, experience, and integrity of those persons who
8 would control the operation of the insurer are such that it would not be in the interest
9 of policyholders of the insurer and of the public to permit the merger or other
10 acquisition of control; or

11 (7) the acquisition is likely to be hazardous or prejudicial to the
12 insurance-buying public.

13 * Sec. 18. AS 21.27.060(d) is amended to read:

14 (d) This section does not apply to an applicant

15 (1) for a limited license under AS 21.27.150(a)(1), (4), or (5)
16 [AS 21.27.150(a)(1), (5), OR (6)]; or

17 (2) who, at any time within the one-year period immediately preceding
18 the date the current pending application is received by the division, had been licensed
19 in good standing in this state under a license requiring substantially similar
20 qualifications as required by the license applied for.

21 * Sec. 19. AS 21.27.115 is amended to read:

22 **Sec. 21.27.115. Lines of authority.** If a person has met the applicable
23 requirements of AS 21.27.020 and 21.27.270, the director shall issue a license for one
24 or more of the following lines of authority:

25 (1) life insurance coverage on natural persons; in this paragraph, "life
26 insurance coverage"

27 (A) includes benefits of endowment and annuities; and

28 (B) may include benefits in the event of death or
29 dismemberment by accident and benefits for disability income;

30 (2) health insurance coverage for sickness, bodily injury, or accidental
31 death; in this paragraph, "health insurance coverage" may include benefits for

1 disability income;

2 (3) property insurance coverage for the direct or consequential loss for
3 damage to property of every kind;

4 (4) casualty insurance coverage against legal liability, including that
5 for death, injury, or disability or damage to real or personal property; in this
6 paragraph, "casualty insurance" includes surety insurance as defined in AS 21.12.080;

7 (5) variable life and variable annuity products insurance coverage;

8 (6) personal lines property and casualty insurance coverage sold to
9 individuals and families for primarily noncommercial purposes;

10 (7) limited lines credit insurance;

11 (8) crop insurance coverage for damage to crops from unfavorable
12 weather conditions, fire or lightning, flood, hail, insect infestation, disease, or
13 other yield-reducing conditions or perils provided by the private insurance
14 market, or that is subsidized by the Federal Crop Insurance Corporation,
15 including multiperil crop insurance;

16 (9) surety insurance as defined in AS 21.12.080;

17 (10) any insurance for which a limited lines license may be issued
18 under AS 21.27.150.

19 * Sec. 20. AS 21.27.140(b) is amended to read:

20 (b) A firm may not be licensed as an insurance producer, managing general
21 agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus
22 lines broker, or independent adjuster, or transact insurance unless each individual
23 employed as an insurance producer, managing general agent, surplus lines broker,
24 [TRAINEE INSURANCE PRODUCER,] trainee independent adjuster, or independent
25 adjuster by the firm is licensed as an individual in the firm. Each compliance officer
26 of the firm shall be licensed as an individual in the firm for a specific line and class of
27 authority. If there is more than one compliance officer, the combined authority of all
28 compliance officers shall cover all the powers conferred by the firm's license.

29 * Sec. 21. AS 21.27.150(a) is amended to read:

30 (a) The director may issue a

31 (1) travel insurance limited producer license to a person who sells

1 transportation tickets of a common carrier of persons or property, who is appointed
 2 under AS 21.27.100 [, AND WHOSE SOLE PURPOSE IS TO BE APPOINTED BY
 3 AND ACT AS AN AGENT] for transportation ticket policies of health insurance,
 4 baggage insurance on personal effects, and trip cancellation or trip interruption
 5 insurance;

6 (2) title insurance limited producer license to a person whose place of
 7 business is located in this state and whose sole purpose is to be appointed by and act
 8 on behalf of a title insurer;

9 (3) bail bond limited producer license to a person who is [WHOSE
 10 SOLE PURPOSE IS TO BE] appointed by and acts [ACT] on behalf of a surety
 11 insurer pertaining to bail bonds;

12 (4) [FRATERNAL BENEFIT SOCIETY LIMITED PRODUCER
 13 LICENSE TO A PERSON WHOSE SOLE PURPOSE IS TO BE APPOINTED BY
 14 AND ACT ON BEHALF OF A FRATERNAL BENEFIT SOCIETY LICENSED
 15 UNDER AS 21.84;

16 (5)] motor vehicle rental agency limited producer license to a person
 17 and, subject to the approval of the director, to employees of the person licensed that
 18 the licensee authorizes to transact the business of insurance on the licensee's behalf if,
 19 as to an employee, the licensee complies with (D) of this paragraph and if the licensee

20 (A) rents to others, without operators,

21 (i) private passenger motor vehicles, including
 22 passenger vans, minivans, and sport utility vehicles; or

23 (ii) cargo motor vehicles, including cargo vans, pickup
 24 trucks, and trucks with a gross vehicle weight of less than 26,000
 25 pounds that do not require the operator to possess a commercial driver's
 26 license;

27 (B) rents motor vehicles only to persons under rental
 28 agreements that do not exceed a term of 90 days;

29 (C) transacts only the following kinds of insurance:

30 (i) motor vehicle liability insurance with respect to
 31 liability arising out of the use of a vehicle rented from the licensee

1 during the term of the rental agreement;

2 (ii) uninsured or underinsured motorist coverage, with
3 minimum limits described in AS 21.89.020(c) and (d) arising out of the
4 use of a vehicle rented from the licensee during the term of the rental
5 agreement;

6 (iii) insurance against medical, hospital, surgical, and
7 disability benefits to an injured person and funeral and death benefits to
8 dependents, beneficiaries, or personal representatives of a deceased
9 person if the insurance is issued as incidental coverage with or
10 supplemental to liability insurance and arises out of the use of a vehicle
11 rented from the licensee during the term of the rental agreement;

12 (iv) personal effects insurance, including loss of use,
13 with respect to damage to or loss of personal property of a person
14 renting the vehicle and other vehicle occupants while that property is
15 being loaded into, transported by, or unloaded from a vehicle rented
16 from the licensee during the term of the rental agreement;

17 (v) towing and roadside assistance with respect to
18 vehicles rented from the licensee during the term of the rental
19 agreement; and

20 (vi) other insurance as may be authorized by regulation
21 by the director;

22 (D) notifies the director in writing, within 30 days of
23 employment, of the name, date of birth, social security number, location of
24 employment, and home address of an employee authorized by the licensee to
25 transact insurance on the licensee's behalf; and

26 (E) provides other information as required by the director;

27 (5) [(6)] nonresident limited producer license to a person; a license that
28 the director issues under this paragraph grants the same scope of authority as a limited
29 lines producer license issued to the person by the person's home state;

30 (6) [(7)] credit insurance limited producer license to a person who sells
31 limited lines credit insurance;

1 (7) [(8)] miscellaneous limited producer license to a person who
 2 transacts insurance in this state that restricts the person's authority to less than the total
 3 authority for a line of authority described in AS 21.27.115(1) - (6), (8), and (9).

4 * **Sec. 22.** AS 21.27.360(h) is amended to read:

5 (h) A licensee who transacts the business of insurance under a motor vehicle
 6 rental agency limited producer license under AS 21.27.150(a)(6) [AS 21.27.150(a)(7)]
 7 is not required to hold money collected from a person for the purchase of rental motor
 8 vehicle insurance coverage in a separate fiduciary account if

9 (1) the fees for the rental insurance coverage are itemized and are a
 10 part of a rental motor vehicle transaction; and

11 (2) the insurer has given written consent that the money need not be
 12 segregated from other money received by the licensee and the consent is signed by an
 13 officer of the insurer.

14 * **Sec. 23.** AS 21.27.380(e) is amended to read:

15 (e) A trainee license issued to an [INSURANCE PRODUCER OR AN]
 16 independent adjuster shall be for a term not to exceed 12 months and may not be
 17 renewed.

18 * **Sec. 24.** AS 21.27.590 is repealed and reenacted to read:

19 **Sec. 21.27.590. Managing general agents qualifications.** In addition to the
 20 general qualifications under AS 21.27.020, the director may require that a managing
 21 general agent maintain

22 (1) a bond in an amount acceptable to the director and that requires the
 23 managing general agent to conduct business under this title; and

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

25 * **Sec. 25.** AS 21.27.670 is repealed and reenacted to read:

26 **Sec. 21.27.670. Reinsurance intermediary broker qualifications.** In
 27 addition to the general qualifications under AS 21.27.020, the director may require
 28 that a reinsurance intermediary broker maintain

29 (1) a bond in an amount acceptable to the director in favor of insurers
 30 and this state that requires the reinsurance intermediary broker to conduct business
 31 under this title; and

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

2 * Sec. 26. AS 21.27.730 is repealed and reenacted to read:

3 **Sec. 21.27.730. Reinsurance intermediary manager qualifications.** In
4 addition to the general qualifications under AS 21.27.020, the director may require
5 that a reinsurance intermediary manager maintain

6 (1) a bond in an amount acceptable to the director that requires the
7 reinsurance intermediary manager to conduct business under this title; and

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

9 * Sec. 27. AS 21.27.790 is amended to read:

10 **Sec. 21.27.790. Surplus lines broker qualifications.** In addition to the
11 general qualifications under AS 21.27.020, to qualify for issuance or for renewal of a
12 surplus lines broker license, an applicant or licensee shall

13 (1) be licensed as either an insurance producer or managing
14 general agent for property and casualty lines of authority [HAVE A MINIMUM
15 TWO YEARS ACTIVE WORKING EXPERIENCE WITHIN THE PREVIOUS
16 FIVE CALENDAR YEARS AS AN INSURANCE PRODUCER, MANAGING
17 GENERAL AGENT, REINSURANCE INTERMEDIARY BROKER,
18 REINSURANCE INTERMEDIARY MANAGER, INDEPENDENT ADJUSTER, OR
19 UNDERWRITER OR CLAIMS ADJUSTER EMPLOYEE OF AN INSURER AND,
20 IN THE DIRECTOR'S OPINION, EXHIBIT THE ABILITY TO COMPETENTLY
21 PERFORM THE RESPONSIBILITIES OF THE LICENSE APPLIED FOR];

22 (2) if required by the director by regulation, maintain a bond as
23 described in AS 21.27.190 in an amount acceptable to the director [WITH THE
24 CONDITIONS] that requires the surplus lines broker to conduct business under [THE
25 PROVISIONS OF] this title, promptly remit the taxes and fees required
26 [PROVIDED] by law, return premiums promptly when due, and pay proper losses
27 promptly;

28 (3) if the director requires, maintain an errors and omissions insurance
29 policy acceptable to the director.

30 * Sec. 28. AS 21.34.020 is amended to read:

31 **Sec. 21.34.020. Placement of surplus lines insurance.** Insurance other than

1 reinsurance, wet marine and transportation insurance, insurance independently
 2 procured, life insurance, health insurance except as provided in AS 21.34.035, and
 3 annuity contracts may be procured through a surplus lines broker licensed under
 4 AS 21.27 from nonadmitted insurers if

5 (1) the insurer is an eligible surplus lines insurer;

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

8 (3) the producing broker has conducted and documented a diligent
 9 search among insurers who are admitted to transact business in this state and are
 10 actually writing the particular kind or class of insurance required by the client in this
 11 state;

12 (4) the director authorizes an exception to (2) of this section by
 13 regulation or by written authorization for an individual placement upon written request
 14 by the broker; and

15 (5) all other requirements of this chapter are met.

16 * Sec. 29. AS 21.34.020 is amended by adding a new subsection to read:

17 (b) In this section,

18 (1) "amount" means limit, sublimit, retention, and broadening or
 19 restrictive endorsement;

20 (2) "class" means rating class;

21 (3) "kind" means one or more kinds of insurance as defined in
 22 AS 21.12.

23 * Sec. 30. AS 21.34 is amended by adding a new section to read:

24 **Sec. 21.34.035. Health care insurance.** (a) Except for a multiple employer
 25 welfare arrangement, health care insurance may be placed in and written by a
 26 nonadmitted insurer if

27 (1) the director finds it is in the best interest of the public and issues an
 28 order to that effect; and

29 (2) the insurance is in compliance with this chapter.

30 (b) The rates and rating methods for health care insurance placed and written
 31 under this section are subject to AS 21.87.190. The surplus lines broker shall make

1 the filings required under AS 21.87.190 and maintain the records and accounts as
2 required under AS 21.87.230.

3 (c) Health care insurance may not be procured under this chapter

4 (1) for the purpose of obtaining a lower premium rate than acceptable
5 by an authorized insurer; or

6 (2) for obtaining a competitive advantage.

7 (d) Insurance placed in or written by a nonadmitted insurer and the activities
8 of the surplus lines broker relating to that transaction are subject to this title.

9 (e) In this section, "health care insurance" has the meaning given in
10 AS 21.12.050(b).

11 * **Sec. 31.** AS 21.34.050 is amended to read:

12 **Sec. 21.34.050. Listing eligible surplus lines insurers.** In addition to
13 meeting the requirements of AS 21.34.040, a nonadmitted insurer shall be an eligible
14 surplus lines insurer if it pays to the division or surplus lines association any fee
15 required by regulation and appears on the most recent list of eligible surplus lines
16 insurers published by the director or by the surplus lines association when approved by
17 the director. The list is to be published at least semi-annually. Nothing in this section
18 requires the director or the surplus lines association to place or maintain the name of a
19 nonadmitted insurer on the list of eligible surplus lines insurers. An annual fee
20 required under this section and adopted by regulation shall be paid before July 1
21 of each year.

22 * **Sec. 32.** AS 21.34.080 is amended by adding a new subsection to read:

23 (d) A transaction, as used in this section, is any placement of coverage as well
24 as changes in coverage that result in an increase or decrease of premiums, taxes, or
25 fees.

26 * **Sec. 33.** AS 21.34.100 is repealed and reenacted to read:

27 **Sec. 21.34.100. Evidence of insurance.** (a) When surplus lines insurance is
28 placed, the surplus lines broker shall promptly deliver to the named insured or the
29 producing broker the policy or, if the policy is not then available, a certificate, cover
30 note, binder, or other evidence of insurance. The certificate, cover note, binder, or
31 other evidence of insurance for the named insured shall be executed by the surplus

1 lines broker and must contain a summary of all material facts that would regularly be
2 included in the policy, the description and location of the subject of insurance, a
3 general description of the coverages of the insurance, the premium and rate charged
4 and taxes to be collected from the insured, the name and address of the insured, the
5 name of each surplus lines insurer and the percentage of the entire risk assumed by
6 each, the name of the surplus lines broker, and the license number of the surplus lines
7 broker.

8 (b) A surplus lines broker may not issue or deliver evidence of insurance or
9 purport to insure or represent that insurance will be or has been written by an eligible
10 surplus lines insurer, or a nonadmitted insurer under AS 21.34.060, unless the surplus
11 lines broker has authority from the insurer to cause the risk to be insured or has
12 received information from the insurer in the regular course of business that the
13 insurance has been granted.

14 (c) If, after delivery of evidence of insurance, there is a change in the identity
15 of the insurers or the percentage of the risk assumed by an insurer or another material
16 change in coverage from that stated in the surplus lines broker's original evidence of
17 insurance or in other material concerning the evidenced insurance, the surplus lines
18 broker shall promptly issue and deliver to the insured or the producing broker an
19 appropriate substitute for or endorsement of the original document, accurately
20 showing the current status of the coverage and the insurer's responsibility.

21 (d) A surplus lines broker who fails to comply with this section is subject to
22 the penalties in AS 21.34.230.

23 (e) Every evidence of insurance negotiated, placed, or procured under this
24 chapter issued by a surplus lines broker must bear the name of the surplus lines broker,
25 which may not be covered, concealed, or obscured by the producing broker, and the
26 following legend in at least 10-point type: "This is evidence of insurance procured
27 and developed under the Alaska Surplus Lines Law, AS 21.34. It is not covered by the
28 Alaska Insurance Guaranty Association Act, AS 21.80."

29 (f) Every certificate issued by the producing broker or other licensee as
30 evidence of insurance negotiated, placed, or procured under this chapter must bear the
31 name of the surplus lines broker, which may not be covered, concealed, or obscured

1 by the producing broker, and the following legend in at least 10-point type: "This is
2 evidence of insurance procured and developed under the Alaska Surplus Lines Law,
3 AS 21.34. It is not covered by the Alaska Insurance Guaranty Association Act,
4 AS 21.80."

5 * **Sec. 34.** AS 21.34.110(a) is repealed and reenacted to read:

6 (a) A contract of insurance placed by a surplus lines broker under this chapter
7 is not binding upon the insured and a premium charged is not due and payable until

8 (1) the surplus lines broker has notified the insured in writing, a copy
9 of which shall be maintained by the surplus lines broker with the records of the
10 contract, available for examination, that the insurer with whom the surplus lines
11 broker places the insurance does not hold a certificate of authority issued by this state
12 and is not subject to its supervision, and, in the event of the insolvency of the surplus
13 lines insurer, losses will not be covered under AS 21.80 (Alaska Insurance Guaranty
14 Association Act); or

15 (2) the producing broker has notified the insured and the surplus lines
16 broker in writing, a copy of which shall be maintained by the producing broker and the
17 surplus lines broker with the records of the contract, available for examination, that the
18 insurer with whom the surplus lines is placed does not hold a certificate of authority
19 issued by this state, is not subject to this state's supervision, and, in the event of the
20 insolvency of the surplus lines insurer, losses will not be covered under AS 21.80
21 (Alaska Insurance Guaranty Association Act).

22 * **Sec. 35.** AS 21.34.170(a) is amended to read:

23 (a) A surplus lines broker shall file with the director on or before the end of
24 each month, on forms prescribed by the director, a verified report [IN DUPLICATE]
25 of all surplus lines insurance, by type of insurance as required to be reported in the
26 annual statement that must be filed with the director by admitted insurers. The report
27 must include all surplus lines insurance transactions during the preceding calendar
28 month showing the aggregate gross premiums written, the aggregate return premiums,
29 the amount of aggregate tax remitted to this state, and the amount of aggregate tax
30 remitted to each other state for which an allocation is made under AS 21.34.150.

31 * **Sec. 36.** AS 21.34.170 is amended by adding a new subsection to read:

1 (c) The surplus lines broker shall pay a penalty for late filing of the report,
2 according to the rate established in regulations adopted by the director.

3 * **Sec. 37.** AS 21.34.180(a) is amended to read:

4 (a) Gross premiums written [CHARGED], less any return premium, for
5 surplus lines insurance are subject to a premium receipts tax as outlined in
6 AS 21.09.210, which shall be collected by the surplus lines broker as specified by the
7 director, in addition to the full amount of the gross premium written [CHARGED] by
8 the insurer for the insurance. The tax on any portion of the premium unearned at
9 termination of insurance having been credited by the state to the surplus lines broker
10 shall be returned to the policy holder directly by the surplus lines broker or through the
11 producing broker, if any. The surplus lines broker may not absorb the tax or any part
12 of it, and may not rebate for any reason the tax or any part of it. However, if, under
13 AS 21.09.210, an admitted insurer is required to collect and pay premium tax on a
14 portion of a subscription policy, the surplus lines broker is not required to collect any
15 amount that would constitute double taxation of that portion of the insurance.

16 * **Sec. 38.** AS 21.34.180(f) is repealed and reenacted to read:

17 (f) A surplus lines broker shall pay to the division a late payment fee of \$50 a
18 month plus five percent of the tax due each calendar month or part of a month during
19 which the broker fails to pay the full amount of the tax or a portion of the tax and
20 interest at the rate of one percent of the tax due each calendar month or part of a
21 month for the period the broker fails to pay the tax. The late payment fee, not
22 including interest, may not exceed \$250 plus 25 percent of the tax due. The tax
23 payment shall be made in the form required by the director, or a penalty shall be added
24 to the tax equal to 25 percent of the tax due, not to exceed \$2,000, with a minimum
25 penalty of \$100. In addition to any other penalty provided by law, if the provisions of
26 this section are wilfully violated, a civil penalty may be assessed of not more than
27 \$10,000. The director may suspend or revoke the license of a broker that fails to pay
28 its taxes, a penalty, or a late payment fee required under this section.

29 * **Sec. 39.** AS 21.36.235(c) is amended to read:

30 (c) This section does not apply to workers' compensation insurance or to
31 business or commercial policies issued under AS 21.34.

1 * **Sec. 40.** AS 21.36.240 is amended to read:

2 **Sec. 21.36.240. Failure to renew.** An insurer may only fail to renew a
3 personal insurance policy on the policy's annual anniversary. An insurer may not fail
4 to renew a policy unless a written notice of nonrenewal is mailed to the named insured
5 as required by AS 21.36.260 at least 20 days for a personal insurance policy, and at
6 least 45 days for a business or commercial insurance policy, before the expiration date
7 of the policy or of the anniversary date of a policy written for a term longer than one
8 year or with no fixed expiration date. If notice of nonrenewal is not given as required
9 by this section, the existing policy shall continue until the insurer provides notice for
10 the time period required by this section for that policy. This section does not apply

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

12 (2) in case of nonpayment of premium for the expiring policy; [OR]

13 (3) if the insured fails to pay the premium as required by the insurer for
14 renewal; or

15 **(4) to business or commercial policies placed under AS 21.34.**

16 * **Sec. 41.** AS 21.36.365(a) is amended to read:

17 (a) A person is not liable for civil damages for filing a report with or
18 furnishing other information whether written or oral, concerning suspected,
19 anticipated, or completed fraudulent acts to

20 (1) law enforcement officials, their agents, and employees;

21 (2) the National Association of Insurance Commissioners, the division
22 of insurance, an agency in a state that regulates insurance, or an organization
23 established to detect and prevent fraudulent insurance acts, their agents, employees, or
24 designees;

25 **(3) a person involved in the prevention and detection of fraudulent**
26 **insurance acts or that person's employees, agents, or representatives.**

27 * **Sec. 42.** AS 21.39.020(b) is amended to read:

28 (b) This chapter does not apply to

29 (1) reinsurance, other than joint reinsurance to the extent stated in
30 AS 21.39.110;

31 (2) health insurance;

1 (3) insurance of vessels or craft, their cargoes, marine builders' risks,
2 marine protection and indemnity, or other risks commonly insured under marine, as
3 distinguished from inland marine insurance policies;

4 (4) insurance against loss of or damage to aircraft or against liability,
5 other than workers' compensation and employer's liability, arising out of the
6 ownership, maintenance, or use of aircraft; or, to insurance of hulls of aircraft,
7 including their accessories and equipment;

8 (5) insurance written under AS 21.34, except as provided in
9 AS 21.34.030(b).

10 * Sec. 43. AS 21.42.120(f) is amended to read:

11 (f) This section does not apply to a type of insurance subject to AS 21.57 or to
12 policies issued under AS 21.34.

13 * Sec. 44. AS 21.66.020 is amended to read:

14 Sec. 21.66.020. Deposits in guaranty fund. In addition to the deposit
15 required in AS 21.66.010(b), within [WITHIN] 30 days after the filing of each
16 annual statement, the title insurance company shall deposit with the director a sum
17 equal to 10 percent of the premiums written [RECEIVED BY IT] during the
18 preceding year covering property in this state, as shown by the annual statement, until
19 the accumulated deposits, added to the sums originally deposited with the director, as
20 provided in this chapter, total \$750,000, but the title insurance company may not be
21 required to deposit more than \$50,000 in any one year. The purpose of this deposit
22 is to provide a guaranty fund for payment of claims under title guaranties and
23 policies issued in Alaska in the event of the insolvency of the title insurer.

24 * Sec. 45. AS 21.66.110(c) is repealed and reenacted to read:

25 (c) A title insurance company shall pay to the division a late payment fee of
26 \$50 a month plus five percent of tax due each calendar month or part of a month
27 during which the insurer fails to pay the full amount of the tax or a portion of the tax
28 and interest at the rate of one percent of the tax due each calendar month or part of a
29 month for the period the insurer fails to pay the premium tax. The late payment fee,
30 not including interest, may not exceed \$250 plus 25 percent of the tax due. The tax
31 payment shall be made in the form required by the director or a penalty shall be added

1 to the tax equal to 25 percent of the tax due, not to exceed \$2,000, with a minimum
2 penalty of \$100. In addition to any other penalty provided by law, if the provisions of
3 this section are wilfully violated, then a civil penalty may be assessed of not more than
4 \$10,000. The director may suspend or revoke the certificate of authority of a title
5 insurance company that fails to pay its taxes, a penalty, or a late payment fee as
6 required under this section.

7 * Sec. 46. AS 21.69.390(b) is amended to read:

8 (b) A person determined by the director, following an appropriate hearing as
9 provided in AS 21.06.170 - 21.06.230, to have removed or attempted to remove any
10 records from the place where they are required to be kept under (a) or (d) of this
11 section with the intent to wrongfully remove them, or to have concealed or attempted
12 to conceal them from the director, is subject to a civil penalty of not more than
13 \$25,000. If a domestic insurer violates a provision of this section the director may
14 institute delinquency proceedings against the insurer under the provisions of AS 21.78.

15 * Sec. 47. AS 21.69.390 is amended by adding a new subsection to read:

16 (e) A domestic insurer may change the place of business or the location of
17 records with the written approval of the director. The domestic insurer must submit a
18 list of the records and the locations of the records that will be maintained outside of
19 this state when requesting approval. Any change in place of business, the approved
20 list of records, and the location of the records maintained outside of this state shall be
21 submitted 60 days before relocation and is considered approved if not disapproved by
22 the director within 30 days after receipt. The director shall approve the change in
23 place of business or location of records outside of this state subject to the following
24 standards:

25 (1) the place of business is readily accessible by the general public by
26 visit and telephone;

27 (2) the records are immediately available to examiners representing the
28 director in an examination;

29 (3) the domestic insurer agrees to ship the records to the state if the
30 insurer is ordered to do so under AS 21.78;

31 (4) the location of the place of business and records outside of the state

1 has a valid business purpose that is not satisfied by maintaining a place of business or
2 the records in the state;

3 (5) the list of records and location is of sufficient detail to readily
4 locate specific records.

5 * Sec. 48. AS 21.69.610 is repealed and reenacted to read:

6 **Sec. 21.69.610. Reinsurance for stock insurers.** (a) Notwithstanding (b) of
7 this section, a domestic stock insurer may reinsure a portion or all of its insurance in
8 force or a major class of its insurance with another insurer by a reinsurance agreement.
9 A reinsurance agreement shall be filed with the director within 30 days after all parties
10 have signed the agreement. A reinsurance agreement is designated as confidential for
11 purposes of AS 21.06.060.

12 (b) A domestic stock insurer may reinsure a portion or all of its insurance in
13 force or a major class of its insurance with another insurer by an agreement of
14 assumption reinsurance, but an agreement of assumption reinsurance is not effective
15 unless filed with and approved in writing by the director after a hearing.

16 (c) The director shall approve the agreement within a reasonable time after the
17 filing unless the director finds that it is inequitable to the stockholders of the domestic
18 insurer or would substantially reduce the protection or service to its policyholders. If
19 the director does not approve the agreement, the director shall notify the insurer in
20 writing specifying the reasons.

21 (d) This section does not apply to a facultative reinsurance contract. In this
22 subsection, "facultative reinsurance contract" means an agreement whereby individual
23 risk is offered by an insurer for acceptance or rejection by a reinsurer. Under a
24 facultative reinsurance contract, both parties are free to act in their own best interest,
25 regardless of any prior contractual arrangement.

26 * Sec. 49. AS 21.69.620(a) is amended to read:

27 (a) A domestic mutual insurer may reinsure a portion or all of [OR
28 SUBSTANTIALLY ALL] its business in force [,] or a portion or all [OR
29 SUBSTANTIALLY ALL] of a major class of its business [,] with another insurer,
30 stock or mutual, by a reinsurance [AN] agreement [OR BULK REINSURANCE
31 AFTER COMPLIANCE WITH THIS SECTION]. A reinsurance [AN] agreement

1 shall be [IS NOT EFFECTIVE UNLESS] filed with [AND APPROVED IN
 2 WRITING BY] the director within 30 days after all parties have signed the
 3 agreement. The agreement filed with the director is designated as confidential
 4 for the purposes of AS 21.06.060. A domestic mutual insurer may reinsure a
 5 portion or all of its insurance in force or a major class of its insurance with
 6 another insurer by an agreement of assumption reinsurance. An agreement of
 7 assumption reinsurance is not effective unless filed with and approved in writing
 8 by the director after a hearing [AFTER A HEARING].

9 * Sec. 50. AS 21.89.080 is amended to read:

10 Sec. 21.89.080. Electronic transactions [SUBMISSIONS].
 11 Notwithstanding any contrary provision of this title, the [THE] director may, by
 12 regulation or by order, provide for the electronic transaction [SUBMISSION] of any
 13 information or written communication under [SUBMISSION REQUIRED BY] this
 14 title [AND FOR AN ELECTRONIC CONFIRMATION OF A REQUIRED
 15 SUBMISSION].

16 * Sec. 51. AS 21.89.080 is amended by adding a new subsection to read:

17 (b) An electronic transaction under this section must comply with
 18 AS 09.25.500 - 09.25.520.

19 * Sec. 52. AS 21.90.900 is amended by adding new paragraphs to read:

20 (43) "assumption reinsurance" means a form of reinsurance that
 21 includes the transfer of all contractual obligations to the assuming insurer with no
 22 recourse to the ceding insurer;

23 (44) "reinsurance" means an insurance transaction by which the
 24 assuming insurer agrees to indemnify the ceding insurer in whole or in part against
 25 liability or losses that the ceding insurer might incur under a separate contract of
 26 insurance with its insured.

27 * Sec. 53. AS 21.18.090; AS 21.27.530(3), 21.27.540, 21.27.600, 21.27.680, 21.27.740,
 28 21.27.800, 21.27.900(22); AS 21.34.080(c); and AS 21.86.280 are repealed.

29 * Sec. 54. The uncodified law of the State of Alaska is amended by adding a new section to
 30 read:

31 TRANSITION: REGULATIONS. The director of insurance in the Department of

1 Community and Economic Development may proceed to adopt regulations necessary to
2 implement the changes made by this Act. The regulations take effect under AS 44.62
3 (Administrative Procedure Act), but not before the effective date of the respective statutory
4 change.

5 * **Sec. 55.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 REVISOR'S INSTRUCTIONS. The revisor of statutes is instructed to change the
8 catchline of AS 21.69.620 from "Bulk reinsurance, mutual insurers" to "Reinsurance for
9 mutual insurers."

10 * **Sec. 56.** Section 54 of this Act takes effect immediately under AS 01.10.07().

11 * **Sec. 57.** Except as provided in sec. 56 of this Act, this Act takes effect July 1, 2004.

Sheila ~

SB 357-

The amendment ~~likely~~
doesn't change ϕ
fiscal note does it?

Mundy

No/
Thanks for
asking
D

SENATE FINANCE
COMMITTEE

Amendment Number: #2

Bill Number: SB 357

Sponsor: Olson Date: 4/01/04

Logged In By: Robins

AMENDMENT

OFFERED IN SENATE FINANCE COMMITTEE

BY OLSON

TO: CS SB 357 (L&C)

Page 2, line 13: After "Medical",

insert ", genetic,"

Page 2, line 16: Delete "public"

and after "disclosure" insert

"without the expressed consent of the enrollee or applicant"

SENATE FINANCE COMMITTEE
4 / 01 / 2004 COMMITTEE ACTION

Bill Number	SB 357		
Amendment	#2		
Motion	to adnpt #2		
<u>Motion by</u>	Olson		
<u>Objection by</u>	Green		
<u>Removed</u>			
<u>Second Objection by</u>			
<u>Committee Member</u>	Y	<u>Vote</u>	N
Senator Bunde			
Senator Dyson			
Senator Hoffman			
Senator Olson			
Senator Stevens			
Co-Chair Green			
Co-Chair Wilken			
<u>Tally</u>			
Yea			
Nay			
Absent			
<u>MOTION</u>	WITHDRAWN		

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Provided by Spolsom

4/1/04
with Amend #2

Sec. 21.86.250. Penalties and enforcement. (a) Instead of, or in addition to, suspending or revoking a certificate of authority, the director may, in an order issued under AS 21.86.200, impose an administrative penalty in an amount not less than \$1,000 nor more than \$25,000 for each violation of an applicable provision of this chapter or a regulation adopted under this chapter.

(b) The director may issue an order directing a health maintenance organization or a person representing a health maintenance organization to stop engaging in an act or practice that is in violation of this chapter or a regulation adopted under this chapter. Within five days after service of a stop order under this subsection, the respondent may request, in writing, a hearing on the question of whether the act or practice has occurred in violation of this chapter or a regulation adopted by the director. The hearing shall commence within 10 days after the written request for the hearing has been received by the director unless the respondent requests that the hearing take place at a later date and the director agrees to the later hearing date. (§ 1 ch 95 SLA 1990)

Sec. 21.86.260. Statutory construction and relationship to other law.

(a) Except as provided in AS 21.36, AS 21.42, AS 21.54, AS 21.56 and in this chapter, this title does not apply to a health maintenance organization that obtains a certificate of authority under this chapter. This subsection does not apply to an insurer licensed under AS 21.09 or a hospital or medical service corporation licensed under AS 21.87 except with respect to its health maintenance organization activities authorized by and regulated under this chapter.

(b) Solicitation of enrollees by a health maintenance organization that has obtained a certificate of authority or by its licensed agents or authorized employee representatives, may not be construed to violate a law of this state relating to solicitation or advertising by health care professionals.

(c) A health maintenance organization that obtains a certificate of authority under this chapter is not considered to be practicing medicine, and is exempt from a law of this state relating to the practice of medicine. However, this subsection does not exempt a health care provider from a licensing requirement, or from another law of this state regarding providers. (§ 1 ch 95 SLA 1990; am § 6 ch 39 SLA 1993; am § 101 ch 81 SLA 1997)

Cross references. — For statement that the purpose of the amendments to this section made by ch. 81, SLA 1997 was to implement minimum federal standards, see § 1, ch. 81, SLA 1997 in the 1997

Temporary and Special Acts.
Effect of amendments. — The 1997 amendment, effective July 1, 1997, inserted section references in subsection (a).

Sec. 21.86.270. Filings and reports as public documents. Except for information described in AS 21.86.100(b)(3) and except for trade secrets, privileged, confidential commercial, or financial information as determined by the director, all applications, filings, and reports required under this chapter, including annual financial statements that are required under AS 21.86.080, are public documents. (§ 1 ch 95 SLA 1990)

Sec. 21.86.280. Confidentiality of medical information. Data or information pertaining to the diagnosis, treatment, or health of an enrollee or applicant that is obtained from that person, or from a provider, by a health maintenance organization shall be held in confidence and may not be disclosed except (1) to the extent necessary to carry out the purposes of this chapter; (2) upon the express consent of the enrollee or applicant; (3) under a statute or court order for the production of evidence or discovery; or (4) in the event of a claim or litigation between the person and the health maintenance organization regarding which the data or information is relevant. A health maintenance organization may claim a statutory privilege against disclosure that the provider who furnished the information to the health maintenance organization is entitled to claim. (§ 1 ch 95 SLA 1990)

Alaska State Legislature

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SENATOR CON BUNDE

District P

VICE-CHAIR: SENATE FINANCE COMMITTEE
CHAIR: SENATE LABOR & COMMERCE COMMITTEE
MEMBER: LEGISLATIVE BUDGET & AUDIT COMMITTEE

Sponsor Statement SB 357

SB 357 is referred to as the Insurance Omnibus Bill because it contains numerous changes to Title 21 that are necessary to ensure that state statutes are consistent with federal law, the National Association of Insurance Commissioners (NAIC) model acts, standards and guidelines, and to update procedures and transactions.

A summary of the general changes follows.

1. Provisions to provide electronic communications between the Division of Insurance and the public, industry and other regulators will promote more efficient administrative procedures.
2. Provisions for changes in reinsurance are necessary to bring the state law into compliance with the NAIC Model Credit for Reinsurance Regulation
3. Revisions have been suggested by the NAIC Accreditation Team dealing with authority of the director over risk based capital and conditions for approval of a merger or other acquisition.
4. Licensing revisions are necessary to make insurance license regulation in Alaska consistent with the NAIC Producer License Model Act and Producer Licensing Resident Uniformity Standards to be in compliance with Federal Law.
5. Revisions in the surplus lines statutes to make the regulatory process more efficient based on a industry producer task force that met in the summer of 2003.
6. Changes to provide that a person is not liable for civil damages for filing a report concerning fraudulent act to a person involved in the prevention and detection of fraudulent insurance acts. This change is necessary to allow special investigation units of different insurance companies to share information about fraudulent acts without the potential of liability and is based on the NAIC model act.
7. Provisions clarifying that a guaranty fund deposit is required for title insurance companies.
8. Changes to taxes and late payments to make the penalties more consistent with the Department of Revenue statutes and include penalties for surplus lines brokers who submit late payments on taxes.

These changes to Title 21 will promote consistency between Alaska and other states, promote more efficient operations and provide better public protection.

Sectional Analysis
For
Insurance Omnibus Bill CSSB 357

- Section 1 Deleted words "certified to" and replaced with "issued" in order to assist the public, industry and other regulators to electronically communicate with the division. Electronic transactions are more efficient and streamline administrative procedures.
- Section 2 Deleted words "notwithstanding AS 21.86.280, medical" and replaced with "medical" in order to clarify the meaning of this section.
- Section 3 Added subsection (d) to clarify that for purposes of this section, a managed care entity means a managed care entity that is not subject to AS 21.36
- Section 4 Deleted words "certified to" and replaced with "issued" in order to assist the public, industry and other regulators to electronically communicate with the division. Electronic transactions are more efficient and streamline administrative procedures.
- Section 5 Revised to make it possible for director to suspend, rather than revoke, a certificate of authority for additional one year terms so that insurer can correct the issues that caused the need for suspension. In any event, the certificate of authority will be revoked after five years of suspension.
- Section 6 Deleted word "received" and replaced with "written" to clarify the intent of the section to reflect the practical calculation methodology of taxes paid by insurers.
- Section 7 Deleted word "received" and replaced with "written" and words "income received" were deleted and replaced with "written" to clarify the intent of the section and to reflect the practical calculation methodology of taxes paid by insurers.
- Section 8 Revised the calculation methodology of late paid taxes by insurers under AS 21.09.210 and makes the penalties more consistent with Department of Revenue statutes. Taxes must be made in the form required by the director, which by regulation is automated clearinghouse debit or credit. A penalty may be assessed for willful violation of the section, and the director may revoke or suspend a certificate of authority of an insurer who fails to pay taxes or late fees.
- Section 9 Clarified the intent of the section by deleting the words "policy of" and replacing with "policy."

- Section 10 Added a subsection, which provides that premiums paid on an individual life insurance are not subject to retaliation tax under AS 21.09.270
- Section 11 Deleted the word "certified" and replaced with "issued" in order to provide for electronic communication
- Section 12 Revised to clarify that assumption of Alaska business should only be ceded to an insurer that is authorized by its domestic state to conduct the same line of business being ceded and to bring state law into compliance with the NAIC Model Credit for Reinsurance Regulation, including conditions and requirements for domestic ceding insurers and assuming insurers.
- Section 13 Revised to bring state law into compliance with the NAIC Model Credit for Reinsurance Regulation, including conditions and requirements for domestic ceding insurers and assuming insurers.
- Section 14 Added a new section that provides for the regulation of Alaska policyholder business that is transferred from an Alaska admitted insurer to a non-admitted insurer through an assumption reinsurance agreement.
- Section 15 Added a new subsection that states that the requirements of this chapter are supplemental to any other provisions of this title and do not preclude or limit any other powers or duties of the director. The addition is as given in the NAIC Model Law and required for accreditation by NAIC.
- Section 16 Added a subsection, which clarifies conditions for approval of a merger or acquisition under Chapter 22, Insurance Holding Companies, with respect to insurance buying public. The addition is as given in the NAIC Model Law and required for accreditation by NAIC.
- Section 17 Changed the numbering sequence to correspond to other changes
- Section 18 Revised to give the director the authority to issue licenses for crop and surety insurance lines of authority to qualified persons based on these lines of authority for consistency with national standards.
- Section 19 Deleted reference to trainee license for an insurance producer as it is inconsistent with the NAIC Producer Licensing Model Act that is used as a standard for national uniformity in producer licensing.

- Section 20 Deleted additional license requirements that may impose barriers to licensure for nonresidents who seek to obtain a license in our state. Requiring a company appointment for the "sole purpose to be appointed" is considered an additional requirement that may jeopardize Alaska's reciprocity under the Gramm-Leach-Bliley Act. Deleted references to fraternal licenses to conform to national licensing standards since Alaska is one of only a few states that offer this license class. A person who sells policies on behalf of a fraternal organization is already licensed for major lines (life and health) and therefore this repeal has no negative effect.
- Section 21 Corrected the statutory reference to correspond to other changes
- Section 22 Deleted reference of trainee license for an insurance producer in order to conform to NAIC standards.
- Section 23-26 Deleted inconsistent experience requirements for managing general agents, reinsurance intermediary managers, reinsurance intermediary brokers and surplus lines brokers in order to be consistent with the Gramm-Leach-Bliley Act. Included a requirement for a person seeking licensure for surplus lines authority that they also be licensed as either a producer or managing general agent, consistent with NAIC standards.
- Section 27 Revised to make it possible for health insurance to be provided through surplus lines.
- Section 28 Clarified definitions.
- Section 29 Added a new section that makes it possible for health insurance to be provided through surplus lines.
- Section 30 Amended the section to include the requirement that in order for a nonadmitted insurer to be an eligible surplus lines insurer, that it pays to the division or surplus lines association any fee required by regulation and that an annual fee required under this section and adopted as a regulation must be paid on or before June 30 of each year.
- Section 31 Added a new subsection which clarifies the meaning of "transaction."
- Section 32-34 Revised to make the regulatory process more efficient and reflective of the surplus lines marketplace based on an industry task force convened during the summer of 2003.
- Section 35 Created a penalty for late reporting.

- Section 36 Deleted word "charged" and replaced with "written" to clarify the intent of the section and to reflect the practical calculation methodology of taxes paid by insurers
- Section 37 Revised the calculation methodology of late paid taxes by surplus lines brokers under AS 21.34.180 (I). Taxes must be made in the form required by the director. A penalty may be assessed for willful violation of the section and the director may revoke or suspend a broker who fails to pay taxes or late fees.
- Section 38 Amended to include business or commercial policies issued under AS 21.34 as not included under AS 21.36.235 (c)
- Section 39 Amended to include business or commercial policies issued under AS 21.34 as not included under AS 21.36.240
- Section 40 Added a subsection which provides a person is not liable for civil damages for filing a report or furnishing other information concerning a fraudulent act to a person involved in the prevention or detection of fraudulent insurance acts or that person's employees, agents or representative. This change allows special investigation units of different insurance companies to share information without potential of liability and is based on the NAIC model act.
- Section 41 Added a subsection which provides that insurance written under AS 21.34 does not apply under this chapter.
- Section 42 Added language that provides that this section does not apply to policies issued under AS 21.34.
- Section 43 Clarified that a guaranty fund deposit is required for title insurance companies in addition to the required deposit under AS 21.66.010 (b).
- Section 44 Clarified late payment fees and penalties and director's authority to suspend or revoke the certificate of authority for title insurance companies that fail to pay its taxes, a penalty or a late payment fee.
- Section 45,46 Revised AS 21.69.390 to allow domestic insurers with operations entirely outside the state to maintain their records outside of Alaska and provide a process of getting director approval when it is necessary.
- Section 47 Revised wording regarding reinsurance for stock insurers in order to require filing of signed reinsurance agreements.

- Section 48 Revised wording regarding reinsurance for mutual insurers in order to require filing of signed major reinsurance agreements.
- Section 49,50 Revised wording regarding electronic communications and transactions in order to streamline administrative procedures and make them more efficient.
- Section 51 Added definitions for "reinsurance" and "assumption reinsurance."
- Section 52 Repealed section in order to make state law consistent with NAIC guidelines, other revisions in the bill and to make procedures more efficient. Repeals the trainee license requirements for insurance producers, reinsurance intermediary managers, brokers, managing general agents and surplus lines brokers.
- Section 53 Added new section giving the director of insurance the authority to adopt regulations necessary to implement the changes made in this Act and providing for effective dates.
- Section 54 Added new section instructing reviser of statutes of a heading name

ALASKA STATE LEGISLATURE

House of Representatives

COMMITTEE ASSIGNMENTS

RULES COMMITTEE, CHAIRMAN
LABOR & COMMERCE COMMITTEE, MEMBER
LEGISLATIVE COUNCIL, MEMBER
SPECIAL COMMITTEE ON OIL & GAS, MEMBER
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Representative Norman Rokeberg

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MEMORANDUM

TO: Senator Lyda Green, Co-Chair
✓ Senator Gary Wilken, Co-Chair
Senate Finance Committee

FROM: Rep. Norman Rokeberg

DATE: March 29, 2004

RE: Amendment to SB 357

A handwritten signature in black ink, appearing to read "Norman Rokeberg".

A question has arisen regarding the provisions of AS 21.07.010(b)(2) from my patient's bill of rights legislation.

AS 21.07.010(b)(2) restricts plans from requiring providers to participate in all products offered by a plan or at least that was the intention. A health care provider should not be forced to participate in all products offered by a plan in order to participate in a part of the plan and that was my intention when this section was adopted.

However, as can be seen from the attachments, there is some disagreement whether this is how the current law is to be construed. In particular, in a letter dated February 5, 2003, to Dr. Falconer from VSP's attorney, it is stated:

Therefore, in order for a contract provision to be considered unlawful, it would necessarily have to encompass each of the prohibited provisions of (b)(1), (2) and (3).

This was not my intention when the bill was under discussion. Therefore, I would like to change the "and" to "or" and would appreciate it if you would entertain an amendment to SB 357 to add a new section to change that language. Attached is a draft amendment for your review. Your committee has this bill scheduled for Wednesday, March 31.

If you have any questions, please do not hesitate to contact me or Dr. Maynard Falconer. Thank you for your consideration of this request.

Attachment: AS 21.07.010
February 5, 2003 letter to Dr. Falconer from VSP
Draft Amendment Provided by Legal Services

cc: Dr. Maynard Falconer (w/Amendment only)
Linda Hall, Director, Division of Insurance (w/attachments)

Sec. 21.07.010. Patient and health care provider protection.

(a) A contract between a participating health care provider and a managed care entity that offers a group managed care plan must contain a provision that

(1) provides for a reasonable mechanism to identify all health care services to be provided by the managed care entity;

(2) clearly states or references an attachment that states the health care provider's rate of compensation;

(3) clearly states all ways in which the contract between the health care provider and managed care entity may be terminated; a provision that provides for discretionary termination by either party must apply equitably to both parties;

(4) provides that, in the event of a dispute between the parties to the contract, a fair, prompt, and mutual dispute resolution process must be used; at a minimum, the process must provide

(A) for an initial meeting at which all parties are present or represented by individuals with authority regarding the matters in dispute; the meeting shall be held within 10 working days after the plan receives written notice of the dispute or gives written notice to the provider, unless the parties otherwise agree in writing to a different schedule;

(B) that if, within 30 days following the initial meeting, the parties have not resolved the dispute, the dispute shall be submitted to mediation directed by a mediator who is mutually agreeable to the parties and who is not regularly under contract to or employed by either of the parties; each party shall bear its proportionate share of the cost of mediation, including the mediator fees;

(C) that if, after a period of 60 days following commencement of mediation, the parties are unable to resolve the dispute, either party may seek other relief allowed by law;

(D) that the parties shall agree to negotiate in good faith in the initial meeting and in mediation;

(5) states that a health care provider may not be penalized or the health care provider's contract terminated by the managed care entity because the health care provider acts as an advocate for a covered person in seeking appropriate, medically necessary health care services;

(6) protects the ability of a health care provider to communicate openly with a covered person about all appropriate diagnostic testing and treatment options; and

(7) defines words in a clear and concise manner.

(b) A contract between a participating health care provider and a managed care entity that

offers a group managed care plan may not contain a provision that

(1) has as its predominant purpose the creation of direct financial incentives to the health care provider for withholding covered health care services that are medically necessary; nothing in this paragraph shall be construed to prohibit a contract between a participating health care provider and a managed care entity from containing incentives for efficient management of the utilization and cost of covered health care services;

(2) requires the provider to contract for all products that are currently offered or that may be offered in the future by the managed care entity; and

(3) requires the health care provider to be compensated for health care services performed at the same rate as the health care provider has contracted with another managed care entity.

(c) A managed care entity may not enter into a contract with a health care provider that requires the provider to indemnify or hold harmless the managed care entity for the acts or conduct of the managed care entity. An indemnification or hold harmless clause entered into in violation of this subsection is void.

(§ 2 ch 99 SLA 2000)



ROBERT E. MOSS, JR.
DEPUTY GENERAL COUNSEL

February 5, 2003

Maynard Falconer, Executive Director
Alaska Optometric Association
1689 C Street, Suite 222
Anchorage, AK 99501

This is the legal
opinion of the largest
vision HMO in the country!
RMJ

Re: Patient/Provider Protection

Dear Mr. Falconer:

I am in receipt of your letter a letter addressed to Don Price, Vision Service Plan ("VSP"), dated January 9, 2002. In that letter, you generally question the possible illegality of contracts between VSP and VSP providers in Alaska.

Without more specificity, it appears that you refer to Alaska Statute 21.07.010 (Patient and Health Care Provider Protection), which provides, in pertinent part,

"(b) A contract between a participating health care provider and a managed care entity that offers a group managed care plan may not contain a provision that

(1) has as its predominant purpose the creation of direct financial incentives to the health care provider for withholding covered health care services that are medically necessary; nothing in this paragraph shall be construed to prohibit a contract between a participating health care provider and a managed care entity from containing incentives for efficient management of the utilization and cost of covered health care services;

(2) requires the provider to contract for all products that are currently offered or that may be offered in the future by the managed care entity; and

(3) requires the health care provider to be compensated for health care services performed at the same rate as the health care provider has contracted with another managed care entity."

Based upon my reading of the subject statute, VSP's provider agreement is not in present violation of Alaska law. As drafted, the statute is written in the conjunctive, rather than disjunctive. Therefore, in order for a contract provision to be considered unlawful, it would necessarily have to encompass each of the prohibited provisions of (b) (1), (2) and (3).

Maynard Falconer, Executive Director

February 5, 2003

Page 2

As applied to VSP, its provider contracts may not include a provision which predominantly creates financial incentives to a doctor for withholding medically necessary covered services, and requires the doctor to contract for all products that are currently offered or that may be offered in the future by VSP, and requires the doctor to be compensated for health care services performed at the same rate as the doctor has contracted with another managed care entity.

Certainly, (b)(1) and (3) are not provisions contained within VSP's provider agreement. Since VSP's provider agreements do not contain each prohibition expressed in 21.07.010(b), it would appear that your analysis is in error.

With regard to 21.07.010(b)(2), VSP providers are not required to contract for all current and future products offered. VSP maintains three (3) different provider panels within Alaska, being the Standard network, Medicaid network and Select network. A standard network doctor is not required, but may voluntarily agree, to participate in VSP's Medicaid and Select networks. VSP may also offer specific "hard" products to doctors, which are not required to be sold to his/her patient base, such as frames (except new doctors, as of 2002 they must sell a certain number of Altareyeware frames) and perhaps contact lens availability.

Furthermore, contracts between VSP and its Alaska providers do allow for addenda to the original terms of the agreement. Such addenda reduce time for review and administrative costs to both, the provider and VSP. Written notice of any change in terms to the member doctor agreement are distributed to providers well in advance of the effective date of such changes. Should a provider not wish to continue membership participation with VSP, that provider may voluntarily terminate his/her membership.

I hope this explanation is responsive to your inquiry. Should you have further questions or comments, please feel free to contact me.

Very truly yours,



ROBERT E. MOSS, JR.

REM:rcm

**SENATE COMMITTEE REPORT
First Committee of Referral**

DATE: 3/1/04

FURTHER: Finance

Date of 5-Day Notice: 3/4/04
(in accordance with Uniform Rule 23)

DATE TURNED
IN TO OFFICE: 3/24/04

Labor and Commerce Committee considered SENATE BILL NO. 357

SB 357 INSURANCE

"An Act relating to the regulation of insurance, insurance licenses, qualifications of insurance producers, surplus lines, fraud investigations, electronic transactions, and compliance with federal law and national standards; and providing for an effective date."

and recommends:

- be replaced with _____ CS SB 357 (LEC)
- adopt previous _____ CS _____ (_____)
- attached amendment(s)
- adopt Letter of Intent by _____ Committee
- further referral to _____ Committee

Senate Bill:	
<input checked="" type="checkbox"/>	Same Title
<input type="checkbox"/>	New Title
House Bill:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
DCED	3/5/04			✓	1.

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:		DO PASS	DO NOT PASS	NO REC	AMEND
Seelins	<i>Ralph Seelins</i>	✓			
Grillo	<i>Betty Davis</i>	✓			
French	<i>[Signature]</i>			X	
Griffin	<i>[Signature]</i>			X	
CHAIR:	<i>[Signature]</i>			✓	