

**CONF.**

**COMM.**

**HB**

**147**

# ALASKA STATE LEGISLATURE

## House of Representatives

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Labor & Commerce Committee, Member  
Legislative Council, Member  
Special Committees:

Oil & Gas  
Ways & Means



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### FAX COVER SHEET

DATE: \_\_\_\_\_ 5/13/05

TO: \_\_\_\_\_ Don Bullock

FAX: \_\_\_\_\_ 2029 VOICE: \_\_\_\_\_

RE: \_\_\_\_\_ CC HB 147 24-64 108.3 \ I

MESSAGE: <sup>feh</sup> am # 1 p. 7, line ~~25~~ 26 after "foreign

insurer" insert "other than a self-funded

multiple employer welfare arrangement regulated

under 922185" so it would remain

SCS CS HB 147 (Fin) p 7. line 26-28

Thanks

TOTAL NUMBER OF PAGES SENT, INCLUDING COVER SHEET: \_\_\_\_\_ 1

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24-GH1083V  
Bullock  
5/14/05

**CS FOR HOUSE BILL NO. 147( )**  
**IN THE LEGISLATURE OF THE STATE OF ALASKA**  
**TWENTY-FOURTH LEGISLATURE - FIRST SPECIAL SESSION**

**BY**

**Offered:**  
**Referred:**

**Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to notice of suspension or revocation of an insurer's certificate of  
2 authority and the effect of the suspension or revocation upon the authority of agents and  
3 managing general agents of the insurer; relating to certain deposits under AS 21;  
4 relating to the yielding of assets and securities held on deposit; relating to third-party  
5 administrators under AS 21; relating to insurance agents, managing general agents,  
6 reinsurance intermediary managers, and insurance producers; requiring the director of  
7 insurance to notify a licensee of a license renewal before the renewal date; defining the  
8 term 'appointment' as used in part of AS 21; relating to the eligibility to provide  
9 coverage by a nonadmitted insurer and alien insurer; relating to surplus lines insurance  
10 and brokers; relating to misrepresentations and false advertising concerning insurance;  
11 relating to health discount plans; providing for limitations on owner controlled and  
12 contractor controlled insurance programs and limiting the coverage of those programs;

1 prohibiting excessive, inadequate, or unfairly discriminatory rate charges for health  
2 insurance; defining the term 'plan administrator' as used in part of AS 21; defining the  
3 term 'transact' as used in AS 21; authorizing the director of insurance to designate a  
4 person to receive annual reports from companies; reducing the period for filing a  
5 quarterly financial statement; and providing for an effective date."

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

7 \* **Section 1.** AS 21.05.130(a) is amended to read:

8 (a) To determine compliance with this title, the director may, as often as the  
9 director has reasonable cause, [CONSIDERS ADVISABLE] examine or require a  
10 written report from a person of the accounts, records, documents, and transactions  
11 pertaining to or affecting the insurance affairs or proposed insurance affairs of

12 (1) an insurance producer or independent adjuster; or

13 (2) a person engaged in or proposing to be engaged in or assisting in  
14 the promotion or formation of a domestic insurer or insurance holding corporation, or  
15 corporation to finance a domestic insurer or the production of its business.

16 \* **Sec. 2.** AS 21.09.160 is amended to read:

17 **Sec. 21.09.160. Notice of suspension or revocation and effect upon agent's**  
18 **authority.** (a) Upon suspending or revoking an insurer's certificate of authority the  
19 director shall immediately give notice to the insurer and [TO ITS AGENTS OF  
20 RECORD IN THIS STATE IN THE DIRECTOR'S OFFICE. THE DIRECTOR] shall  
21 also publish notice of the revocation in one or more newspapers of general circulation  
22 in this state.

23 (b) The suspension or revocation shall automatically suspend or revoke, as the  
24 case may be, the authority of all its agents and managing general agents to act as  
25 agents or managing general agents of the insurer in this state, and the insurer  
26 [DIRECTOR] shall so state in the notice to agents and managing general agents  
27 provided for in (c) [(a)] of this section.

28 \* **Sec. 3.** AS 21.09.160 is amended by adding a new subsection to read:

29 (c) Upon notification of suspension or revocation of an insurer's certificate of

1 authority, the insurer shall immediately give notice of the suspension or revocation to  
2 its agents and managing general agents operating in this state.

3 \* Sec. 4. AS 21.24.040(a) is amended to read:

4 (a) Deposits made in this state under this title shall be made through the office  
5 of the director [IN SAFE DEPOSIT OR] under custodial arrangements as required or  
6 approved by the director consistent with the purposes of the deposit, with an  
7 established safe deposit institution, bank, or trust company located in this state  
8 selected by the insurer with the director's approval.

9 \* Sec. 5. AS 21.24.040(c) is amended to read:

10 (c) If of convenience to the insurer in the buying, selling, and exchange of  
11 securities making up [COMPRISING] its deposit, and in the collection of interest and  
12 other income currently accruing on the securities [THEREON], the insurer may, with  
13 the director's advance written approval, deposit a portion of the securities under  
14 custodial arrangements with an established bank or trust company located outside this  
15 state, if receipts representing all the securities are issued by the custodial bank or trust  
16 company and are held in [SAFE DEPOSIT OR] custody subject to the requirements of  
17 (a) [AND (b)] of this section.

18 \* Sec. 6. AS 21.24.130(d) is amended to read:

19 (d) If the insurer is subject to delinquency proceedings as defined in AS 21.78,  
20 upon the order of a court of competent jurisdiction, the director shall yield the assets  
21 and securities held on deposit under AS 21.09.090(b) to the receiver, conservator,  
22 rehabilitator, or liquidator of the insurer, or to any other properly designated official or  
23 officials who succeed to the management and control of the insurer's assets. The  
24 director may release the deposit directly to the guaranty fund of which the  
25 insurer is a member if the right to receive all or a portion of the deposit is  
26 assigned to the guaranty fund.

27 \* Sec. 7. AS 21.27.010(c) is amended to read:

28 (c) A third-party administrator [PERSON WHO FOR A RESIDENT OF  
29 THIS STATE, OR FOR A RESIDENT OF ANOTHER JURISDICTION FROM A  
30 PLACE OF BUSINESS IN THIS STATE, PERFORMS ADMINISTRATIVE  
31 FUNCTIONS, INCLUDING CLAIMS ADMINISTRATION AND PAYMENT,

1           MARKETING ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING,  
2           PREMIUM BILLING, COVERAGE VERIFICATION, UNDERWRITING  
3           AUTHORITY, OR CERTIFICATE ISSUANCE ONLY IN REGARD TO LIFE  
4           INSURANCE, HEALTH INSURANCE, OR ANNUITIES] is not required to be  
5           licensed as a managing general agent if the third-party administrator [PERSON]

6                   (1) is registered under AS 21.27.630 - 21.27.660 [THIS CHAPTER  
7           AS A THIRD-PARTY ADMINISTRATOR]; or

8                   (2) only investigates and adjusts claims and is licensed under this  
9           chapter as an independent adjuster.

10   \* Sec. 8. AS 21.27.100 is repealed and reenacted to read:

11                   **Sec. 21.27.100. Appointment of insurance producer, managing general**  
12           **agent, and reinsurance intermediary manager; acts of agent.** (a) An appointment  
13           is required to be made in accordance with this section when one or more of the  
14           following has occurred:

15                   (1) an admitted insurer appoints a managing general agent in this state  
16           or relative to a subject resident, located, or to be performed in this state;

17                   (2) a managing general agent appoints an insurance producer as its  
18           subagent in this state or relative to subjects resident, located, or to be performed in this  
19           state;

20                   (3) a domestic reinsurer appoints a reinsurance intermediary manager;

21                   (4) a reinsurance intermediary manager appoints an insurance producer  
22           as its subagent in this state.

23                   (b) An admitted insurer shall appoint an insurance producer as its agent in this  
24           state or relative to a subject resident, located, or to be performed in this state not later  
25           than 30 days after the date that a written agency contract is executed or the first  
26           insurance application is submitted to the admitted insurer by the licensed insurance  
27           producer.

28                   (c) An individual in a firm who acts solely on behalf of a firm that is  
29           appointed as an agent or a managing general agent on behalf of an admitted insurer  
30           under this section may not be required to also have an appointment under this section  
31           if the individual in the firm is licensed with that firm for a specific class of authority.

1 (d) The authorized or apparently authorized acts on behalf of an appointing  
2 insurer of an insurance producer appointed under this section are considered the acts  
3 of that insurer.

4 (e) An insurer and managing general agent shall maintain a current list of all  
5 appointments made or required to be made under this section that identifies the  
6 licensee's name, licensee's mailing address, license number, and effective date of  
7 appointment.

8 (f) An insurance producer shall maintain a list of all appointments made or  
9 required to be made under this section that identifies the insurer's name, insurer's  
10 mailing address, and effective date of appointment.

11 (g) An insurer, managing general agent, or insurance producer shall reply in  
12 writing within three working days to an inquiry of the director regarding an  
13 appointment.

14 \* **Sec. 9.** AS 21.27.110 is repealed and reenacted to read:

15 **Sec. 21.27.110. Term of appointment.** (a) An appointment under  
16 AS 21.27.100 continues in force until the appointment is terminated in writing.

17 (b) If an insurer, reinsurer, or authorized representative discovers information  
18 showing that the appointee whose appointment was terminated has engaged in an  
19 activity identified in AS 21.27.410 during the period of the appointment, the insurer,  
20 reinsurer, or authorized representative shall, on a form or in a format prescribed by the  
21 director, promptly notify the director.

22 (c) Within 15 days after providing notification in accordance with (b) of this  
23 section, the insurer, reinsurer, or authorized representative shall mail a copy of the  
24 notification to the appointee at the last address on record with the insurer, reinsurer, or  
25 authorized representative. The notice must be provided by certified mail, return  
26 receipt requested, postage prepaid, or by overnight delivery using a nationally  
27 recognized mail carrier.

28 (d) Within 30 days after the appointee receives notification in accordance with  
29 (c) of this section, the appointee may file written comments concerning the substance  
30 of the notification with the director and shall provide a copy of the written comments  
31 to the insurer, reinsurer, or authorized representative. The written comments filed

1 with the director must be included with each report distributed or disclosed concerning  
2 a reason about the termination of the appointment.

3 (e) If requested by the director, an insurer, a reinsurer, or an authorized  
4 representative shall provide to the director additional information, documents, records,  
5 or other data pertaining to a termination or activity of a licensee under this title.

6 (f) A notice of termination submitted to the director under this section must  
7 include a statement of the reasons for the termination. A statement of the reasons for  
8 termination is confidential and not subject to inspection and copying under  
9 AS 40.25.110. A statement of reasons for the termination may not be admitted as  
10 evidence in a civil action or an administrative proceeding against an insurer, reinsurer,  
11 or authorized representative by or on behalf of a person affected by the termination,  
12 except when the action or proceeding involves perjury, unsworn falsification, fraud, or  
13 failure to comply with this subsection.

14 (g) If an insurer, a reinsurer, or an authorized representative fails to report as  
15 required under this section or is found by a court to have knowingly or intentionally  
16 falsely made that report, the director may, after notice and hearing, suspend or revoke  
17 the license or certificate of authority of the insurer, reinsurer, or authorized  
18 representative and may impose a penalty in accordance with AS 21.27.440.

19 \* Sec. 10. AS 21.27.380(a) is amended to read:

20 (a) Except as provided in this title, the director may renew a license biennially  
21 on a date set by the director if the licensee continues to be qualified under this chapter  
22 and, on or before the close of business of the renewal date, meets all renewal  
23 requirements established by regulation and pays the renewal license fees set under  
24 AS 21.06.250 for each license to the director. A licensee is responsible for knowing  
25 the date that a license lapses and for renewing a license before expiration. The  
26 director shall notify the licensee of the license renewal [MAIL A RENEWAL  
27 NOTICE TO THE LICENSEE'S CURRENT ADDRESS ON FILE WITH THE  
28 DIRECTOR] 30 days before the renewal date.

29 \* Sec. 11. AS 21.27.630(b) is amended to read:

30 (b) A third-party administrator may not transact business for a kind or class of  
31 authority [INSURANCE] for which the person is not registered.

1 \* Sec. 12. AS 21.27.630(c) is amended to read:

2 (c) Except as otherwise provided in this chapter, a third-party  
3 administrator [A PERSON WHO PERFORMS ADMINISTRATIVE FUNCTIONS,  
4 INCLUDING CLAIMS ADMINISTRATION AND PAYMENT, MARKETING  
5 ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING, PREMIUM  
6 BILLING, COVERAGE VERIFICATION, UNDERWRITING AUTHORITY, OR  
7 CERTIFICATE ISSUANCE IN REGARD TO INSURANCE AS A THIRD-PARTY  
8 ADMINISTRATOR] shall be registered under AS 21.27.630 - 21.27.660 [AS A  
9 THIRD-PARTY ADMINISTRATOR] unless the third-party administrator  
10 [PERSON] only investigates and adjusts claims and is licensed under this chapter as  
11 an independent adjuster.

12 \* Sec. 13. AS 21.27.630 is amended by adding new subsections to read:

13 (k) An insurer that holds a certificate of authority issued by the director and is  
14 in good standing under this title is not required to be registered as a third-party  
15 administrator in this state.

16 (l) A person that is not required to be registered as a third-party administrator  
17 under (e) - (k) of this section must file a certification with the di. ctor that the person  
18 meets the requirements for exemption.

19 \* Sec. 14. AS 21.27.650(a) is amended to read:

20 (a) An insurer may not transact business with a third-party administrator  
21 unless

22 (1) the insurer holds a certificate of authority in this state, if required  
23 under this title;

24 (2) the third-party administrator is registered under this chapter or the  
25 third-party administrator has filed a certification with the director certifying that  
26 [. WHEN] the third-party administrator is operating only for a foreign insurer and [.]  
27 is registered as a third-party administrator by the third-party administrator's resident  
28 insurance regulator in a state that the director has determined has enacted provisions  
29 substantially similar to those contained in AS 21.27.630 - 21.27.650 and that is  
30 accredited by the National Association of Insurance Commissioners;

31 (3) the third-party administrator provides the director on January 1,

1 April 1, July 1, and October 1 of each year

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

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

6 (C) other information the director may require;

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

10 (5) there is in effect a written contract between the insurer and third-  
11 party administrator that contains the following provisions:

12 (A) the insurer may terminate the contract for cause upon  
13 written notice sent by certified mail to the third-party administrator and may  
14 suspend the underwriting authority of the third-party administrator during a  
15 dispute regarding the cause for termination; but the insurer must fulfill all  
16 lawful obligations with respect to policies affected by the written agreement,  
17 regardless of any dispute between the insurer and the third-party administrator;

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

21 (C) all money collected for the account of an insurer shall be  
22 held by the third-party administrator as a fiduciary;

23 (D) all payments on behalf of the insurer shall be held by the  
24 third-party administrator as a fiduciary;

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

27 (F) the third-party administrator shall maintain separate records  
28 for each insurer in a form usable by the insurer; the insurer or its au thorized  
29 representative shall have the right to audit and the right to copy all accounts  
30 and records related to the insurer's business; the director, in addition to other  
31 authority granted in this title, shall have access to all books, bank accounts, and

1 records of the third-party administrator in a form usable to the director; any  
2 trade secrets contained in books and records reviewed by the director,  
3 including the identity and addresses of policyholders and certificate holders,  
4 shall be kept confidential, except that the director may use the information in a  
5 proceeding instituted against the third-party administrator or the insurer;

6 (G) the contract may not be assigned in whole or in part by the  
7 third-party administrator;

8 (H) if the contract permits the third-party administrator to do  
9 underwriting, the contract must include the following:

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

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

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

15 (iv) maximum limits of liability;

16 (v) applicable exclusions;

17 (vi) territorial limitations;

18 (vii) policy cancellation provisions;

19 (viii) the maximum policy term; and

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

22 (I) if the contract permits the third-party administrator to  
23 administer claims on behalf of the insurer, the contract must include the  
24 following:

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

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

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

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

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

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

17 (J) the contract may not provide for commissions, fees, or  
18 charges contingent upon savings obtained in the adjustment, settlement, and  
19 payment of losses covered by the insurer's obligations; but a third-party  
20 administrator may receive performance-based compensation for providing  
21 hospital or other auditing services or may receive compensation based on  
22 premiums or charges collected or the number of claims paid or processed.

23 \* Sec. 15. AS 21.27.650 is amended by adding a new subsection to read:

24 (q) The director may, without advance notice or hearing, immediately suspend  
25 by order the registration of a third-party administrator if the director finds that one or  
26 more of the following circumstances exist:

27 (1) the third-party administrator is insolvent or impaired;

28 (2) a proceeding for bankruptcy, receivership, conservatorship, or  
29 rehabilitation, or another delinquency proceeding regarding the third-party  
30 administrator has been commenced in any state or by a governmental agency of  
31 another jurisdiction;

1 (3) the third-party administrator is in an unsound condition, or is in a  
2 condition or using methods or practices that render its further transaction of insurance  
3 injurious to policy holders or the public.

4 \* Sec. 16. AS 21.27 is amended by adding a new section to article 4 to read:

5 **Sec. 21.27.660. Definitions.** In AS 21.27.630 - 21.27.660,

6 (1) "insurer" includes the Comprehensive Health Insurance  
7 Association created under AS 21.55.010 and any person issued or required to obtain a  
8 certificate of authority under this title to transact life insurance, annuities, and health  
9 insurance or to provide coverage for the cost of medical care;

10 (2) "transact" has the meaning given in AS 21.90.900.

11 \* Sec. 17. AS 21.27.900 is amended by adding a new paragraph to read:

12 (33) "appointment" means an act by a person evidencing a grant of  
13 authority to another to act on the grantor's behalf.

14 \* Sec. 18. AS 21.34.040(d) is amended to read:

15 (d) A nonadmitted insurer may be eligible to provide coverage in this state if it  
16 furnishes to the director a copy of its current annual statement that has been certified  
17 by the insurer. Except in the case of an alien insurer, the [THE] statement shall be  
18 provided not [NO] more than six months after the close of the period reported upon  
19 and that is either filed with and approved by the regulatory authority in the domicile of  
20 the nonadmitted insurer, or certified by an accounting or auditing firm licensed in the  
21 jurisdiction of the insurer's domicile. An alien insurer shall provide the statement  
22 not later than nine months after the close of the reporting period. In the case of  
23 an insurance exchange, the statement may be an aggregate combined statement of all  
24 underwriting syndicates operating during the period reported upon.

25 \* Sec. 19. AS 21.34.100(a) is amended to read:

26 (a) When surplus lines insurance is placed, the surplus lines broker shall  
27 promptly deliver to the named insured or the producing broker the policy or, if the  
28 policy is not then available, a [CERTIFICATE,] cover note, binder, or other evidence  
29 of insurance. The [CERTIFICATE,] cover note, binder, or other evidence of  
30 insurance for the named insured shall be executed by the surplus lines broker and must  
31 contain a summary of all material facts that would regularly be included in the policy.

1 the description and location of the subject of insurance, a general description of the  
2 coverages of the insurance, the premium and rate charged and taxes to be collected  
3 from the insured, the name and address of the insured, the name of each surplus lines  
4 insurer and the percentage of the entire risk assumed by each, the name of the surplus  
5 lines broker, and the license number of the surplus lines broker.

6 \* Sec. 20. AS 21.34.100(f) is amended to read:

7 (f) A producing broker or other licensee may issue to a person, other than  
8 the named insured, a certificate [EVERY CERTIFICATE ISSUED BY THE  
9 PRODUCING BROKER OR OTHER LICENSEE] as evidence of insurance  
10 negotiated, placed, or procured under this chapter. The certificate must bear the  
11 name of the surplus lines broker, which may not be covered, concealed, or obscured  
12 by the producing broker, and the following legend in at least 10-point type: "This is  
13 evidence of insurance procured and developed under the Alaska Surplus Lines Law,  
14 AS 21.34. It is not covered by the Alaska Insurance Guaranty Association Act,  
15 AS 21.80."

16 \* Sec. 21. AS 21.36.030(a) is amended to read:

17 (a) A person may not make, issue, circulate, broadcast, or have made, issued,  
18 circulated, or broadcast an estimate, circular, statement, illustration, comparison,  
19 assertion, or other written, electronic, or oral presentation that

20 (1) misrepresents the benefits, advantages, conditions, sponsorship,  
21 source, or terms of an insurance policy;

22 (2) misrepresents the dividends or share of the surplus to be received  
23 on an insurance policy;

24 (3) misrepresents an insurance policy as being a share or shares of  
25 stock;

26 (4) makes a false or misleading statement as to the dividends or shares  
27 of the surplus previously paid on an insurance policy;

28 (5) misrepresents or makes a misleading statement as to the financial  
29 condition of an insurer or as to the legal reserve system upon which a life insurer  
30 operates;

31 (6) uses a name or title of an insurance policy or class of insurance

1 policies misrepresenting its true nature;

2 (7) is a misrepresentation for the purpose of inducing, or that tends to  
3 induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy;

4 (8) is a misrepresentation for the purpose of effecting or tending to  
5 effect a pledge or assignment of or loan against an insurance policy;

6 (9) appears to be an actual policy for a named individual when it is  
7 merely an advertisement;

8 (10) does not clearly designate the name of the insurer providing the  
9 coverage or about which the statements are made; or

10 (11) is in any other way misleading, false, or deceptive.

11 \* Sec. 22. AS 21.36.030(a) is amended to read:

12 (a) A person may not make, issue, circulate, broadcast, or have made, issued,  
13 circulated, or broadcast an estimate, circular, statement, illustration, comparison,  
14 assertion, or other written, electronic, or oral presentation that

15 (1) misrepresents the benefits, advantages, conditions, sponsorship,  
16 source, or terms of an insurance policy or a health discount plan;

17 (2) misrepresents the dividends or share of the surplus to be received  
18 on an insurance policy;

19 (3) misrepresents an insurance policy as being a share or shares of  
20 stock;

21 (4) makes a false or misleading statement as to the dividends or shares  
22 of the surplus previously paid on an insurance policy;

23 (5) misrepresents or makes a misleading statement as to the financial  
24 condition of an insurer or as to the legal reserve system upon which a life insurer  
25 operates;

26 (6) uses a name or title of an insurance policy or class of insurance  
27 policies misrepresenting its true nature;

28 (7) is a misrepresentation for the purpose of inducing, or that tends to  
29 induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy;

30 (8) is a misrepresentation for the purpose of effecting or tending to  
31 effect a pledge or assignment of or loan against an insurance policy;

1 (9) appears to be an actual policy for a named individual when it is  
2 merely an advertisement;

3 (10) does not clearly designate the name of the insurer providing the  
4 coverage or about which the statements are made; [OR]

5 (11) is in any other way misleading, false, or deceptive;

6 (12) misrepresents a health discount plan as a form or type of  
7 insurance;

8 (13) describes a health discount plan using common insurance  
9 terminology; or

10 (14) misrepresents that a health discount plan is underwritten by  
11 or associated with an insurer.

12 \* Sec. 23. AS 21.36 is amended by adding a new section to read:

13 **Sec. 21.36.065. Limitation on owner controlled and contractor controlled**  
14 **insurance programs.** (a) An owner controlled insurance program or a contractor  
15 controlled insurance program is subject to both AS 21.39 and AS 21.42, must be  
16 approved by the director, and shall be allowed only for a major construction project.  
17 Owner controlled and contractor controlled insurance programs are limited to property  
18 insurance as defined in AS 21.12.060 and casualty insurance as defined in  
19 AS 21.12.070.

20 (b) In this section, an owner controlled or contractor controlled insured  
21 program does not include

22 (1) builder's risk or course of construction insurance;

23 (2) insurance relating to the transportation of cargo or other property;

24 (3) insurance covering one or more affiliates, subsidiaries, partners, or  
25 joint venture partners of a person; or

26 (4) insurance policies endorsed to name one or more persons as  
27 additional insureds.

28 (c) In this section,

29 (1) "contractor" means a person who meets the definition of  
30 "contractor" in AS 08.18.171 and who undertakes the performance of a construction  
31 project for a project owner, its agent, or its representative;

1 (2) "contractor controlled insurance program" means an insurance  
2 program where one or more insurance policies are procured on behalf of a contractor,  
3 its agent, or its representative, by its insurance producer, as defined in AS 21.27.900,  
4 for the purpose of insuring the contractor and one or more of the following:

- 5 (A) the project owner;
- 6 (B) a subcontractor;
- 7 (C) an architect;
- 8 (D) an engineer; or
- 9 (E) a person performing professional services;

10 (3) "major construction project" means the process of constructing a  
11 structure, building, facility, or roadway or major renovation of more than 50 percent of  
12 an existing structure, building, facility, or roadway having a contract cost of more than  
13 \$50,000,000 of a definite term at a geographically defined project site;

14 (4) "owner controlled insurance program" means an insurance program  
15 where one or more insurance policies are procured on behalf of a project owner, its  
16 agent, or its representative, by its insurance producer, as defined in AS 21.27.900, for  
17 the purpose of insuring the project owner and one or more of the following:

- 18 (A) the contractor;
- 19 (B) a subcontractor;
- 20 (C) an architect;
- 21 (D) an engineer; or
- 22 (E) a person performing professional services;

23 (5) "project owner" means a person who, in the course of the person's  
24 business, engages the service of a contractor for the purpose of working on a  
25 construction project;

26 (6) "subcontractor" means a person to whom a contractor sublets all or  
27 part of a contractor's initial undertaking.

28 \* Sec. 24. AS 21.36 is amended by adding a new section to read:

29 **Sec. 21.36.155. Health discount plans.** (a) A person may not sell, market,  
30 promote, advertise, or otherwise distribute a health discount plan unless

- 31 (1) each advertisement, policy, document, information, statement, or

1 other communication regarding the health discount plan and the plan itself contain a  
statement, in bold and prominent type, that the health discount plan is not insurance;

3 (2) the discounts offered under the health discount plan are specifically  
4 authorized by a contract with each provider of the services or supplies listed in  
5 conjunction with the plan;

6 (3) the health discount plan states the name, address, and telephone  
7 number of the administrator of the plan;

8 (4) the person makes readily available to the consumer a complete,  
9 accurate, and up-to-date list of providers participating in the plan that offer discounted  
10 health care services or supplies in the consumer's local area and the discounts offered  
11 by the providers;

12 (5) the person provides the consumer the right to cancel the health  
13 discount plan within 30 days after purchase of the plan; and

14 (6) the person provides the consumer with a full refund of all payments  
15 made, except for a nominal processing fee, within 30 days after notification of  
16 cancellation of the plan under (5) of this subsection.

17 (b) The director may adopt regulations to implement this section and to  
18 establish additional requirements intended to prohibit unfair or deceptive practices  
19 relating to health discount plans.

20 \* **Sec. 25.** AS 21.36.190 is amended by adding a new subsection to read:

21 (f) Except as provided in AS 21.36.065, an insurer, whether authorized or  
22 unauthorized, may not underwrite an owner controlled insurance program or  
23 contractor controlled insurance program. In this subsection, "owner controlled  
24 insurance program" and "contractor controlled insurance program" have the meanings  
25 given in AS 21.36.065.

26 \* **Sec. 26.** AS 21.36.195 is amended to read:

27 **Sec. 21.36.195. Surplus lines brokers and insurance producers; prohibited**  
28 **acts.** A surplus lines broker or an insurance producer may not fail to provide evidence  
29 of insurance, [AFFIDAVITS,] filings, or reports, or fail to maintain the records, or fail  
30 to pay the taxes and fees, required under AS 21.34.

31 \* **Sec. 27.** AS 21.51 is amended by adding a new section to read:

1           **Sec. 21.51.405. Rate requirements.** Rates charged for a health insurance  
2 policy may not be excessive, inadequate, or unfairly discriminatory.

3 \* **Sec. 28.** AS 21.55.500(16) is amended to read:

4           (16) "plan administrator" means an [THE] eligible entity that is  
5 licensed as a third-party administrator under AS 21.27 and is selected by the  
6 board and approved by the director to administer a state plan:

7 \* **Sec. 29.** AS 21.66.080(a) is amended to read:

8           (a) Every company, on or before March 1 of each year, shall furnish the  
9 director or the director's designee a sworn statement of assets and liabilities, and of  
10 all title premiums received by it during the preceding calendar year, setting out, among  
11 other things, the amounts that have been set aside and held by it in an account required  
12 under AS 21.18.073. The reporting format for a given year is the most recently  
13 approved National Association of Insurance Commissioners Annual Financial  
14 Statement blank form and instructions, supplemented for additional information as  
15 required by the director. The director may require the statement to be filed on  
16 electronic media. The statement must also show all unpaid losses and claims upon  
17 title insurance policies of which the title insurance company has received due notice in  
18 writing from or on behalf of the insured. With the filing of the statement, the title  
19 insurance company shall pay a filing fee set under AS 21.06.250.

20 \* **Sec. 30.** AS 21.66.085(b) is amended to read:

21           (b) A quarterly financial statement, if required, is due 45 [60] days after the  
22 end of the quarter to which it applies.

23 \* **Sec. 31.** AS 21.90.900(42) is amended to read:

24           (42) "third-party administrator" means a person who, for residents of  
25 this state, or for residents of another jurisdiction from a place of business in this state,  
26 performs administrative functions including claims administration and payment,  
27 marketing administrative functions, premium accounting, premium billing, coverage  
28 verification, underwriting authority, or certificate issuance in connection with life  
29 insurance, annuities, health insurance, or the provision of coverage for the cost of  
30 medical care [REGARD TO LIFE INSURANCE, HEALTH INSURANCE, OR  
31 ANNUITIES];

1 \* **Sec. 32.** AS 21.90.900(43) is amended to read:

2 (43) "transact," with respect to insurance or the provision of coverage  
3 for medical care, includes

4 (A) solicitation and inducement;

5 (B) preliminary negotiations;

6 (C) effectuation of a contract of insurance or the provision of  
7 coverage for medical care;

8 (D) transaction of matters subsequent to effectuation of the  
9 contract of insurance or the provision of coverage for medical care and  
10 arising out of it;

11 \* **Sec. 33.** AS 21.90.900 is amended by adding a new paragraph to read:

12 (45) "health discount plan" means a card, program, device,  
13 arrangement, contract, or mechanism that purports to offer discounts or access to  
14 discounts on health care services or supplies and that is not insurance or that does not  
15 provide coverage for services or benefits regulated under AS 21.86 or AS 21.87.

16 \* **Sec. 34.** AS 21.24.040(b); AS 21.27.330(b), and 21.27.650(p) are repealed.

17 \* **Sec. 35.** The uncodified law of the State of Alaska is amended by adding a new section to  
18 read:

19 **TRANSITION: REGULATIONS.** The director of insurance may proceed to adopt  
20 regulations to implement the changes made by secs. 22, 24, and 33 of this Act. The  
21 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
22 effective date of secs. 22, 24, and 33 of this Act.

23 \* **Sec. 36.** Sections 22, 24, and 33 of this Act take effect July 1, 2005.

24 \* **Sec. 37.** Except as provided in sec. 36 of this Act, this Act takes effect immediately under  
25 AS 01.10.070(c).

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 1  
 Bill Version: HB 147  
 (H) Publish Date: 2/14/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Omnibus Insurance RDU Insurance (116)  
 Component Insurance Operations  
 Sponsor Rules  
 Requester By Request of the Governor Component No. 354

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	35.0	36.0	37.0	38.0	40.0	41.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	1.0	0.0	0.0	0.0	0.0	0.0
Supplies	2.5	0.0	0.0	0.0	0.0	0.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>38.5</b>	<b>36.0</b>	<b>37.0</b>	<b>38.0</b>	<b>40.0</b>	<b>41.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts	38.5	36.0	37.0	38.0	40.0	41.0
1037 GF/Mental Health						
Other (Specify Type-Do not abbreviate)						
<b>TOTAL</b>	<b>38.5</b>	<b>36.0</b>	<b>37.0</b>	<b>38.0</b>	<b>40.0</b>	<b>41.0</b>

Estimate of any current year (FY2005) cost: 00  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2005 budget proposal:

**POSITIONS**

Full-time	1	1	1	1	1	1
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

A Consumer Services Specialist will need to be added to respond to additional inquiries from the public on the union health trust fund provisions

Prepared by Linda S. Hall, Director Phone 907 269 7900  
 Division Insurance Date/Time 2/14/05 9 48 AM  
 Approved by Edgar Blatchford, Commissioner Date 2/14/2005  
 Agency Commerce, Community & Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 2  
Bill Version: C SHB 147(L&C)  
(H) Publish Date: 4/1/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title: Omnibus Insurance RDU: Insurance (116)  
Component: Insurance  
Sponsor: Rules by request of the Governor  
Requester: House Labor & Commerce Component No.: 354

**Expenditures/Revenues (Thousands of Dollars)**

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE (Thousands of Dollars)**

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

Estimate of any current year (FY2005) cost: 0.0

Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

This legislation does not have a fiscal impact on the operations of the division since there are no union health trust sections in the current version.

Prepared by: Linda S. Hall, Director Phone: 907 269 7900  
Division: Insurance Date/Time: 3/29/05 5 58 PM  
Approved by: Edgar Blatchford, Commissioner Date: 3/29/2005  
Agency: Commerce, Community, and Economic Development

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: 3  
Bill Version: SCS CSHB 147(FIN)  
(S) Publish Date: 5/6/05

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
Title Omnibus Insurance RDU Insurance (116)  
Component Insurance  
Sponsor Rules  
Requester Senate FINANCE Component No. 354

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	35.0	36.0	37.0	38.0	40.0	41.0
Travel	0.0	0.0	0.0	0.0	0.0	0.0
Contractual	1.0	0.0	0.0	0.0	0.0	0.0
Supplies	2.5	0.0	0.0	0.0	0.0	0.0
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>38.5</b>	<b>36.0</b>	<b>37.0</b>	<b>38.0</b>	<b>40.0</b>	<b>41.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
1156 Receipt Supported Services	38.5	36.0	37.0	38.0	40.0	41.0
<b>TOTAL</b>	<b>38.5</b>	<b>36.0</b>	<b>37.0</b>	<b>38.0</b>	<b>40.0</b>	<b>41.0</b>

Estimate of any current year (FY2005) cost: 0.0  
Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

**ANALYSIS:** (Attach a separate page if necessary)

A Consumer Services Specialist will need to be added to respond to additional inquiries from the public on the union health trust fund provisions

Prepared by: Linda S. Hall, Director Phone 907-269-7900  
Division: insurance Date/Time 5/6/05 11:33 AM  
Approved by: Edgar Blatchford, Commissioner Date 5/6/2005  
Agency: Commerce, Community & Economic Development

## Senate CS for CS for House 147 (Version Y)

The bill proposes changes that will make the regulation of insurance more efficient for the Division of Insurance, more uniform for industry and at the same time give greater protection for Alaska insurance consumers.

### Changes in the Senate CS

1. Section 1 – Changes language regarding the director's examinations from "considers advisable" to "has reasonable cause"
2. Section 31 – Adds a streamlined version of filing requirements and minimum standards for union health trusts

Specific provisions are summarized in the attached document

Current statute (AS 21.03.021) states that any entity that provides coverage for the cost of medical care may be regulated by Division unless it shows it is regulated by another state agency or the Federal Government

3. Section 32 – Adds a definition of self-funded governmental plan

*From: Division of Insurance*

## **SENATE CS FOR CS FOR HOUSE 147 (VERSION Y)**

### **STREAMLINED HEALTH TRUST PROVISIONS**

#### **A. FILING REQUIREMENTS**

1. Audited Financial Statements
2. Actuarial Memorandum
  - a. Adequacy of reserves, contribution rates, stop loss policy
  - b. Financial condition of the plan
3. Name and contact info for plan administrator

#### **B. MINIMUM REQUIREMENTS**

1. Trust Agreement
2. Bond – Same as ERISA
3. Stop Loss Policy
4. Competent personnel & adequate facility for administrator
5. Provide plan description to participants

## C. ADDITIONAL STANDARDS FROM CURRENT STATUTE

1. 21.03 – Scope of Code
2. 21.06 – Director authority for hearings & orders
3. 21.07 – Managed Care – Internal & External Review – Utilization – requires someone with professional credentials
4. 21.09 – Records required
5. 21.18 – Reserves
6. 21.36 – Trade practices
7. 21.42 – Mandates
8. 21.54 – Group Health such as HIPPA
9. 21.78 – Rehabilitation & Liquidation
10. 21.90 - Definitions

HB 147		
	Health Trust	Insurer
Certificate of Authority		Yes
Deposit		\$300,000
Capital & Surplus		Up to 5.2 Million
Risk Based Capital Analysis		Yes
Reserves	Statute 21.18	Statute 21.18
Audited Annual Statement	Traditional CPA	Yes Statutory 120 pages
Non-Audited Quarterly		Yes
Biographical Affidavits		Yes
Premium Tax		Yes
License Fees		\$2,250
Fidelity Bond	ERISA/\$500,000 Max	Domestic Companies
Actuarial Opinions	Yes	Yes

## General Fund Contributions to the Health Trusts

Figures from the Division of Finance

ASEA	\$66,000,000
PSEA	\$ 3,600,000
MMP	\$ 617,000
Local 71	\$12,300,000
NEA	\$ 179,000
Total	\$82,996,000



## Opposition to Alaska State Legislature House Bill 147 Sections 31 and 32

**JIM ASHTON**  
Business Manager/  
Secretary-Treasurer

**ROBERT JOHNSON**  
President

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**Summary: Sections 31 and 32 of HB 147 impose unnecessary regulation and costly administrative burden on Trust health plans which were established through the collective bargaining process to provide benefits to state employees.**

### Imposes a Costly Administrative Burden

- The bill would require the Trusts to file actuarial reports and other documents. Two annual reports would be required, as well as a report each quarter. The estimated cost to the Trust in actuarial fees to produce the required filings is a minimum of \$40,000-\$50,000, assuming the actuary was already familiar with the plan. The fees could increase significantly if the actuary were not already familiar with the plan. In addition, we anticipate administrative costs and legal fees related to these filings.
- The Division of Insurance will bear additional administrative expenses in order to review and process these filings.
- The State and State employees will also bear this administrative burden. The funds held by the Trusts' health plans are to be used to provide health benefits to plan participants. Every dollar that is diverted to administrative expenses is a dollar that is not available to provide health benefit coverage.

### Interferes With Collective Bargaining

- This bill would allow the State to unilaterally determine the benefits to be provided to covered participants, because the Trust would be required to comply with all State-mandated benefits, the State-mandated requirements for the plan administered by the Department of Administration, and regulations adopted by the director. Although the Trust plans currently provide coverage at a level that is as high as or higher than what is mandated by the State, the Trust benefits are tailored to the participant group. The Trusts were originally created through the collective bargaining process in order to allow the health benefit contributions to be used in such a way to better benefit participants.
- Under this regulation, the Trust would be required to provide any additional information requested by the director, "relating to the financial condition, transactions, and affairs of the plan." This requirement could be used, to the State's advantage, during the collective bargaining process.

### Imposes Requirements which may be Impossible to Meet

- The bill requires that the Trust "establish and maintain a plan of operation that ensures that the plan will remain solvent as certified to by a qualified actuary." It is unlikely that an actuary would assume the liability to "ensure" solvency of any health plan.
- The bill requires filing of contribution rates at least 60 days before the end of the plan year (June 30 for both the PE71 and ASEA plans). The employer contribution is

funded by the legislature, and historically the funding has not been passed by the legislature early enough to enable this filing.

Is Unnecessary

- Each of the Trusts was approved by the Division of Retirement and Benefits and has an existing Letter of agreement in place allowing the provision of coverage to the members of the sponsoring union.
- Each Trust plan is subject to PHSa, HIPAA, COBRA, WHCRA, FMLA, USERRA, MHPA and other federally mandated requirements.
- The Trusts are also regulated by the IRS and have received tax-exempt determination letters as qualified voluntary employee beneficiary associations and must comply with all of the Treasury Regulations associated with VEBA qualification.
- The Trusts already report to the State under the terms of the LOAs.
- Both the PE71 and ASEA plans voluntarily comply with the fiduciary standards set forth in ERISA. The Trustees are fiduciaries, receive fiduciary training, are insured as fiduciaries, and purchase fidelity bonds to protect against dishonesty.
- The Trust plans already provide Summary Plan Descriptions to covered participants.
- The Trust plans undergo an annual audit by a qualified independent certified public accounting firm qualified in employee benefit plan audits. The participants are entitled to a copy of the audit results.
- Participants have an opportunity to appeal denied benefit claims; if they are dissatisfied with the appeal determination, the participant may arbitrate, and if dissatisfied with the decision of the arbitrator may file suit in State Superior Court.
- The Trusts are subject to the jurisdiction of the State of Alaska Superior Courts.