

**HB**

**147**

SFIN

FILE

# SENATE FINANCE COMMITTEE REPORT

DATE: 5/1/05

FURTHER:

REPORTED OUT

MAY 6 2005

SENATE FINANCE  
COMMITTEE

DATE TURNED  
IN TO OFFICE: 6 May 2005

Finance Committee considered CS FOR HOUSE BILL NO. 147(FIN) am

## HB 147 INSURANCE REGULATION

\*An Act relating to notice of suspension or revocation of an insurer's certificate of authority and the effect of the suspension or revocation upon the authority of agents and managing general agents of the insurer; relating to certain deposits under AS 21; relating to the yielding of assets and securities held on deposit; relating to third-party administrators under AS 21; relating to insurance agents, managing general agents, reinsurance intermediary managers, and insurance producers; requiring the director of insurance to notify a licensee of a license renewal before the renewal date; defining the term 'appointment' as used in part of AS 21; relating to the eligibility to provide coverage by a nonadmitted insurer and alien insurer; relating to surplus lines insurance and brokers; relating to misrepresentations and false advertising concerning insurance; relating to health discount plans, providing for limitations on owner controlled and contractor controlled insurance programs and limiting the coverage of those programs; prohibiting excessive, inadequate, or unfairly discriminatory rate charges for health insurance; defining the term 'plan administrator' as used in part of AS 21; defining the term 'transact' as used in AS 21; authorizing the director of insurance to designate a person to receive annual reports from companies; reducing the period for filing a quarterly financial statement; and providing for an effective date \*

and recommends:

- be replaced with 5 CS CS HB 147 (FIN)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_ (\_\_\_\_\_)
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to \_\_\_\_\_ Committee

**CS Senate Bill:**

Same Title

New Title

**SCS House Bill:**

Same Title

Technical Title Change

New Title w/ SCR # \_\_\_\_\_

**NEW FISCAL NOTE(S):**

**PREVIOUS FISCAL NOTE(S):**

Department	Date	Fiscal	Ind.	Zero	FN#
DCCED	5/1/05	38.5			

Department	Date	Fiscal	Ind.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	DO PASS	DO NOT PASS	NO REC	AMEND
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
<i>[Signature]</i>			✓	
COCHAIR: <i>Gary Miller</i>	✓			
COCHAIR: <i>Lynne Green</i>	✓			

MAY 6 2005

SENATE FINANCE  
COMMITTEE

# FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
Bill Version: CSHB 147(FIN) AM  
( ) Publish Date: \_\_\_\_\_

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



Official Business

# Alaska State Senate

## Senate Finance Committee

Mail Stop 3100  
State Capitol  
Juneau, Alaska 99801-1182

### FAX COVER SHEET

DATE: 6 May 2005 TIME: 4:45pm

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  
SCS CS HB 147 (FIN) 24-GH1083/Y  
Bullock 5/6/05  
no changes  
Thx  
Mindy

Adopted 5/6/05

WORK DRAFT

WORK DRAFT

WORK DRAFT

24-GH1083VY  
Bullock  
5/6/05

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

BY THE SENATE FINANCE COMMITTEE

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 21.06.130(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 director 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 other  
27 than a self-funded multiple employer welfare arrangement regulated under  
28 AS 21.85 and [,] is registered as a third-party administrator by the third-party  
29 administrator's resident insurance regulator in a state that the director has determined  
30 has enacted provisions substantially similar to those contained in AS 21.27.630 -  
31 21.27.650 and that is accredited by the National Association of Insurance

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Commissioners:

(3) the third-party administrator provides the director on January 1, April 1, July 1, and October 1 of each year

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

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

(C) other information the director may require;

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

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

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

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

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

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

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

(F) the third-party administrator shall maintain separate records for each insurer in a form usable by the insurer; the insurer or its authorized representative shall have the right to audit and the right to copy all accounts

1 and records related to the insurer's business; the director, in addition to other  
2 authority granted in this title, shall have access to all books, bank accounts, and  
3 records of the third-party administrator in a form usable to the director; any  
4 trade secrets contained in books and records reviewed by the director,  
5 including the identity and addresses of policyholders and certificate holders,  
6 shall be kept confidential, except that the director may use the information in a  
7 proceeding instituted against the third-party administrator or the insurer;

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

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

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

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

16 (iii) the types of risks that may be

17 (iv) maximum limits of liability;

18 (v) applicable exclusions;

19 (vi) territorial limitations;

20 (vii) policy cancellation provisions;

21 (viii) the maximum policy term; and

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

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

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

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

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

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

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

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

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

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

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

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

30 (2) a proceeding for bankruptcy, receivership, conservatorship, or  
31 rehabilitation, or another delinquency proceeding regarding the third-party

1 administrator has been commenced in any state or by a governmental agency of  
2 another jurisdiction;

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

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

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

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

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

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

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

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

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

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

28 (a) When surplus lines insurance is placed, the surplus lines broker shall  
29 promptly deliver to the named insured or the producing broker the policy or, if the  
30 policy is not then available, a [CERTIFICATE,] cover note, binder, or other evidence  
31 of insurance. The [CERTIFICATE,] cover note, binder, or other evidence of

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

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

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

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

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

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

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

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

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

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

1 operates;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

8 (12) misrepresents a health discount plan as a form or type of  
9 insurance;

10 (13) describes a health discount plan using common insurance  
11 terminology; or

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

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

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

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

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

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

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

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

30 (c) In this section,

31 (1) "contractor" means a person who meets the definition of

1 "contractor" in AS 08.18.171 and who undertakes the performance of a construction  
2 project for a project owner, its agent, or its representative;

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

7 (A) the project owner;

8 (B) a subcontractor;

9 (C) an architect;

10 (D) an engineer; or

11 (E) a person performing professional services;

12 (3) "major construction project" means the process of constructing a  
13 structure, building, facility, or roadway or major renovation of more than 50 percent of  
14 an existing structure, building, facility, or roadway having a contract cost of more than  
15 \$50,000,000 of a definite term at a geographically defined project site;

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

20 (A) the contractor;

21 (B) a subcontractor;

22 (C) an architect;

23 (D) an engineer; or

24 (E) a person performing professional services;

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

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

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

31 **Sec. 21.36.155. Health discount plans.** (a) A person may not sell, market,

1 promote, advertise, or otherwise distribute a health discount plan unless

2 (1) each advertisement, policy, document, information, statement, or  
3 other communication regarding the health discount plan and the plan itself contain a  
4 statement, in bold and prominent type, that the health discount plan is not insurance;

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

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

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

14 (5) the person provide. the consumer the right to cancel the health  
15 discount plan within 30 days after purchase of the plan; and

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

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

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

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

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

29 **Sec. 21.36.195. Surplus lines brokers and insurance producers; prohibited**  
30 **acts.** A surplus lines broker or an insurance producer may not fail to provide evidence  
31 of insurance, [AFFIDAVITS,] filings, or reports, or fail to maintain the records, or fail

1 to pay the taxes and fees, required under AS 21.34.

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

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

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

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

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

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

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

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

25 \* **Sec. 31.** AS 21.85 is amended by adding new sections to read:

26 **Article 2. Self-Funded Governmental Plans.**

27 **Sec. 21.85.205. Applicability.** A self-funded governmental plan that is  
28 exempt from coverage under a group policy covering state employees and their  
29 dependents under AS 39.30.090 and regulations adopted under that section shall  
30 comply with the provisions of AS 21.85.210 - 21.85.230.

31 **Sec. 21.85.210. Filing requirements.** (a) A self-funded governmental plan

1 shall annually file

2 (1) an audited statement of financial condition and a statement of  
3 change in financial condition for the fiscal year affirmed by a trustee of the plan;

4 (2) an actuarial memorandum from a qualified actuary that

5 (A) certifies to the adequacy of reserves, contribution rates and  
6 stop-loss insurance coverage;

7 (B) describes the financial condition of the plan, including any  
8 recommended actions the plan should take to improve the financial condition  
9 of the plan if the qualified actuary believes the financial condition of the plan  
10 needs to be improved to remain solvent;

11 (3) the name and contact information of each person providing  
12 administrative and consulting services to the plan;

13 (b) A self-funded governmental plan shall file additional information as  
14 requested by the director relating to the financial condition, transactions, and affairs of  
15 the plan.

16 **Sec. 21.85.215. Minimum standards.** A self-funded governmental plan shall

17 (1) operate under a trust agreement under the governance of a board of  
18 trustees that is responsible for all operations of the plan; a trustee may not be an  
19 owner, officer, or employee of the administrator of the plan;

20 (2) maintain a fidelity bond issued by an authorized insurance  
21 company covering each trustee of the plan in an amount not less than ten percent of  
22 the benefits paid during the preceding fiscal year up to a maximum of \$500,000;

23 (3) establish and maintain stop-loss coverage, reserves and  
24 contribution rates at a level recommended and certified to by a qualified actuary for  
25 the plan to remain financially solvent;

26 (4) maintain adequate facilities and competent personnel, as  
27 determined by the director, to service the plan or contract with a third-party  
28 administrator registered under AS 21.27 to service the plan;

29 (5) provide each participant a summary plan description as described  
30 in 29 U.S.C. 1022, 29 CFR 2520.102-2, 29 CFR 2520.102-3, and 29 CFR 2520.102-4.

31 **Sec. 21.85.225. Additional standards.** In addition to the provisions

1 contained or referred to in AS 21.85.205 - 21.85.230, the following chapters and  
 2 provisions of this title also apply with respect to a self-funded governmental plan to  
 3 the extent applicable and not in conflict with the express provisions of AS 21.85.205 -  
 4 21.85.230 and the reasonable implications of the following chapters and provisions,  
 5 and, for the purposes of the application, the plan shall be considered to be a mutual  
 6 insurer:

7 (1) AS 21.03;

8 (2) AS 21.06;

9 (3) AS 21.07;

10 (4) AS 21.09.100, 21.09.300, and 21.09.320;

11 (5) AS 21.18.080 - 21.18.086, and 21.18.100;

12 (6) AS 21.36;

13 (7) AS 21.42.345 - 21.42.365, and 21.42.375 - 21.42.500;

14 (8) AS 21.54;

15 (9) AS 21.78;

16 (10) AS 21.90.

17 **Sec. 21.85.230. Regulations.** The director may adopt regulations to  
 18 implement AS 21.85.205 - 21.85.225, including a requirement that a self-funded  
 19 governmental plan includes coverages and standards that are required under this title  
 20 for insurance policies of the same type of risk or risks that the self-funded  
 21 governmental plan is intended to cover.

22 \* **Sec. 32.** AS 21.85.500 is amended by adding a new paragraph to read:

23 (9) "self-funded governmental plan" means a governmental plan as  
 24 defined under 29 U.S.C. 1002<sup>(32)</sup>(Employee Retirement Income Security Act of 1974),  
 25 that

26 (A) is not a federal governmental plan as defined under  
 27 AS 21.54.500; and

28 (B) does not provide for payment of benefits under the plan  
 29 solely through a policy of insurance issued by one or more authorized  
 30 insurance companies.

31 \* **Sec. 33.** AS 21.90.900(42) is amended to read:

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

9 \* Sec. 34. AS 21.90.900(43) is amended to read:

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

12 (A) solicitation and inducement;

13 (B) preliminary negotiations;

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

16 (D) transaction of matters subsequent to effectuation of the  
17 contract of insurance or the provision of coverage for medical care and  
18 arising out of it;

19 \* Sec. 35. AS 21.90.900 is amended by adding a new paragraph to read:

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

24 \* Sec. 36. AS 21.24.040(b); AS 21.27.330(b), and 21.27.650(p) are repealed.

25 \* Sec. 37. The uncodified law of the State of Alaska is amended by adding a new section to  
26 read:

27 TRANSITION: REGULATIONS. The director of insurance may proceed to adopt  
28 regulations to implement the changes made by secs. 22, 24, and 35 of this Act. The  
29 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
30 effective date of secs. 22, 24, and 35 of this Act.

31 \* Sec. 38. The uncodified law of the State of Alaska is amended by adding a new section to

1 read:

2 REVISOR'S INSTRUCTIONS. (a) The revisor of statutes is instructed to change the  
3 heading of AS 21.85 from "Regulation of Multiple Employer Welfare Arrangements" to  
4 "Regulation of Self-Funded Employer Plans."

5 (b) The revisor of statutes is instructed to designate AS 21.85.010 - 21.85.100 as  
6 "Article 1. Self-funded Multiple Employer Welfare Arrangements" and to designate  
7 AS 21.85.500 as "Article 3. General Provisions."

8 \* **Sec. 39.** Sections 22, 24, and 35 of this Act take effect July 1, 2005.

9 \* **Sec. 40.** Except as provided in sec. 39 of this Act, this Act takes effect immediately under  
10 AS 01.10.070(c).

# STATE OF ALASKA

DEPARTMENT OF LAW  
OFFICE OF THE ATTORNEY GENERAL

Frank H. Murkowski, Governor

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May 5, 2005

The Honorable Senator Lyda Green  
Co-Chair Senate Finance Committee  
Alaska State Legislature  
State Capitol, room 516  
Juneau, AK 99801

Re: Proposed amendments to CS HB 147(FIN)am relating to self funded governmental plans

Dear Senator Green:

We have been asked to comment on whether certain amendments relating to the regulation of self funded governmental plans under the insurance code (AS 21) would be fairly covered by the title of CS HB 147(FIN)am. We understand that the proposed amendments would be drawn from sections 31, 32, and 38 of CSSB 108 (L&C).

In pertinent part, the title of CS HB 147 (FIN)am includes "relating to the eligibility to provide coverage by a nonadmitted insurer and alien insurer." We understand that a self funded governmental plan may be considered a nonadmitted insurer. A nonadmitted insurer is an unauthorized insurer. AS 21.90.900(30). An unauthorized insurer is an insurer that is not authorized to transact insurance in the state. AS 21.90.900(44). In general terms, this means that an entity acting as an insurer does not hold a certificate of authority to operate in this state. AS 21.09.010. Under existing law, a self-funded governmental plan is not authorized to transact insurance in the state. Because such a plan may be transacting insurance in providing coverage to employers under the plan, it is literally a "nonadmitted insurer" and the provisions of the amendment are intended to establish certain eligibility criteria for these plans to transact insurance in the state without obtaining a certificate of authority.

The title of CS HB 147(FIN)am would be descriptive of the material to be taken from CSSB 108 (L&C). In this regard, the Alaska Supreme Court has observed that the purpose of the descriptive title requirement set out in Article II, Sec. 13 of the Alaska Constitution is to guard against inadvertence, stealth, and fraud in legislation. *State v. A.L.I.V.E. Voluntary*, 606 P.2d 769 (Alaska 1980); see also *Suber v. Alaska State Bond Committee*, 414 P.2d 545 (Alaska 1966); *Gellert v. State*, 522 P.2d 1120 (Alaska 1974).

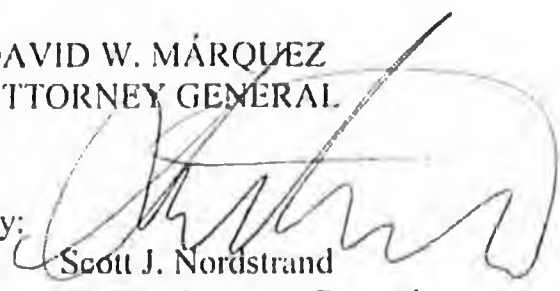
The law enacted in the bill would not be set aside unless the violation of the descriptive title rule is "both substantial and plain." *Suber* 414 P.2d at 557.

We conclude that the material of the proposed amendment is germane to the subject matter indicated in the title to CSHB 147(FIN)am and, if the committee so desires, the title does not need to be changed in order to include the material relating to self funded governmental plans.

Sincerely,

DAVID W. MARQUEZ  
ATTORNEY GENERAL

By:



Scott J. Nordstrand  
Deputy Attorney General

HB 147

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STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 11, 2005

The Honorable John Harris  
Speaker of the House  
Alaska State Legislature  
State Capitol, Room 208  
Juneau, AK 99801-1182

Dear Speaker Harris:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting an omnibus insurance bill.

The bill would make changes to certain insurance licensing provisions to provide more efficient licensing processes and to bring Alaska's law into greater conformity with other states' laws. It would make minor changes to the surplus lines statutes to clean up language and to make reporting easier for alien insurers.

The bill also would make changes to the requirements for the administration of insurer deposits and would provide authorization for insurer deposits to be paid to the state insurance guaranty funds rather than becoming an asset of an insolvent insurer. Finally, the bill would give the Division of Insurance in the Department of Commerce, Community, and Economic Development the authority to regulate health discount plans, would clarify the state's regulation of guaranteed auto protection products and motor vehicle service contracts, and would provide for oversight of certain self-funded governmental plans.

A sectional analysis, describing the bill in more detail, is available from the division of insurance.

In sum, this omnibus insurance bill will make the regulation of insurance more efficient for the state, easier for industry, and at the same time give heightened protection to Alaska insurance consumers. I urge your prompt and favorable action on this measure.

Sincerely yours,

Frank H. Murkowski  
Governor

Enclosure