

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988
4647 HJUD HB 46 - HB 52 8672

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1 Sec. 21.36.310. DEFINITIONS. In AS 21.36.210 - 21.36.310

2 (1) "business or commercial insurance" means insurance
3 other than personal insurance, life insurance, disability insurance,
4 fidelity and surety insurance, title insurance, wet marine and trans-
5 portation insurance as defined in AS 21.34.900, or an annuity con-
6 tract;

7 (2) "nonpayment of premium" means failure of the named
8 insured to discharge when due any obligations of the named insured in
9 connection with the payment of premium on a policy, or any installment
10 of the premium, whether the premium is payable directly to the insurer
11 or its agent or indirectly under any premium finance plan or extension
12 of credit;

13 (3) "personal automobile insurance" means insurance not
14 related to business or commercial activities, covering [(2) "POLICY"
15 MEANS AN INSURANCE POLICY COVERING THE RISKS AND EXPOSURES LISTED IN
16 AS 21.36.210(e) OR AN AUTOMOBILE POLICY THAT INCLUDES] automobile
17 liability, uninsured or underinsured motorists [COVERAGE, UNINSURED
18 MOTORIST COVERAGE], automobile medical payments [COVERAGE], or automo-
19 bile physical damage [COVERAGE], that is delivered or issued for
20 delivery in this state [INSURING AS THE NAMED INSURED, ONE INDIVIDUAL
21 OR HUSBAND AND WIFE RESIDENT OF THE SAME HOUSEHOLD], and under which
22 the insured vehicles are of the following types only:

23 (A) a motor vehicle of the private passenger or sta-
24 tion wagon type that is not used as a public or livery convey-
25 ance, nor rented to others; or

26 (B) any other four-wheel motor vehicle with a load
27 capacity of 1,500 pounds or less that is not used in the occupa-
28 tion, profession, or business of the insured, nor used as a
29 public or livery conveyance, nor rented to others;

1 (4) "personal insurance"

2 (A) means personal automobile insurance, or insurance
3 covering

4 (i) loss of or damage to real property that is
5 used predominantly for residential purposes and that does
6 not consist of more than four dwelling units;

7 (ii) loss of or damage to personal property,
8 including personal effects, household furniture, fixtures
9 and equipment located in not more than four dwelling units;

10 or

11 (iii) legal liability of natural persons for loss
12 of, damage to, or injury to persons or property if the in-
13 surance does not cover liability arising from or in con-
14 nection with business or commercial activities;

15 (B) does not include an annuity contract or a policy
16 of life insurance, disability insurance, or title insurance;

17 (5) [(3)] "renewal" or "renew" means

18 (A) the issuance and delivery [BY AN INSURER] of an
19 insurance [A] policy [REPLACING] at the end of the policy period,
20 that replaces a policy previously issued and delivered by the
21 same insurer; [,]

22 (B) the issuance and delivery of a certificate or
23 notice extending the term of a policy beyond its policy period or
24 term; [,] or

25 (C) the extension of the term of a policy beyond its
26 policy period or term under a provision for extending the policy
27 by payment of a continuation premium.

28 * Sec. 41. AS 21.84.430(c) is amended to read:

29 (c) The director may refuse to issue or may suspend or revoke

1 [RENEW] an insurance agent's license if, in the judgment of the direc-
2 tor, the proposed licensee is not trustworthy and competent to act as
3 agent, or has given cause for revocation or suspension of the license,
4 or has failed to comply with a prerequisite for the issuance [OR
5 RENEWAL, AS THE CASE MAY BE,] of the license.

6 * Sec. 42. AS 21.88.050 is amended to read:

7 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
8 corporation shall

9 (1) in the form approved by the director, issue to all
10 physicians, nurses, and hospitals who are found to be acceptable risks
11 under standards developed under (5) of this subsection, and who pay
12 the premiums for it, a contract or contracts indemnifying physicians,
13 nurses, and hospitals and their employees who are health care provid-
14 ers against loss by reason of liability for covered claims for an act
15 or omission in the delivery of professional health care in this state,
16 and agreeing to tender on behalf of the physicians, nurses, and hos-
17 pitals and their employees who are health care providers a defense to
18 a covered claim in a proceeding brought under AS 09.55.530 - 09.55.-
19 560; the limits of liability for policies issued by the corporation
20 shall be approved by the director; the contract shall cover the de-
21 fense against but need not indemnify liability for punitive damages
22 arising from a covered claim; at the option of the corporation, if
23 approved by the director, and for an additional premium the contract
24 may cover claims against the physician, nurse, or hospital that arise
25 out of professional services performed by the physician, nurse, or
26 hospital for any period before the contract is issued, except that
27 coverage will not be provided for a claim already filed or that [OF
28 WHICH] the physician, nurse, or hospital had or reasonably should have
29 had notice at the time the retroactive insurance was purchased;

1 (2) charge a premium for the protection provided by the
2 contracts issued by the corporation which shall be determined by the
3 board of governors in accordance with AS 21.88.080 and subject to the
4 approval of the director;

5 (3) comply with or be subject to AS 21.06.090, 21.06.120,
6 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,
7 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and
8 AS 21.36; and shall be exempt from participation as a member insurer
9 in the Alaska Insurance Guaranty Corporation;

10 (4) carry out the obligations of the contracts issued by
11 the corporation by defending all covered claim made against insured
12 health care providers and by paying all liabilities that [WHICH] are
13 finally adjudicated against the insured health care provider or that
14 [WHICH] may in the opinion of the corporation reasonably be expected
15 to be finally adjudicated against the health care provider to the
16 extent of the contract obligation;

17 (5) establish standards for the acceptability of risks; in
18 establishing these standards the corporation may exclude an applicant
19 for insurance based on individual risk selection factors, but may not
20 exclude an applicant based only on the classification of the appli-
21 cant.

22 (b) The corporation may

23 (1) employ or retain persons, individual or corporate, to
24 discharge its obligations and pay reasonable compensation for these
25 services; employees of the corporation are not considered state em-
26 ployees;

27 (2) negotiate for and procure reinsurance from private
28 casualty insurers or reinsurers for any and all liability incurred by
29 contracts issued by it;

1 (3) provide coverage to insureds for other hazards custom-
2 arily included in medical malpractice insurance policies when there is
3 a finding by the director that this coverage is not available to
4 insureds of the Medical Indemnity Corporation of Alaska in the private
5 insurance market at a competitive price;

6 (4) borrow or advance funds necessary to carry out the
7 purposes of the corporation;

8 (5) negotiate and become a party to those contracts as are
9 necessary to carry out the purposes of the corporation;

10 (6) sue or be sued in the name of the corporation;

11 (7) provide risk management advice and services to hospi-
12 tals;

13 (8) negotiate and become a party to contracts for manage-
14 ment services for the corporation;

15 (9) perform all other acts necessary and proper to carry
16 out the duties of the corporation;

17 (10) in a form approved by the director and for an addition-
18 al premium determined under AS 21.88.080, issue endorsements which
19 provide indemnity for claims not yet reported which arise out of
20 professional services rendered during a period of continuous coverage
21 under the originally issued contract, to physicians, nurses, and
22 hospitals who pay the premium for it and who are terminating their
23 original covered claims contract with the corporation for a period of
24 not less than one year;

25 (11) subject to approval by the director, extend coverage
26 to a person, entity, or facility that renders health care services in
27 the state under the supervision of a physician.

28 * Sec. 43. AS 21.90.900 is amended to read:

29 Sec. 21.90.900. DEFINITIONS FOR TITLE. In this title, unless

1 the context requires otherwise,

2 (1) "adjuster" means a person who, for compensation as an
3 independent contractor or as an employee of an independent contractor,
4 or for fee or commission, investigates and adjusts claims arising
5 under insurance contracts on behalf of the insurer, but does not
6 include an attorney at law who adjusts insurance losses from time to
7 time incidental to the practice of law or a salaried employee of an
8 insurer;

9 (2) "agent" means a person appointed by an insurer to
10 solicit applications for insurance or annuities on its behalf, and if
11 authorized to do so, to effectuate and countersign insurance con-
12 tracts, except life or disability insurance or annuities, and to
13 collect premiums on insurance or annuities;

14 (3) "alien insurer" means an insurer formed under the laws
15 of a country other than the United States of America, its states,
16 districts, territories, and commonwealths;

17 (4) [(2)] "authorized insurer" means an insurer authorized
18 by a [SUBSISTING] certificate of authority issued by the director to
19 transact insurance in this state;

20 (5) "broker" means a person who is not an agent of the
21 insurer and who, on behalf of the insured, for compensation as an
22 independent contractor by commission or fee, solicits, negotiates, or
23 procures insurance or reinsurance or the renewal or continuance of
24 insurance or reinsurance; or in any manner aids in the solicitation,
25 negotiation, procur ment, renewal, or continuance of insurance or
26 reinsurance, for insureds or prospective insureds not including the
27 broker;

28 (6) [(3)] "commissioner" means the commissioner of the
29 Department of Commerce and Economic Development;

1 (7) [(4)] "court" means superior court;

2 (8) [(5)] "director" means the director of the division of
3 insurance;

4 (9) [(6)] "division" means the division of insurance,
5 Department of Commerce and Economic Development;

6 (10) [(7)] "domestic insurer" means an insurer formed under
7 the laws of this state;

8 (11) "firm" means an organization of two or more licensees
9 acting in association with each other, either in a partnership, corpo-
10 ration, or otherwise, or an organization in which a single licensee
11 has less than 50 percent ownership interest in the organization;

12 (12) [(8)] "foreign insurer" means an insurer formed under
13 the laws of a jurisdiction other than this state and includes an alien
14 insurer;

15 (13) "independent adjuster" means an adjuster representing
16 the interests of the insurer;

17 (14) [(9)] "industrial life insurance" means that form of
18 life insurance written under policies with a face amount of \$1,000 or
19 less, with the words "industrial policy" imprinted on the face as part
20 of the descriptive matter, and under which premiums are payable month-
21 ly or more often;

22 (15) [(10)] "insurance" means a contract whereby one under-
23 takes to indemnify another or pay or provide a specified or determin-
24 able amount or benefit upon determinable contingencies;

25 (16) [(11)] "insurer" includes a person engaged as indemni-
26 tor, surety, or contractor in the business of entering into contracts
27 of insurance or of annuity;

28 (17) [(12)] "person" has the meaning given in AS 01.10.C60
29 and includes an insurer, Lloyd's, fraternal benefit society, medical

1 service or hospital service plan as defined in AS 21.87, reciprocal or
2 interinsurance exchange, syndicate, and any other legal entity engaged
3 in the business of transacting insurance, including agents, brokers,
4 and claims adjusters;

5 (18) [(13)] "policy" means the written contract of or writ-
6 ten agreement for or effecting insurance, by whatever name called, and
7 includes all clauses, riders, endorsements and papers attached to it
8 and a part of it;

9 (19) [(14)] "premium" means the consideration for insurance,
10 by whatever name called, and by whatever method paid or collected,
11 including an assessment, or membership, policy, survey, inspection,
12 service or similar fee or charge made in consideration for an insur-
13 ance contract;

14 (20) "solicitor" means an individual authorized by an agent
15 or broker to solicit applications for insurance as a representative of
16 the agent or broker and to collect premiums in connection with the
17 insurance;

18 (21) [(15)] "state" means a state, District of Columbia,
19 territory, commonwealth, or possession of the United States of
20 America;

21 (22) [(16)] "transact" with respect to insurance includes
22 (A) solicitation and inducement;
23 (B) preliminary negotiations;
24 (C) effectuation of a contract of insurance;
25 (D) transaction of matters subsequent to effectuation
26 of the contract of insurance and arising out of it;

27 (23) [(17)] "unauthorized insurer" means an insurer not
28 authorized to transact insurance in this state.

29 * Sec. 44. AS 21.90 is amended by adding a new section to read:

1 Sec. 21.90.910. EXCEPTIONS FROM DEFINITIONS. The definitions of
2 "adjuster," "agent," "broker," "firm," and "solicitor" in AS 21.90.900
3 do not include

4 (1) individuals employed and used by agents for the perfor-
5 mance of clerical, stenographic, and similar office duties; incidental
6 taking of an application for insurance from time to time in the office
7 of the employing agent if the employee's compensation is not contin-
8 gent upon or related to the volume of applications, insurance, or
9 premiums;

10 (2) the attorney-in-fact of a reciprocal insurer, or the
11 salaried traveling representative of a reciprocal or mutual insurer
12 not compensated on a commission basis.

13 * Sec. 45. AS 21.03.030, 21.03.040, 21.03.050; AS 21.06.040; AS 21.27.-
14 040(b), 21.27.470, 21.27.480, 21.27.490, 21.27.500, 21.27.510, 21.27.520;
15 AS 21.36.210(c), 21.36.210(e), 21.36.230, and 21.36.300 are repealed.

16 * Sec. 46. Sections 1 - 29 and 31 - 45 of this Act apply to insurance
17 policies entered into or renewed on or after the effective date of secs.
18 1 - 29 and 31 - 45 of this Act.

19 * Sec. 47 Section 30 of this Act takes effect immediately under
20 AS 01.10.070(c).

SECTION BY SECTION COMMENTARY

CSHB 46 (RIs)

4/30/87

Prepared by: Alaska Division of Insurance

Date: 5/1/87

OVERVIEW

This committee substitute encompasses about 13 insurance issues in one "omnibus" bill on insurance issues. Most of the items contained in the bill have, at one time or another, been requested by the Division of Insurance. The Division of Insurance supports this legislation.

The material that follows will attempt to identify each issue addressed by the bill, explain the purpose and to comment section by section.

For ease in tracking the various issues, we have provided page breaks following the commentary on each issue. The issues are:

- General Agents / Managers (Pages 2-3)**
- Continuous License (Pages 4-6)**
- Firm / Individual License (Pages 7-9)**
- Broker Bond (Page 10)**
- Broker as Agent (Pages 11-12)**
- Producer Financial / Fiduciary Accounts (Pages 13-14)**
- Alien Trusts Deposits (Page 15)**
- Commercial Cancellation (Pages 16-19)**
- Pro Rata on Cancellations (Page 20)**
- Nurse Coverage (Page 21)**
- Relocation of Definitions (Page 22)**
- Elimination of Domestic Tax Exemption (Page 23)**
- Removal of Obsolete or Duplicative Provisions (Page 24)**

GENERAL AGENTS / MANAGERS

This issue eliminates confusion with AS 21.09.280, which currently attempts to distinguish between "general agents" who are required to be licensed and "managers" who are not. It is a distinction that has been difficult to apply. The basic role of both entities is often the same, and the Alaska Insurance Code does not adequately make a distinction between the two. The bill eliminates references to managers and requires all general agents to be licensed. It then lists those specific entities that will not be considered general agents.

Section 1. (Page 1, Lines 9-20)

AS 21.09 deals with insurance companies that apply for and are issued a Certificate of Authority. These companies have elected to make themselves subject to regulation by the Alaska Director of Insurance and are referred to as admitted companies. The change in this Section makes it clear that an admitted company may only do business through persons or entities licensed by Alaska including general agents.

Section 2. (Page 1, Lines 21-27; Page 2, Lines 1-16)

This Section removes the references to managers. In §(b), the point that the general agent is licensed in the same manner as an agent licensed under AS 21.27, is clarified. This is a view that the Division has applied in practice, but is more than a little vague in statute.

In §(c), the reference to AS 21.27.500 is removed since its content is incorporated in the next Section.

Section 3. (Page 2, Lines 17-29; Page 3, Line 1-2)

§ (f) in this Section, moves a provision from AS 21.27.500. It provides that salaried employees of an insurance company are not subject to license for their activities on behalf of the insurer, even though that

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activity may have the same appearance as a general agent.

§(g) exempts persons or entities who perform general agent type services for an insurance company when that person or entity is:

- (1) a subsidiary of the insurance company;
- (2) the owner of the insurance company; or
- (3) owned by the holding company that owns the insurance company.

Section 46 (Page 31, Lines 1-4)

This Section includes a repeal of AS 21.27.500, on line 2.

CONTINUOUS LICENSE

This bill introduces a continuous insurance license for agents, brokers, solicitors, adjusters, and general agents, rather than the current system requiring annual renewal. All licensees, however, will still pay an annual fee, and failure to pay will result in revocation or suspension of the license. This change should reduce the paperwork currently handled by the Division.

Section 2. (Page 1, Lines 21-29; Page 2, Lines 1-16)

Continuous license language appears on Page 2, Lines 9-13.

Section 4. (Page 3, Lines 3-10)

Reference to renew is removed on Lines 5 & 6. The change on Lines 9 & 10 is not substantive.

Section 5. (Page 3, Lines 11-28)

AS 21.27.030(a)(1) is a controlled business prohibition. The substance of this paragraph has been moved to Section 6. §(a) is revised to deal with the new applicant. Reference to renewal has been removed.

Section 6. (Page 3, Line 29; Page 4, Lines 1-7)

This addition to AS 21.27.030 addresses the controlled business prohibition on an existing license.

Section 7. (Page 4, Lines 8-29; Page 5, Lines 1-9)

Reference to renewal removed on Page 5, Line 6.

Section 10. (Page 6, Lines 15-29; Page 7, Lines 1-3)

Reference to date of expiration is removed on Page 7, Line 2.

Section 12. (Page 7, Lines 26-29; Page 8, Lines 1-9)

This Section addresses licenses for vending machines that dispense policies of personal travel accident insurance. The only change of substance is that on Page 8, Line 3 where reference to annual continuation and expiration is removed.

Section 13. (Page 8, Lines 10-22)

The references to renewal are addressed on Lines 11-13.

Section 17. (Page 9, Lines 15-19)

The reference to renewal appears on Line 17.

Section 18. (Page 9, Lines 20-26)

The reference to date of expiration is removed on Line 24.

Section 22. (Page 11, Lines 11-27)

This Section has been completely reworked to reflect continuous licenses. In §(a) and §(b), annual fee dates differ in some cases from current renewal dates. Under present law, resident licenses expire on June 30, except for brokers, which expire on December 31. Nonresident agent and brokers expire a year from issue and nonresident adjusters on June 30. The continuation fee proposed would be due on all agents, solicitors, or adjusters on June 30, and all brokers on December 31.

The only other substantive change appears in §(d) where the surcharge for late renewal is established by regulation. This concept is already the case for all other fees of the Division of Insurance.

Section 24. (Page 12, Lines 16-29; Page 13, Lines 1-19)

The reference to refuse to renew is removed on Page 12, Line 18. Surplus lines broker licenses are not being changed to continuous license. This accounts for the inserted language on Lines 19 and 20. This type of licensee is the one that provides entry to the nonadmitted market place and is required to post a \$200,000 bond. Further, producers of business for risk retention groups or risk purchasing groups under the recently passed Federal law must have this type of license. We would prefer to see how things are going to shape up with the new Federal Act before we recommend a change

Section 26. (Page 13, Lines 25- 29; Page 14, Lines 1-7)

References relating to renewal removed.

Section 27. (Page 14, Lines 8-19)

References relating to renewal removed.

Section 28. (Page 14, Lines 20-29)

References relating to renewal removed.

Section 29. (Page 15, Lines 1-7)

Reference relating to expiration removed.

Section 42. (Page 24, Lines 16-22)

Reference relating to renewal removed.

FIRM / INDIVIDUAL LICENSE

This portion of the bill creates a new distinction between individual licenses issued to individual persons, and firm licenses issued to associations of individual licensees. Under current law, persons operating under a firm's license do not typically hold an individual license, but are named to act on the firm license. This renders individual accountability difficult. In some cases there is a constant activity on a firm's license file as individuals are added or deleted.

Also under current law, adjusting firms are not licensed, only individuals. We have experienced situations where firms have ignored Alaska Law to the detriment of the public and individual licensees within the firm. This extends the accountability principle to adjusting firms. It will give the Division of Insurance a better regulatory oversight of the industry by requiring that every person selling or adjusting insurance contracts, whether individual or firm, have the appropriate license.

Section 7. (Page 4, Lines 8-29; Page 5, Lines 1-9)

This Section concerning examination of applicants for insurance license has been changed to apply to individual licensees. Since each individual is licensed it is not necessary to require that a firm be examined. This is accomplished with insertions at Page 4, Line 10 and Page 5, Line 3.

Section 8. (Page 5, Lines 10-29; Page 6, Lines 1-8)

This Section addresses the qualifications for license. It has been modified to make it applicable to individual licensees. The language on Page 6, Lines 1 and 2, avoid additional paperwork by providing that a person acting on behalf of a firm is covered by the firm's appointment.

Section 9. (Page 6, Lines 9-14)

This Section also addresses the qualifications for license. It applies to firm licenses.

Section 10. (Page 6, Lines 15-29; Page 7, Line 1-3)

The only changes of substance in this Section are found on Page 6, Lines 22-25. The distinction between firm and corporation is removed. A definition for firm is introduced in Section 44 on Page 28, Lines 25-28. The only person to be named on a firm license will be the principal or manager of the firm.

Section 11. (Page 7, Lines 4-25)

This Section requires that the firm be licensed to the same extent as persons employed by the firm. Use by a firm of unlicensed persons who are required to be licensed is cause for revocation or suspension.

Section 14. (Page 8, Lines 23-26)

This Section provides that the firm broker bond covers individual broker members of the firm.

Section 23. (Page 11, Lines 28-29; Page 12, Lines 1-15)

This Section addresses temporary licenses. It provides for a temporary license if the principal or manager should die. This is not a substantive change.

Section 25. (Page 13, Lines 20-24)

Since persons are no longer designated in the license to exercise its powers, the language has been revised to acting on behalf of the firm.

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Section 44. (Page 27, Lines 16-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-16)

Definition of "firm" introduced on Page 28, Lines 25-28.

Section 46. (Page 31, Lines 1-4)

RS 21.27.040(b) is repealed on Line 2. This is the subsection that requires firms to designate all individuals on the firm license.

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BROKER BOND

This section proposes to increase the bond required of a broker from the current \$5,000 to \$10,000. The bond is available for the people of the state. The increased bond will have an increased cost, but the amount is not excessive. This is not a Division of Insurance proposal, but we have no objection to it.

Section 14. (Page 8, Lines 10-22)

The increased bond amount appears on Lines 16 and 18.

BROKER AS AGENT

Alaska currently licenses two kinds of insurance producer under AS 21.27, agent and broker. The agent represents an insurance company through appointment and contract. On the other hand, the broker represents the purchaser of insurance. It is typical for an insurance producer to hold both types of license. A purchaser of insurance usually does not know, under which license a producer is acting. Most insurance producers do try to balance the interests of the purchaser of coverage and the provider of coverage, and some do this quite well. Normally this is not an issue of concern, but when a producer becomes insolvent or has misused trust account monies, the issue can be very important.

If an agent collects premium funds for an insurer, the insurer is deemed to have received those funds whether they are sent to the insurer or not. When the insurer sends notice of cancellation for nonpayment of premium, the insured need only show his cancelled check and the coverage will be reinstated.

If a broker misappropriates premium funds, and does not pay them to the insurer or intermediary, and a notice is sent by the company which has not received payment, the coverages are generally not reinstated. The Division has had two major cases of this description and a number of smaller ones, where the public has been hurt. The resolution is to provide that when a broker places coverage which can be evidenced by a binder, issuance of a policy, or some acknowledgement from the insurer or its representative, then the insurer is considered to have received those funds whether it has or not. The broker is considered to be the agent of the company for purposes of premium collection.

An additional issue, is the need to have the producer collecting funds at the initiation of the transaction, clearly state that he is acting as a broker and coverages are not bound until confirmed by an insurer, or to return the funds to the purchaser of coverage.

Section 13. (Page 8, Lines 10-22)

This Section deals with the brokers' bond. One group of persons who could be adversely impacted with "agent as broker", is the wholesale broker or general agent who is in between the producing broker and the insurance company. It is possible that they might bear the financial brunt of this solution. Relief is offered by allowing them to access to the brokers' bond.

Section 15. (Page 8, Lines 27-29; Page 9, Line 1)

This Section makes clear the fact that the broker cannot bind an insurer.

Section 16. (Page 9, Lines 2-14)

This Section establishes the concept of "broker as agent for purposes of premium collection." (d) newly provides that a broker may not knowingly accept payment for coverage until that coverage is authorized by an insurer.

PRODUCER FINANCIAL / FIDUCIARY ACCOUNTS

The Division has been working with the Alaska Association of Independent Insurance Agents and Brokers concerning financial problems with some insurance agents and brokers and their handling of insurance premium monies. To this end, we have aided in developing some clarifications to those sections of the insurance code.

Agents and brokers are required to receive insurance premium monies in a fiduciary capacity. Unfortunately, the first sign that all is not well with an agents' or brokers' fiduciary account is when it is too late. One good indicator of a developing problem would be good accounting records accessible by the Division, which are required with this bill.

The Division has need of tools that can be used to resolve fiduciary and financial difficulties at an earlier point in time. One tool is the ability to review financial summaries or detail, such as trial balance, income statement, journal detail, etc. in a Division of Insurance office for examination when requested. These documents would be confidential.

The clarifications addressed in this issue coupled with the Broker as Agent resolution should maximize protection to insurance purchasers.

Section 19. (Page 9, Lines 27-29; Page 10, Lines 1-9)

This is a new requirement specifically requiring an agent or broker to have accounting and financial records and to maintain them in accordance with generally accepted accounting principles. These records are available for review and are confidential when in the possession of the director.

Section 20. (Page 10, Lines 10-21)

§(b) contains the requirement for a premium fiduciary account. The change clarifies the fact that other funds can not be commingled with

it except as specifically permitted in Section 21.

Section 21. (Page 10, Lines 22-29; Page 11, Lines 1-10)

§(d) permits a limited commingling of nonpremium funds in the fiduciary account for specific premium related purposes. Accounting for nonpremium funds is required.

§(e) makes clear that the premium funds required to be in the fiduciary account can not be used or represented to be asset funds. Funds optionally permitted to be in the fiduciary account, such as reserve funds are an asset of the agent or broker.

§(f) introduces a definition for "fiduciary account."

ALIEN TRUST DEPOSITS

This issue is considered the #1 priority legislative need this session and it relates to the trust fund requirements for alien surplus lines insurers wishing to business in Alaska. An alien insurer is one formed under the laws of a country other than the United States.

At the present time, AS 21.34.040(c) provides that an alien surplus lines insurer must maintain a trust fund for the benefit of policyholders in the United States in an amount not less than \$3.5 million. That \$3.5 million figure is scheduled to increase to \$5 million on June 20, 1987. This portion of the bill would eliminate this scheduled increase and reduce the trust fund requirement to \$1.5 million, the level required before June 20, 1985.

This proposal would avoid the necessity to declare as ineligible, approximately 95% of the alien surplus line companies doing business in the Alaska market. There is a great deal of concern about the reduction of available insurance markets for exposures in this state. If the current language in statute were to be enforced, many insurers who now provide valuable markets would be ineligible for use here. Alaska is out of step with the rest of the country on this issue where the norm is a deposit of \$1.5 million. This proposal does not impact the minimum capital and surplus required of alien insurers.

Section 30. (Page 15, Lines 8-29; Page 16, Lines 1-12)

The language to accomplish the change noted above appears on Page 15, Lines 21-22. Other changes are not substantive.

Section 48. (Page 31, Lines 8-9)

This Section is an immediate effective date for Section 30 only.

COMMERCIAL CANCELLATION

AS 21.36.210 - 310 currently places a limitation on an insurance company's right to cancel in mid-term, personal lines of insurance, such as automobile insurance or homeowners insurance. This whole section of law deals with insurer initiated cancellations. The insurance crisis of the past few years, accented the need that this kind of protection should also be provided for commercial policies.

To accomplish this, it is necessary to substantially rework AS 21.36.210 - 310. A number of sections have been relocated and a distinction made between personal insurance and business or commercial insurance. The personal insurance limitation is unchanged except that notice period has been revised. This issue has been the one generating the most fine tuning during the hearing process.

The business or commercial insurance notice is similar to those in many states. This proposal preserves the insurers right to cancel but does require an adequate period of notice, a statement of the reasons for the cancellation, and requires, in most cases, that any unearned premium be returned to the insured before the effective date of cancellation. A notice requirement has been added for an increase of premium at renewal or a change in coverage. Notice must be given prior to expiration.

The normal period of notice for cancellation will be 30 days for personal lines and 60 days for commercial and business insurance policies. Notice for nonpayment will be 20 days. Notice for special reasons such as suspension or revocation of license, conviction of a crime related to the type of coverage provided, and material misrepresentation will have a 10 day notice. Notice of nonrenewal will remain at 20 days for personal insurance and will be 45 days for commercial nonrenewals.

Section 31. (Page 16, Lines 13-24)

No substantive change.

Section 32. (Page 16, Lines 25-29; Page 17, Lines 1-2)

No substantive change. This is merely a relocation of AS 21.36.300. Reference to some exceptions has been deleted since those will be picked up under the commercial or business definition.

Section 33. (Page 17, Lines 3-21)

No substantive change.

Section 34. (Page 17, Lines 22-29; Page 18, Lines 1-9)

This Section lists the notice periods for personal insurance.

Section 35. (Page 18, Lines 10-29; Page 19, Lines 1-29;
Page 20, Lines 1-2)

§(b) of this Section establishes the notice periods for business or commercial insurance.

§(c) requires the return of unearned premium prior to the effective date of cancellation. If the cancellation is for nonpayment, return of unearned premium must occur within 30 days after notice of cancellation is given. Audits on auditable policies must also be made before the effective date of cancellation and unearned premium returned before the expiration of the policy, where the reason for cancellation is other than nonpayment, and some specified exceptions.

While this may cause some difficulty for the insurer, it should be remembered that this speaks to an insurer initiated cancellation. Insurers can use tentative or projected numbers for the period following the notice of cancellation. They often know they are going to cancel, so usually they can also control the audit process. The insured with an auditable policy is entitled to the same protection as an insured with a nonauditable policy. The insurer may elect to waive an audit on cancellation, which is their right currently. If the Division

finds that the waiver is not in the insureds interest, it can require that an audit be made under §(d).

§(d) provides that the Director has the authority to order an audit waived by an insurer under §(c). This would be done when the director believes an insurer is acting unfairly to an insured.

§(e) clarifies that a reason for cancellation will be given in all cases.

Section 36. (Page 20, Lines 3-21)

This section provides for a notice to be given of a premium increase or of a coverage change 20 days before expiration in the case of personal insurance and 45 days before expiration in the case of business or commercial insurance. This does not apply to workers' compensation insurance.

Section 37. (Page 20, Lines 22-29; Page 21, Lines 1-12)

The notice of nonrenewal is unchanged for personal insurance at 20 days. The notice of nonrenewal for business or commercial insurance is 45 days. Failure to give required notice results in continued cover.

Section 38. (Page 21, Lines 13-22)

No substantive change.

Section 40. (Page 22, Lines 10-16)

This section requires that a notice of cancellation be sent to the last known address that the insurer have a post office receipt of mailing.

Section 41. (Page 22, Lines 17-29; Page 23, Lines 1-29;
Page 24, Lines 1-15)

The definition of "business or commercial insurance" is new. The remainder of the changes in this Section are not substantive. The limit on cancellation will extend to vessels under 50 displacement tons which will cover most of Alaska's fishing fleet.

Section 46. (Page 31, Lines 1-4)

AS 21.36.210(c) is repealed as it is not needed.

AS 21.36.210(e) is repealed because it has been relocated in the definition of "personal insurance" on Page 23, Lines 18-29 and Page 24, Lines 1-4.

AS 21.36.230 is repealed as it is not needed.

AS 21.36.300 is repealed because it has been moved to Section 32.

PRO RATA ON CANCELLATIONS

There are two basic methods of computing return premium on a cancelled policy. In industry parlance, these are referred to as short rate and pro rata. Short rate is used on a cancellation initiated by the insured and has a built-in penalty. Pro rata is used on cancellations initiated by the insurance company and the earned portion of premium is proportionate to the period of coverage. The short rate method of computation is often a cause for complaint because of abuse. Most complaints deal with the size of the penalty provision.

Short rate penalty was originally intended to reflect an expense of the insurer that was, for the most part, beyond the insurers' control. It also provides some protection from severe market disruption. The Division has considered the elimination of short rate by regulation, but authority is vague. We would prefer to continue some form of short rate penalty but be able to address the abuses.

Section 39. (Page 21, Lines 23-29; Page 22, Lines 1-9)

This Section limits the short rate penalty to 7.5% of the unearned premium.

Section 47. (Page 31, Lines 5-7)

This Section makes clear that this new requirement does not affect in-force contracts, thus sidestepping potential constitutional conflicts.

NURSE COVERAGE

This proposal will add nurses to the list of health care professionals who can obtain professional liability insurance from the Medical Indemnity Corporation of Alaska which was formed under AS 21.88 in 1976. This is primarily a backup action since nurses have recently been able to put together a national program that appears to resolve their availability difficulties. The Division of Insurance has no objection to this proposal.

Section 43. (Page 24, Lines 23-29; Page 25, Lines 1-29;
Page 26, Lines 1-29; Page 27, Lines 1-15)

"Nurse" or "nurses", is added on Page 24, Line 27; Page 25, Lines 1, 4, 12, 13, & 16 and on Page 27, Line 9.

RELOCATION OF DEFINITIONS

Definitions in the Insurance Code (Title 21) are found in AS 21.90. In addition, chapters contain definitions that in some cases have a more general application. These should be located in the general definition chapter. The changes in this case are not substantive, but merely represent relocation with one exception, the definition of "firm," which has been already discussed on Page 8-9, under Sections 10 & 44.

Section 44. (Page 27, Lines 16-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-16)

§(1), "adjuster" on Page 27, Lines 19-25, was formerly AS 21.27.510(a).

§(2), "agent" on Page 27, Lines 26-29 and Page 28, Line 1, was formerly AS 21.27.470.

§(5), "broker" on Page 28, Lines 8-15, was formerly AS 21.27.480.

§(11), "firm" on Page 28, Lines 25-28 is new. See discussion on Page 8.

§(13), "independent adjuster" on Page 29, Lines 3-4, was formerly AS 21.27.510(b).

§(20), "solicitor" on Page 30, Lines 2-5, was formerly AS 21.27.490.

Section 45. (Page 30, Lines 17-29)

This Section was formerly AS 21.27.520. No substantive change.

Section 46. (Page 31, Lines 1-4)

AS 21.27.470, AS 21.27.480, AS 21.27.490, AS 21.27.510, & AS 21.27.520 are repealed as discussed in Sections 44 and 45 above.

ELIMINATION OF DOMESTIC TAX EXEMPTION

This item proposes to terminate a tax exemption presently granted to a domestic Alaska insurer during its first five years of existence. There is a potential constitutional issue with continuance of the tax exemption. In the past, large national insurance holding companies have taken advantage of this feature and in some cases, there has been a strong question about whether some of those companies were truly domestic Alaska insurers. The Division of Insurance has no objection to this proposal.

Section 46. (Page 31, Lines 1-4)

AS 21.09.210(c) is repealed on Line 3, eliminating the domestic tax exemption.

CSHB 46 (AIs) (4/29/87)

Prepared 5/1/87

REMOVAL OF OBSOLETE OR DUPLICATIVE PROVISIONS

The present Insurance Code was adopted in 1966. At the time of adoption, there were a number of provisions intended to prevent disruption of, then, current activities. These provisions are no longer since some 20+ years have passed and the sections are obsolete. Included in the repeal is a section that duplicates provisions of the ethics bill adopted by the Fourteenth Legislature.

Section 46. (Page 31, Lines 1-4)

AS 21.03.030, AS 21.03.040, AS 21.03.050 and AS 21.05.040 are repealed.

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CSHB 46 (RIs) (4/29/87)

Prepared 5/1/87

GENERAL AGENTS / MANAGERS

- Section 1. (Page 1, Lines 9-20)
- Section 2. (Page 1, Lines 21-29; Page 2, Lines 1-16)
- Section 3. (Page 2, Lines 17-29; Page 3, Line 1-2)
- Section 46 (Page 31, Lines 1-4)

CONTINUOUS LICENSE

- Section 2. (Page 1, Lines 21-29; Page 2, Lines 1-16)
- Section 4. (Page 3, Lines 3-10)
- Section 5. (Page 3, Lines 11-28)
- Section 6. (Page 3, Line 29; Page 4, Lines 1-7)
- Section 7. (Page 4, Lines 8-29; Page 5, Lines 1-9)
- Section 10. (Page 6, Lines 15-29; Page 7, Lines 1-3)
- Section 12. (Page 7, Lines 26-29; Page 8, Lines 1-9)
- Section 13. (Page 8, Lines 10-22)
- Section 17. (Page 9, Lines 15-19)
- Section 18. (Page 9, Lines 20-26)
- Section 22. (Page 11, Lines 11-27)
- Section 24. (Page 12, Lines 16-29; Page 13, Lines 1-19)
- Section 26. (Page 13, Lines 25- 29; Page 14, Lines 1-7)
- Section 27. (Page 14, Lines 8-19)
- Section 28. (Page 14, Lines 20-29)
- Section 29. (Page 15, Lines 1-7)
- Section 42. (Page 24, Lines 16-22)

FIRM / INDIVIDUAL LICENSE

- Section 7. (Page 4, Lines 8-29; Page 5, Lines 1-9)
- Section 8. (Page 5, Lines 10-29; Page 6, Lines 1-8)
- Section 9. (Page 6, Lines 9-14)
- Section 10. (Page 6, Lines 15-29; Page 7, Line 1-3)
- Section 11. (Page 7, Lines 4-25)
- Section 14. (Page 8, Lines 23-26)
- Section 23. (Page 11, Lines 28-29; Page 12, Lines 1-15)

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CSHB 46 (RIs) (4/29/87)

Prepared 5/1/87

Section 25.

Section 44. (Page 27, Lines 16-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-16)

Section 46. (Page 31, Lines 1-4)

BROKER BOND

Section 14. (Page 8, Lines 10-22)

BROKER AS AGENT

Section 13. (Page 8, Lines 10-22)

Section 15. (Page 8, Lines 27-29; Page 9, Line 1)

Section 16. (Page 9, Lines 2-14)

Section 19. (Page 9, Lines 27-29; Page 10, Lines 1-9)

Section 20. (Page 10, Lines 10-21)

Section 21. (Page 10, Lines 22-29; Page 11, Lines 1-10)

ALIEN TRUST DEPOSITS

Section 30. (Page 15, Lines 8-29; Page 16, Lines 1-12)

Section 48. (Page 31, Lines 8-9)

COMMERCIAL CANCELLATION

Section 31. (Page 16, Lines 13-24)

Section 32. (Page 16, Lines 25-29; Page 17, Lines 1-2)

Section 33. (Page 17, Lines 3-21)

Section 34. (Page 17, Lines 22-29; Page 18, Lines 1-9)

Section 35. (Page 18, Lines 10-29; Page 19, Lines 1-29;
Page 20, Lines 1-2)

Section 36. (Page 20, Lines 3-21)

Section 37. (Page 20, Lines 22-29; Page 21, Lines 1-12)

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Prepared 5/1/87

Section 40. (Page 22, Lines 10-16)

Section 41. (Page 22, Lines 17-29; Page 23, Lines 1-29;
Page 24, Lines 1-15)

Section 46. (Page 31, Lines 1-4)

PRO RATA ON CANCELLATIONS

Section 39. (Page 21, Lines 23-29; Page 22, Lines 1-9)

Section 47. (Page 31, Lines 5-7)

NURSE COVERAGE

Section 43. (Page 24, Lines 23-29; Page 25, Lines 1-29;
Page 26, Lines 1-29; Page 27, Lines 1-15)

RELOCATION OF DEFINITIONS

Section 44. (Page 27, Lines 16-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-16)

§(1), "adjuster" on Page 27, Lines 19-25, was formerly AS 21.27.510(a).

§(2), "agent" on Page 27, Lines 26-29 and Page 28, Line 1, was formerly AS 21.27.470.

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§(11), "firm" on Page 28, Lines 25-28 is new. See discussion on Page 8.

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§(20), "solicitor" on Page 30, Lines 2-5, was formerly AS 21.27.490.

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CSHB 46 (Rls) (4/29/87)

Prepared 5/1/87

Section 45. (Page 30, Lines 17-29)

Section 46. (Page 31, Lines 1-4)

ELIMINATION OF DOMESTIC TAX EXEMPTION

Section 46. (Page 31, Lines 1-4)

REMOVAL OF OBSOLETE OR DUPLICATIVE PROVISIONS

Section 46. (Page 31, Lines 1-4)

OVERVIEW
CSHB 46 (RIs)
4/30/87

Prepared by: Alaska Division of Insurance
Date: 5/1/87

This proposal encompasses about 13 insurance issues in one "omnibus" bill on insurance issues. Most of the items contained in the bill have, at one time or another, been requested by the Division. The Division supports this legislation.

GENERAL AGENTS / MANAGERS

This issue eliminates confusion with AS 21.09.280, which currently attempts to distinguish between "general agents" who are required to be licensed and "managers" who are not. The distinction is difficult to apply, since definition is unclear. The bill requires all general agents to be licensed, and lists specific exceptions.

CONTINUOUS LICENSE

This bill introduces a continuous license for agents, brokers, solicitors, adjusters, and general agents, to replace annual renewal. All licensees will pay an annual fee with failure to pay resulting in revocation or suspension of license. This change should reduce the paperwork handled by the Division.

FIRM / INDIVIDUAL LICENSE

This portion of the bill creates a new distinction between individual licenses issued to individual persons, and firm licenses issued to associations of individual licensees. License will be required for all individuals to provide individual accountability. This principle will also be extended to adjusting firms. We have experienced situations where firms have ignored Alaska Law to the detriment of the public and individual licensees within the firm.

BROKER BOND

X This section proposes to increase the bond required of a broker from the current \$5,000 to \$10,000. The bond is available for the people of the state. The increased bond will have an increased cost, but the amount is not excessive.

BROKER AS AGENT

X Alaska currently licenses two kinds of insurance producer, agent and broker. The agent represents an insurance company through appointment and contract. The broker does not. Producers typically hold both types of license. A purchaser of insurance usually does not know which license is being used. This really becomes a concern when a producer becomes insolvent or has misused trust account monies.

OVERVIEW
CSHB 46 (RIs)
4/30/87

This proposal provides that when a broker places coverage which can be evidenced by a binder, issuance of a policy, or some acknowledgement from the insurer or its representative, then the insurer is considered to have received those funds whether it has or not. The broker is considered to be the agent of the company for purposes of premium collection.

PRODUCER FINANCIAL / FIDUCIARY ACCOUNTS

The Division has been working with the Alaska Association of Independent Insurance Agents and Brokers concerning financial problems with some insurance agents and brokers and their handling of insurance premium monies. Unfortunately, the first sign that all is not well with an agents' or brokers' fiduciary account, in which he required to receive all premium, is when it is too late. One good indicator of a developing problem would be good accounting records accessible by the Division, which are required with this bill. This tool, coupled with other items in this bill should maximize public protection.

ALIEN TRUST DEPOSITS

This issue is our #1 priority legislative need this session and it relates to the trust fund requirements for alien surplus lines insurers. An alien insurer is one formed under the laws of another country.

Statute now requires that an alien surplus lines insurer maintain a trust fund for the benefit of policyholders in the United States in an amount not less than \$3.5 million. That \$3.5 million figure is scheduled to increase to \$5 million on June 20, 1987. This portion of the bill would eliminate this scheduled increase and reduce the trust fund requirement to \$1.5 million, the level required by the other 49 states.

This proposal would avoid the necessity to declare as ineligible, approximately 95% of the alien surplus line companies doing business in the Alaska market, with resultant reduction of available insurance markets for exposures in this state.

COMMERCIAL CANCELLATION

X
The insurance crisis of the past few years, accentuated the need to provide some kind of protection for commercial policies. This proposal preserves the insurers right to cancel but does require an adequate period of notice, a statement of the reasons for the cancellation, and requires, in most cases, that any unearned premium be returned to the insured before the effective date of cancellation. A notice requirement has been added for an increase of premium at renewal or a change in coverage. Notice must be given prior to expiration.

OVERVIEW
CSHB 46 (RIs)
4/30/87

PRO RATA ON CANCELLATIONS

There are two basic methods of computing return premium on a cancelled policy, which are referred to as pro rata and short rate. Pro rata is used on cancellations initiated by the insurance company and the earned portion of premium is proportionate to the period of coverage. Short rate is used on a cancellation initiated by the insured and has a built-in penalty. The short rate method of computation is often a cause for complaint because of abuse. Most complaints deal with the size of the penalty provision. This proposal places a reasonable limit on the size of the penalty.

NURSE COVERAGE

This proposal will add nurses to the list of health care professionals who can obtain professional liability insurance from the Medical Indemnity Corporation of Alaska. This is primarily a backup since nurses have been able to put together a national program that resolves their availability difficulties.

RELOCATION OF DEFINITIONS

Definitions in the Insurance Code (Title 21) are found in AS 21.90. In addition, chapters contain definitions that in some cases have a more general application. These should be located in the general definition chapter. The changes in this case are not substantive.

ELIMINATION OF DOMESTIC TAX EXEMPTION

This item proposes to terminate a tax exemption presently granted to a domestic Alaska insurer during its first five years of existence. There is a potential constitutional issue with continuance of the tax exemption.

REMOVAL OF OBSOLETE OR DUPLICATIVE PROVISIONS

The present Insurance Code was adopted in 1966. A number of provisions intended to prevent disruption of activities still remain in statute. These provisions are now obsolete. Included in the repeal is a section that duplicates provisions of the ethics bill adopted by the Fourteenth Legislature.

CSHB 46(Jud)
4/27/87

AMENDMENT #1
ALTERNATIVE #1

By Division of Insurance

- On Page 16, Lines 13-29
Page 17, Lines 1-29
Page 18, Lines 1-10

Delete all language (Sections 31-33)

- On Page 18, Lines 11-15

Rewrite Section 34 to read:

"Sec. 34. AS 21.36.120(a) is amended to read:

(a) A property, casualty, or surety insurer [OR ITS EMPLOYEE OR REPRESENTATIVE, OR AN AGENT, OR SOLICITOR] may not pay, allow, give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance or after insurance has been effected, a rebate, discount, abatement, credit or reduction of the premium named in the policy of insurance, or a special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement, not specified in the policy, except to the extent provided for in an applicable filing with the director as provided by law. An agent or broker may give a rebate on a property, casualty, or surety insurance, provided the rebate results only in a reduction of the commission due the agent or broker and does not reduce the amount or type of insurance coverage.

- On Page 26, Lines 23-29

Delete all language (Section 46)

- On Page 27, Lines 8-13

Delete all language (Section 48)

CSHB 46(Jud)
4/27/87

On Page 33, Line 25

Change "52" to "47"

On Page 33, Line 27

Change "52" to "47"

Renumber Sections as appropriate

Explanation:

This alternative is basically that discussed as the conceptual objective sought by the House Judiciary Committee on 4/23/87. It permits rebate by property and casualty agents and brokers but not by insurers. It continues the present rebate prohibition for life, annuity, disability, and title insurance.

CSHB 46(Jud)
4/27/87

AMENDMENT #1
ALTERNATIVE #2

By Division of Insurance

- On Page 16, Lines 13-29
Page 17, Lines 1-29
Page 18, Lines 1-15

Delete all language (Sections 31-34)

- On Page 26, Lines 23-29

Delete all language (Section 46)

- On Page 27, Lines 8-13

Delete all language (Section 48)

- On Page 33, Line 23

Delete "AS 21.36.120(b)"

- On Page 33, Line 25

Change "52" to "46"

- On Page 33, Line 27

Change "52" to "46"

- Renumber Sections as appropriate

CSHB 46(Jud)

4/27/87

Explanation:

This alternative removes the rebate repeal from the bill. This general issue is controversial and the impact of the change it represents should be given a good deal more thought. Our principal concern is the impact on competition in the smaller communities and the opportunity presented with this legislation to the larger brokerage houses to monopolize business.

CSHB 46(Jud)
4/27/87

AMENDMENT #1
ALTERNATIVE #3

By Division of Insurance

- On Page 16, Lines 13-29
Page 17, Lines 1-29
Page 18, Lines 1-10

Delete all language (Sections 31-33)

- On Page 18, Lines 11-15

Rewrite Section 34 to read:

"Sec. 34. AS 21.36.120(a) is amended to read:

(a) A property, casualty, or surety insurer [OR ITS EMPLOYEE OR REPRESENTATIVE, OR AN AGENT, OR SOLICITOR] may not pay, allow, give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance or after insurance has been effected, a rebate, discount, abatement, credit or reduction of the premium named in the policy of insurance, or a special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement, not specified in the policy, except to the extent provided for in an applicable filing with the director as provided by law. An agent or broker may give a rebate on a property, casualty, or surety insurance, provided the rebate

(1) results only in a reduction of the commission due the agent or broker;

(2) does not reduce the amount or type of insurance coverage;
and.

(3) applies only to an insured with insurance premium in excess of \$50,000 per year.

- On Page 26, Lines 23-29

Delete all language (Section 46)

CSHB 46(Jud)
4/27/87

On Page 27, Lines 8-13

Delete all language (Section 48)

On Page 33, Line 25

Change "52" to "47"

On Page 33, Line 27

Change "52" to "47"

Renumber Sections as appropriate

Explanation:

This alternative is similar to that discussed as the conceptual objective sought by the House Judiciary Committee on 4/23/87. It permits rebate by property and casualty agents and brokers but not by insurers. It continues the present rebate prohibition for life, annuity, disability, and title insurance. The difference between this alternative and alternative #1, is that the rebate prohibition would only be lifted on those cases where the premium is in excess of \$50,000.



North Valley Clinic

(HERE'S TO YOUR HEALTH)
MILE 51.5 PARKS HIGHWAY
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PHONE (907) 892-9180

J

March 23, 1987

Rep. John Sund
P.O. Box V
Juneau, AK 99811
Re: HB 46

Dear Representative Sund;

I wish to express my support for HB 46. As a Family Nurse Practitioner and a Certified Nurse Midwife I would like to be able to provide my services to all clients and be fairly reimbursed.

Sincerely,

Georg Ann Beckwitt

Georg Ann Beckwitt R.N.C., M.S.
Certified Nurse Midwife
Family Nurse Practitioner

Alaska State Legislature
House of Representatives



Labor and Commerce Committee

March 24, 1987

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Proposed CS HB 46 (L&C) W.O.#5-0306L

A new proposed CS for HB 46 (L&C), dated March 23, 1987, is in your Committee folder.

The proposed CS reflects numerous technical changes from the previous CS that were agreed on by the House Labor and Commerce Subcommittee on HB 46.

The Subcommittee agreed that the following issues should be brought before the full Committee for consideration in preparing a final CS. They are:

1. Notice of Cancellation. HB 46 requires 60 days notice of cancellation on commercial and personal insurance. Representatives from the insurance industry ask that we reduce that time. The prime sponsor of HB 46 asks that we leave the section as it is.
2. Mailing Address for Notice of Cancellation. HB 46 requires an insurance company to send notice of cancellation to the address shown on the policy. I believe we should require more effort on the part of the insurer to make sure the notice of cancellation actually reaches the insured.
3. 10 Day Notice of Cancellation. The Division of Insurance suggested amending AS 21.36.220 to allow insurers to cancel a personal insurance policy with only 10 days notice under circumstances listed under AS 21.36.215(a) subparagraphs 1 through 3.
4. Correct technical errors. Page 27, line 6 defines "nurse" for the purposes of this section. "Nurse" is

already defined in current law, AS 21.77.900(11), so this language is unnecessary.

In addition to technical changes, the Subcommittee agreed on some substantive changes that are incorporated in the CS before you today. They include:

1. Restoring the bonding requirement to \$5,000, as in current law.
2. A separate effective date for sections dealing with the Alien Trust Fund.
3. Requiring insurers to obtain a receipt to show proof of mailing and making the receipt presumptive evidence of having met the notification requirements.

Rep. Sunset / Kochman

To: Members of the House Judiciary Committee
From: American Insurance Association, Tom Slagle
Date: April 8, 1987
Re: HB46

The American Insurance Association, representing 171 property-casualty insurance companies in the United States today, supports legislation on cancellation and non-renewal of commercial insurance policies that will both provide reasonable protection for commercial insurance consumers, and provide companies with the flexibility they need to react to changes affecting individual risks.

There are several changes the AIA would urge you to consider, and which we will be actively encouraging. Among these concerns:

Sec 34: We support this section limiting the grounds on which an insurer may cancel a business or commercial policy. We would like to suggest an additional reason. This would be violation of material policy terms and conditions by the insured. As basic matters of contract law and equity, companies ought to have the explicit authority to cancel or non-renew policies where the insured has violated any material term or condition other than those already specified in the section.

Sec. 35: We have four suggestions for changing this section on cancellation notice for personal policies: (1) This notice (as well as every other notice required to be sent to insureds) should be sent not to the address shown in the policy, but rather to the insureds' address last known to the insurer. The "last known address" will always be as current, and usually more so, than the address on the policy; (2) The advance notice should be reduced from 60 days to 30 days (except in those cases already indicated with shorter notice periods). A 60-day period may be appropriate for commercial lines of insurance because of the larger, or more unusual, risks involved; a 30-day period is more than adequate, however, for persons to obtain personal lines of coverage; (3) In the event that an insurer provides this notice less than the required number of days in advance (but still at some point before the policy is to expire), the cancellation should not be effective until the required number of days has passed; in other words, the notice period should "roll" past the expiration date. This ensures that insureds will always

have at least the minimum period of time to shop around for coverage if their policy is cancelled; it requires insurers to extend coverage even beyond what would have been the cancellation date until the full notice period has been met; and it also protects insurers from having to provide a full year (or other term) of additional coverage merely because of a technical error.

Sec. 36: We have several of the same concerns on this section, dealing with cancellation notice on commercial lines: (1) Again, there is the problem of the address to which the notice should be mailed; (2) We can live with the 60-day notice, but only if there is a "rolling" provision, as described above; (3) The requirement that notices be mailed by "certified mail" should be dropped. California and other states that have imposed "certified mail" requirements on various notices have quickly learned they create many problems and do not improve the quality of notice. First, each consumer must individually go to the post office, usually during business hours, to get the letter, and many consumers object to this imposition. Second, many consumers fear that only bad news comes in such letters and refuse to acknowledge their receipt (especially those consumers with financial problems). In fact, more political pressure to drop the certified mail requirement has come from consumers than insurers; and (4) The time periods in subsection (c) are unrealistically short---especially where audits are required---for return of unearned premiums in the event of cancellation. The specified periods of time are not practically reasonable.

Sec. 37: We would have several suggestions for this section on non-renewal: (1) Again, the notice should be sent to the last known address of the insured; (2) Again, a "rolling" provision should be added, and coverage for any period of time that extends beyond the expiration date should be determined pro-rata, based on the previous year's rate; (3) The time periods should be no longer---and ideally, should be shorter---for both personal and commercial lines than the notice periods for cancellation. As a practical matter, the factors involved in non-renewal take longer to evaluate than those in cancellation; (4) Insurers should also be required to provide similar notice of premium increases, changes in deductibles, or reductions in limits or coverages. These changes, arguably, can have the same effect as non-renewal, and should be provided to consumers.

ALASKA BUSINESS INSURANCE INCORPORATED

April 14, 1987

Mr. Robert H. Ziegler, Sr.
127 N. Franklin
Juneau, AK 99801

Dear Bob,

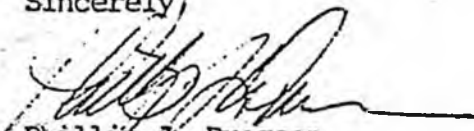
I am an insurance broker specializing in aircraft insurance for all types of Alaskan aviation risks. A copy of the Committee Substitute for House Bill 46 (3/30/87) was sent to London for comment as to how it would effect London Underwriters treatment of Alaskan aviation risks. The reply included "The return of return premium prior to the effective date of cancellation is quite onerous..." and that "The London Market will not give coverage on this basis..."

The London insurance market is virtually the only source of aircraft insurance in the state of Alaska. Clearly if this bill is passed, aircraft insurance in Alaska would not exist as we know it today. It is entirely possible it would not be available at all.

In a broader view, it is my opinion that this is a bad bill and that it should not be passed. The bill would significantly change the method by which insurers conduct business and that almost certainly Alaska would loose certain companies presently doing business here. Why should they commit capital to Alaska where they would be required to submit to such one-sided contracts of insurance?

As a legislative committee member for the Alaska Independent Insurance Agents and Brokers Association I am writing to express my desire that you do everything in your capacity to kill this bill.

Sincerely,



Phillip J. Dressen
President

PJD/ss

cc: Mr. Pat Cowan
AIIAB
P.O. Box 1547
Soldotna, AK 99669

1400 Benson Blvd., Suite 410 Anchorage, Alaska 99503

Phone: (907) 272-1825

FAX: (907) 272-8223



A policy of service and protection

AMENDMENT #2

April 10, 1987

RECEIVED
APR 13 1987

Mr. Donald Koch
State of Alaska
Division of Insurance
Pouch D
Juneau, AK 99811

DEPARTMENT OF COMMERCE
& ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE

Re: House Bill 46

Dear Don:

We are still concerned with the section of House Bill 46 that deals with short rate penalties for cancellation. After a review of the short rate tables filed by the National Council on Compensation Insurance, we have to agree that there is a problem. On the other hand, the Insurance Services Office short rate cancellation rule is fair and I doubt that there have been any complaints filed over the result of this approach.

The rule states "Compute return premium at .90 of the pro rata unearned premium and round to the next higher whole dollar." A ten percent penalty does not seem unreasonable.

Our suggestion is that Section 21.36.255, Premium Refund, be rewritten as follows:

- (a) If an insurance policy is cancelled, rejected, or rescinded by the insurer or the insured, the insurer shall refund the unearned premium paid to the insured. The insurer may not provide a penalty for mid-term cancellation of a policy by the insured that is more than ten (10) percent of the unearned premium and the premium charged may not be more than that provided by the rating plan of the insurer for that coverage.

Don, we feel this is a reasonable compromise and will contribute to a more stable insurance marketplace.

Very truly yours,


Carl L. Anderson
Executive Vice president

CLA:hm

HUGHES THORSNESS GANTZ POWELL & BRUNDIN

ATTORNEYS AT LAW

DAVID M. THORSNESS
JAMES M. POWELL
BRIAN J. BRUNDIN
MARCUS R. CLAPP¹
KENNETH P. JACOBUS
GARY W. GANTZ
JERRY E. MELCHER
JOE M. HUDDLESTON
SIGURD E. MURPHY
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JAMES F. KLASEN

OF COUNSEL
JOHN C. HUGHES
RICHARD O. GANTZ

509 WEST THIRD AVENUE
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TELEPHONE (907) 274-7522
TELECOPIER (907) 274-7525
TELEX 090-28378 (DENALI)

**ONE SEALASKA PLAZA
SUITE 303
JUNEAU, ALASKA 99801-1248
TELEPHONE (907) 586-5912
TELECOPIER: (907) 463-3020

*590 UNIVERSITY AVENUE
SUITE 200
FAIRBANKS, ALASKA 99709-3882
TELEPHONE (907) 479-3181

***200 CHENEGA STREET
P.O. BOX 767
VALDEZ, ALASKA 99868-0767
TELEPHONE (907) 835-2963

REPLY TO JUNEAU

April 29, 1987

Representative Mike Navarre
Alaska State Legislature
P. O. Box V
Juneau, Alaska 99811

Re: House Bill 46
Our File No. 30-213 and 220-92

Dear Representative Navarre:

I am writing to you on behalf of my clients, State Farm and Allstate Insurance Companies to reiterate their continuing concerns as expressed in my testimony before the House Labor and Commerce and Judiciary Committees regarding House Bill 46.

State Farm and Allstate Insurance Companies are deeply concerned about the extended time periods for notice of cancellation and non-renewal that House Bill 46 would impose. Currently, an insurer must give twenty days' notice of cancellation on personal lines of insurance. The original sponsors' version of HB 46 increased this to thirty days. That increase we would not vehemently oppose. However, with little reasoning expressed, the House Labor and Commerce Committee increased the period to sixty days. That increase we strongly oppose as well as the sixty day notice period HB 46 imposes on commercial lines.

Our clients believe the 60 day periods are unnecessary and unduly increase an insurer's exposure on bad risks, thereby inviting high cost claims, the cost of which will ultimately be borne by all policyholders. It must be remembered that only in certain, statutorily specified instances can an insurer even exercise its right to cancel personal lines. Reasons such as gross negligence of the insured and uninsurability of the property for either personal

Rep. Mike Navarre
April 29, 1987
Page 2

or commercial lines would still require sixty days' notice of cancellation. These are clearly warranted, justifiable reasons for cancelling a policy and to require an insurer to stay on these bad risks for sixty days is unduly onerous. This is likewise true of the forty-five day notice of non-renewal for commercial lines.

We recognize that the competing interests of the insurer in minimizing its exposure on a bad risk and providing the insured with adequate time to make other insurance arrangements must be harmonized. We believe imposing a thirty day notice of cancellation requirement for personal and commercial lines and a thirty day notice of non-renewal for commercial lines strikes the balance between these competing interests. It is disadvantageous to all policyholders to require the insurers to remain on a bad risk for extended periods of time as ultimately, all will bear the costs of the claims incurred as a result of these bad exposures.

On behalf of our clients, we respectfully request that House Bill 46 be amended to address these concerns.

Please contact me if I may provide additional information or answer any questions.

Sincerely,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN

By: 

Donna P. Walker

DPW/mh
1743A

ALASKA CHAPTER OF THE AMERICAN COLLEGE OF NURSE-MIDWIVES
BOX 9616 HILAND ROAD
EAGLE RIVER, ALASKA 99577
June 19, 1987

Rep. John Sund
Alaska State Legislature
P.O. Box V (MS 3100)
Juneau, Ak. 99811

Dear Representative Sund:

On behalf of the Alaska Chapter of the American College of Nurse-Midwives, I want to thank you for your efforts on behalf of HB 46 (An Act Relating to Regulation of Insurance; and Providing for an Effective Date). We understand that the bill has been signed by the governor. We will now be contacting the Division of Insurance and MICA regarding our participation in the program.

Sincerely,

Pat Crevensten

Pat Crevensten, CNM, Secretary

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : CSHB 46 (L&C)
Publish Date : HOUSE 3/30/87

Revision Date: _____

Agency Affected: Div. of Insurance-DCED

Title: An Act relating to insurance;
and providing for an effective date.

BRU: _____

Sponsor: Navarre, Sund, Swackhammer

Components: _____

Requestor: House Labor & Commerce

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by: [Signature] Phone: 465-2515
 Division: Division of Insurance Date: 3/26/87
 Approved by Commissioner: [Signature] Date: 3/26/87
 Agency: _____

- Distribution (by preparer) :
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)
 - Senate Secretary

H B

52

STATE OF ALASKA
THE LEGISLATURE

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

House Judiciary:

2/12/87

3/20/87

STATE OF ALASKA 1986 LEGISLATIVE SESSION FISCAL NOTE

Revision Date : _____

REQUEST

Bill/Resolution No. : HB52
 Title : "An Act relating to motor vehicle forfeiture."
 Sponsor : Rep. Koronen
 Requestor : House Judiciary
 Date of Request : Feb. 11, 1987

FISCAL DETAIL

Agency Affected : Dept. of Administration
 BRU : Public Defender Agency
 Components : Third Judicial District

EXPENDITURES/REVENUES : (Thousands of Dollars)

OPERATING	FY 86	FY 87	FY 88	FY 89	FY 90	FY 91
PERSONAL SERVICES			110.7	115.1	119.7	124.5
TRAVEL						
CONTRACTUAL			5.0	5.2	5.4	5.6
SUPPLIES			1.0	1.0	1.1	1.2
EQUIPMENT			3.0			
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		-0-	119.7	121.3	126.1	131.3

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING : (Thousands of Dollars)

GENERAL FUND		-0-	119.7	121.3	126.1	131.3
FEDERAL FUNDS						
OTHER						
TOTAL		-0-	119.7	121.3	126.1	131.3

POSITIONS :

FULL-TIME		-0-	2.0	2.0	2.0	2.0
PART-TIME						
TEMPORARY						

ANALYSIS : Attach a separate page if necessary

See attached analysis

Prepared by: John Salemi, Dep. Public Defender
 Division: Public Defender Agency

Phone: 279-7541
 Date: Feb. 12, 1987

Approved by Commissioner: William A. Dewey
 Agency: Department of Administration

Date: 2/20/87

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB52

This bill would amend AS 28.35.036(a) to require the state to move the court to order forfeiture of a motor vehicle involved in the commission of the offense of Driving While Intoxicated or Refusal to Submit to a Chemical Test in every case where the convicted person has been previously convicted more than once of the same or substantially similar offenses. The Public Defender Agency believe that the proposed amendment would not serve to punish defendants in any appreciable way but would instead create an expensive, time consuming and generally fruitless exercise for the criminal justice system as a whole.

The vast majority of defendants who would be subject to the provisions of this law do not own the vehicles that they were driving at the time they were apprehended. According to the Division of Motor Vehicles, more than 70% of third time Driving While Intoxicated defendants do not own the vehicle. Forfeiture of a vehicle not belonging to a defendant would therefore not serve to penalize a defendant in any way, but would devolve into a confrontation between the state and the legal owner, who could be a completely innocent third party who owned the vehicle outright, or an equally completely innocent lienholder, such as a lending institution or financing agency.

The effect of the mandatory forfeiture procedure, then, would be to embroil the state and the legal owners of the vehicles in an unnecessary and burdensome legal battle refereed at additional time and expense by our court system. In addition, these forfeiture proceedings would typically involve vehicles whose value would not warrant the exercise.

It is anticipated that this proposed amendment would require the services of an additional Attorney III and a Paralegal Assistant II to compensate for the increase workload. This would require an initial budget of 119.7.

BUDGET ANALYSIS

100 Personal Services: Anchorage		
	Attorney III	65.9
	Paralegal II	44.8
		110.7
300 Contractual:		
	Space, experts, etc.	5.0
400 Supplies:		1.0
500 Equipment (One Time)		<u>3.0</u>
	Total	119.7

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 52
Publish Date:

Revision Date: 2-20-87
Title: An Act Relating to Motor Vehicle Forfeiture
Sponsor: Koponen
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
OPERATING						
Personal Services	74.7	74.7	74.7	74.7	74.7
Travel
Contractual
Supplies
Equipment	14.4	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	89.1	74.7	74.7	74.7	74.7
CAPITAL
REVENUE

FUNDING:		(Thousands of Dollars)				
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
General Funds	0.0	89.1	74.7	74.7	74.7	74.7
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	89.1	74.7	74.7	74.7	74.7

POSITIONS:						
	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Full-time
Part-time	4.0	4.0	4.0	4.0	4.0
Temporary

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System
Approved by: *Stephanie J. Cole* Deputy Director
Agency: Alaska Court System

Phone: 264-8228
Date: 2-20-87
Date: 2-20-87

- Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management & Budget
Impacted Agency(ies)
Senate Secretary

ALASKA COURT SYSTEM

HB 52 - An Act Relating to Motor Vehicle Forfeiture

FISCAL NOTE ANALYSIS (Revised)

Personal Services:	Salary	Benefits	Total
Law Clerk, Range 13A, Anchorage, PPT - 6 months	\$13,302	\$4,564	\$17,866
Pro Tem District Court Judge, Anchorage, PPT - 6 months	8,352	8,875	17,227
Law Clerk, Range 13A, Fairbanks, PPT - 6 months	15,186	4,983	20,169
Pro Tem District Court Judge, Fairbanks, PPT - 3 months	9,521	9,893	19,414

Total Personal Services			\$74,676
Equipment: (one time items)			
Desk, chair, filing cabinet, and typewriter			14,376

Total Cost			\$89,052
			=====

ALASKA COURT SYSTEM

HB 52 - ANALYSIS
(Revised 2-20-87)

This measure would require prosecutors to file and courts to hear a motion in every case specified under AS 28.35.036(a). Under current law, the state has discretion to file a forfeiture motion, and the court can act only if a motion is filed.

The Department of Law indicates that such a motion would be made in approximately 400 cases annually, primarily in Anchorage and Fairbanks. It is assumed that spouses or lienholders will assert an interest in approximately 90% of the cases. Approximately one-half of these cases are expected to be highly contested. It is assumed, based on information provided by the Department of Law, that in-court time for these motions will average two hours. The legislation will also impact case processing. A legally-trained person must review paperwork and prepare the file for appropriate and expeditious disposition by the judge. This function is performed by law clerks. Given the volume of anticipated cases, it is assumed that one additional permanent part-time law clerk and one part-time pro tem judge for the district court in both Anchorage and Fairbanks would be required. Additional clerical time could be absorbed.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 52
Publish Date:

Revision Date:
Title: An Act Relating to Motor Vehicle Forfeiture
Sponsor: Koponen
Requestor: House Judiciary Committee

Agency Affected: Alaska Court System
BRU: Trial Courts
Components:

EXPENDITURES/REVENUES:		(Thousands of Dollars)				
OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
Personal Services	38.0	38.0	38.0	38.0	38.0
Travel
Contractual
Supplies
Equipment	7.2	. . . .	. . . .	. . . .	. . . .
Land & Structures
Grants & Claims
TOTAL OPERATING	0.0	45.2	38.0	38.0	38.0	38.0
<hr/>						
CAPITAL
<hr/>						
REVENUE

FUNDING:		(Thousands of Dollars)				
General Funds	0.0	45.2	38.0	38.0	38.0	38.0
Federal Funds	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Other	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
TOTAL	0.0	45.2	38.0	38.0	38.0	38.0

POSITIONS:		(Thousands of Dollars)				
Full-time	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .
Part-time	. . . .	2.0	2.0	2.0	2.0	2.0
Temporary	. . . .	. . . .	. . . .	. . . .	. . . .	. . . .

ANALYSIS: (Attach a separate page if necessary)

See attached analysis.

Prepared by: Karla Forsythe, General Counsel
Division: Alaska Court System
Approved by: *Stephanie Cole*
Agency: Alaska Court System

Phone: 264-8228
Date: 2-10-87
Date: 2-10-87

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management & Budget
- Impacted Agency(ies)
- Senate Secretary

ALASKA COURT SYSTEM

HB 52

ANALYSIS

This measure would require prosecutors to file and courts to hear a motion in every case specified under AS 28.35.036(a). Under current law, the state has discretion to file a forfeiture motion, and the court can act only if a motion is filed.

The Department of Law indicates that such motions would be made in approximately 400 cases, primarily in Anchorage and Fairbanks. It is assumed that spouses or lienholders will assert an interest in the vehicle in approximately 90% of the cases. Although some additional time in court will result, the primary impact is on case processing. A legally-trained person must review paperwork and prepare the file for appropriate and expeditious disposition by the judge. This function is performed by legal technicians. Given the volume of anticipated cases, it is assumed that one additional permanent part-time legal technician for the district court in both Anchorage and Fairbanks would be required. Additional judicial and clerical time could be absorbed.

ALASKA COURT SYSTEM

HB 52 - An Act Relating to Motor Vehicle Forfeiture

FISCAL NOTE

Personal Services:	Salary Benefits		Total
Legal Technician, Range 13A, Anchorage, PPT - 6 months	\$13,302	\$4,564	\$17,866
Legal Technician, Range 13A, Fairbanks, PPT - 6 months	15,186	4,983	<u>20,169</u>
Total Personal Services			\$38,035
Equipment: (one time items)			
Desk, chair, filing cabinet, and typewriter			<u>7,188</u>
Total Cost			<u>\$45,223</u> =====

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version: HB 52
Publish Date: _____

Revision Date: _____
Title: "An Act relating to motor vehicle forfeiture."
Sponsor: _____
Requestor: _____

Agency Affected: Department of Law
BRU: Prosecution

Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		132.7	136.7	140.8	145.0	149.4
TRAVEL		3.6	3.7	3.8	3.9	4.0
CONTRACTUAL		38.8	40.0	41.2	42.4	43.7
SUPPLIES		12.3	8.0	8.2	8.4	8.7
EQUIPMENT		11.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		198.4	188.4	194.0	199.7	205.8

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		198.4	188.4	194.0	199.7	205.8
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Richard I. Pegues

Prepared by: Richard I. Pegues, Director
Division: Administrative Services Division

Phone: 465-3672
Date: Feb. 9, 1987

Approved by Commissioner: Grace Berg Schaible, Atty. Gen.
Agency: Department of Law

Date: Feb. 9, 1987

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)
- Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 52

This bill amends AS 28.35.036(a) by mandating that the state seek forfeiture of the motor vehicle involved if the convicted person has been previously convicted more than once for driving while intoxicated or for refusing to submit to a chemical test. Under current law, the state has the option of seeking forfeiture, but it is not mandated to do so.

Department of Law records, as well as those of the Division of Motor Vehicles, indicate that the department would have to seek forfeiture in 300 to 400 cases annually, where it does not do so now. The forfeiture process can be somewhat complicated whenever parties other than the person convicted hold an ownership or security interest in the vehicle involved. A separate court hearing would have to be held in each individual case. A title search of each vehicle would have to be conducted. All third parties with an ownership interest would have to be notified so that they may assert their ownership interest at the hearings. If a third party proves their ownership or security interest, and proves that they did not know or have reasonable cause to know the vehicle would be used in the commission of an offense, the vehicle and title to vehicle is released to the party holding ownership, or an amount equal to the value in the vehicle held by the party holding a security interest is paid to that party. In any event, a substantial amount of resources will be required to acquire and hold vehicles, and to manage the proceeds from vehicles that have been sold.

Attorneys with the Municipality of Anchorage, which conducts a municipal forfeiture program under AS 28.35.038, have advised us that ownership or security interests are held by persons other than the person convicted of an offense in 90 to 95 per cent of the cases that they have handled. Thus, it appears that very few forfeitures will be straightforward or without need for costly legal proceedings. The Department of Law estimates that at least one attorney III, one paraprofessional, and one clerk typist will be required to prepare and handle forfeiture actions. In addition to normal personnel and support costs, a sum of \$25,000 will be needed to publish legal notices for lien holders, and others with ownership interests who cannot be easily contacted or readily identified. Other departments that will also probably see a fiscal impact if this bill is enacted are the Public Defender and the Court System, who would experience increased caseload. Likewise, the Department of Public Safety, who would be responsible for holding and disposing of vehicles, and for remitting the proceeds of sales to those having security interest in many of the vehicles that are to be sold, will also experience a fiscal impact. The department recognizes the valuable social purpose that this bill serves; however, it must caution against burdening it with new responsibilities in a budget year when many of the department's core prosecution functions are being severely curtailed due to budget constraints.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. HB 52

HB 52 Fiscal Analysis

Funding Summary

	<u>Atty III</u>	<u>P/A II</u>	<u>Clerk Typist III</u>	<u>Total</u>
71000	62.5	42.6	27.6	132.7
72000	1.8	1.8	-0-	3.6
73000	29.8	4.8	4.2	38.8
74000	4.5	4.5	3.3	12.3
75000	1.5	1.5	8.0	11.0
	<hr/>	<hr/>	<hr/>	<hr/>
Total	55.2	100.1	43.1	198.4

Costs beyond FY 88 include a 3 per cent annual inflation factor.

Position Title Attorney III			No. of Positions 1	Range/Step 22A	Barg. Unit PX
Time Status PFT	Staff Months 12		Location EBA - Anchorage		Election District 8
Justification					
This position is needed at Anchorage, and other southcentral locations, to handle the 300 to 400 forfeiture actions mandated by HB 52. Each requires a court hearing, motions and, in 90 to 95 per cent of the cases, third party ownership or security interests. This bill will generate a large volume of legal transactions requiring the full-time services of at least one attorney. Although these transactions are often complicated, they rarely involve complex legal issues. Allocation of the position to the sub-journey level of Attorney III is therefore recommended.					
Type of Expenditure:			Amount		
1	2	3			
Salary	49,140				
Benefits	13,311				
Premium Pay					
Other					
Total Personal Services		62,451			
Travel		1,800			
Contractual		29,800			
Commodities		4,500			
Equipment		1,500			
Other					
Total Cost		100,051			
Funding Source for Total Cost					
Federal Receipts		1002			
G. F. Match		1003			
General Fund		1004	100,051		
I-A Receipts		1006			
CIP Receipts		1061			
Other					

Request For
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Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location EPA - Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	32,424			
Benefits	10,127			
Premium Pay				
Other				
Total Personal Services		42,551		
Travel		1,800		
Contractual		4,800		
Commodities		4,500		
Equipment		1,500		
Other				
Total Cost		55,151		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	55,151		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

Justification
This position is needed at Anchorage, and other southcentral locations, to assist with the 300 to 400 vehicle forfeiture actions mandated by HB 52. Title and records searches to verify an ownership or security interest, legal notification, and preparation of all necessary documentation will be required. This level of work is most appropriately allocated to the Paralegal Assistant II class.

**Request For
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Position Title Clerk Typist III			No. of Positions 1	Range/Step 8B	Barg. Unit GGU
Time Status PFT	Staff Months 12		Location EBA - Anchorage		Election District 8
Justification					
This clerical position is needed to assist the attorney and the paralegal handle the 300 to 400 vehicle forfeiture actions mandated by HB 52. A very large volume of routine documents will be generated by this work, including motions, notices to persons with ownership or security interest, and correspondence between the parties. Because this work will not usually involve higher level legal instruments, such as briefs, allocation to the Clerk Typist III level is recommended.					
Type of Expenditure			Amount		
1	2	3			
Salary	20,136				
Benefits	7,507				
Premium Pay					
Other					
Total Personal Services		27,643			
Travel		-0-			
Contractual		4,200			
Commodities		3,300			
Equipment		8,000			
Other					
Total Cost		43,143			
Funding Source for Total Cost					
Federal Receipts	1002				
G. F. Match	1003				
General Fund	1004	43,143			
I-A Receipts	1006				
CIP Receipts	1061				
Other					

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STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

REQUEST: _____

Bill Version : CSHB 52
Publish Date : _____

Revision Date: March 24, 1987
Title: "An Act relating to motor vehicle forfeiture."
Sponsor: Repr. Koponen
Requestor: House Judiciary Committee

Agency Affected: Department of Law
BRU: Prosecution

Components: Third Judicial District

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		132.7	136.7	140.8	145.0	149.4
TRAVEL		3.6	3.7	3.8	3.9	4.0
CONTRACTUAL		38.8	40.0	41.2	42.4	43.7
SUPPLIES		12.3	8.0	8.2	8.4	8.7
EQUIPMENT		11.0	-0-	-0-	-0-	-0-
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING		198.4	188.4	194.0	199.7	205.8

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND		198.4	188.4	194.0	199.7	205.8
FEDERAL FUNDS						
OTHER						
TOTAL						

POSITIONS:

FULL-TIME		3.0	3.0	3.0	3.0	3.0
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Please see attached analysis.

Prepared by: Richard I. Pegues, Director Phone: 465-3672
 Division: Administrative Services Division Date: March 24, 1987
 Approved by Commissioner: Richard I. Pegues/RA/
Grace Berg Schaible, Atty. Gen. Date: March 24, 1987
 Agency: Department of Law

Distribution (by preparer):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)
 Senate Secretary

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 52 (Jud.)

The committee substitute for HB 52 accomplishes the same purpose as the original bill by making forfeiture of a vehicle mandatory if a person is convicted of DWI or refusal to submit to a chemical test, if the person has more than once been previously convicted of the same offense. This version of the bill, now makes it mandatory on the court to order forfeiture upon conviction, rather than requiring a motion by the state, and a separate, later court hearing, before forfeiture could take place. However, because of the requirement to protect third-party interests in forfeited vehicles, it will still be necessary for the state to determine if there are third-parties with ascertainable ownership or security interests, and it will still be necessary to notify them of their right to seek remission. It will then be necessary to represent the state at court hearings to determine if remission should occur. We still anticipate that a large number of the cases will involve forfeiture of vehicles having third-party interests, and the revised bill will still require a substantial effort on our part to handle and prepare for remission hearings. Consequently, the fiscal impact contained in our fiscal note of February 9, 1987, requesting funds for one Attorney III, one Paralegal Assistant II and a Clerk Typist III, is still valid.

CONTINUATION of FISCAL NOTE ANALYSIS

For Bill/Resolution No. CSHB 52

CSHB 52 Fiscal Analysis

Funding Summary

	<u>Atty III</u>	<u>P/A II</u>	<u>Clerk Typist III</u>	<u>Total</u>
000	62.5	42.6	27.6	132.7
000	1.8	1.8	-0-	3.6
000	29.8	4.8	4.2	38.8
000	4.5	4.5	3.3	12.3
000	1.5	1.5	8.0	11.0
	<hr style="width: 50%; margin: 0 auto;"/>	<hr style="width: 50%; margin: 0 auto;"/>	<hr style="width: 50%; margin: 0 auto;"/>	<hr style="width: 50%; margin: 0 auto;"/>
Total	100.1	55.2	43.1	198.4

ests beyond FY 88 include a 3 per cent annual inflation factor.

Position Title Attorney III		No. of Positions 1	Range/Step 22A	Range Unit PX
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Justification				
This position is needed at Anchorage, and other southcentral locations, to handle the 300 to 400 forfeiture actions mandated by CSHB 52. Each requires a court hearing, motions and, in 90 to 95 per cent of the cases, third party ownership or security interests. This bill will generate a large volume of legal transactions requiring the full-time services of at least one attorney. Although these transactions are often complicated, they rarely involve complex legal issues. Allocation of the position to the sub-journey level of Attorney III is therefore recommended.				
Type of Expenditure:		Amount		
1	2	3		
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Benefits	13,311			
Premium Pay				
Other				
Total Personal Services		62,451		
Travel		1,800		
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I-A Receipts	1006			
CIP Receipts	1061			
Other				

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Position Title Paralegal Assistant II		No. of Positions 1	Range/Step 16A	Barg. Unit GGU
Time Status PFI	Staff Months 12	Location EBA - Anchorage		Election District 8
Type of Expenditure		Amount		
1	2	3		
Salary	32,424			
Benefits	10,127			
Premium Pay				
Other				
Total Personal Services		42,551		
Travel		1,800		
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Equipment		1,500		
Other				
Total Cost		55,151		
Funding Source for Total Cost				
Federal Receipts	1002			
G. F. Match	1003			
General Fund	1004	55,151		
I-A Receipts	1006			
CIP Receipts	1061			
Other				

Justification

This position is needed at Anchorage, and other southcentral locations, to assist with the 300 to 400 vehicle forfeiture actions mandated by CSHB 52. Title and records searches to verify an ownership or security interest, legal notification, and preparation of all necessary documentation will be required. This level of work is most appropriately allocated to the Paralegal Assistant II class.

**Request For
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Position Title Clerk Typist III		No. of Positions 1	Range/Step 8B	Barg. Unit GGU
Time Status PFT	Staff Months 12	Location EBA - Anchorage		Election District 8
Justification				
This clerical position is needed to assist the attorney and the paralegal handle the 300 to 400 vehicle forfeiture actions mandated by CSHB 52. A very large volume of routine documents will be generated by this work, including motions, notices to persons with ownership or security interest, and correspondence between the parties. Because this work will not usually involve higher level legal instruments, such as briefs, allocation to the Clerk Typist III level is recommended.				
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FY 88

Adopted

Proposed Amendments to CSHB 52(Jud)

Amendment 1:

Page 4, line 9 after ".037." add a new sentence to read:

Remission of forfeiture under AS 28.35.037 does not apply to a person convicted of the offense resulting in forfeiture.

This language is offered to make it absolutely clear that the person convicted of the DWI may not move for remission of the forfeiture under AS 28.35.037.

Amendment 2:

Page 4, after line 12 add a new subsection (d) to read:

For purposes of this section, convictions for both driving while intoxicated and for refusal to submit to a chemical test of breath under AS 28.35.031(a), if arising out of a single transaction and a arrest, are considered one previous conviction.

This language is currently in AS 28.35.036(b), AS 28.35.030(f), and AS 28.35.032(j). It was recommended by Pat Conheady that we put it in the new committee substitute version of .036 just to make it clear that it is still the intent of the legislature that this provision apply to .036.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 20, 1987

SUBJECT: Motor Vehicle Forfeiture - CSHB 52 (Jud)
TO: Representative John Sund
FROM: Michael F. Ford *M.F.*
Legislative Counsel

The version of CSHB 52(Jud) approved by the Judiciary committee contains an amendment to section 3, adding a new subsection (d) to AS 28.35.036. This subsection was, I believe, intended to ensure that convictions for driving while drunk and for refusing the breath test would be considered a single conviction, if both occurred during the same incident. Similar language occurs in AS 28.35.030(f) and AS 28.35.032(j). The manner in which AS 28.35.036 has been repealed and reenacted makes the addition of subsection (d) meaningless. There is no longer any required consideration of multiple convictions in that section. As every statute is presumed to have a meaning, I would recommend that the subsection be deleted in order to avoid raising an implication that the court may reexamine the issue of multiple convictions at the hearing on remission of forfeiture.

MFF:mkr
m10/031

Introduced: 1/19/87
 Referred: State Affairs and
 Judiciary

1 IN THE HOUSE

BY KOPONFN

2

HOUSE BILL NO. 52

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to motor vehicle forfeiture."

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

8 * Section 1. AS 28.35.036(a) is amended to read:

9 (a) After conviction of an offense under AS 28.35.030 or
 10 [AS] 28.35.032 involving a motor vehicle of a type for which a
 11 driver's license is required, the state shall [MAY] move the court to
 12 order the forfeiture of the motor vehicle involved in the commission
 13 of the offense if the convicted person has been previously convicted
 14 in this or another jurisdiction of more than one of the following
 15 offenses or has more than once been previously convicted of one of the
 16 following offenses:

17 (1) driving while intoxicated under AS 28.35.030 or another
 18 law or ordinance with substantially similar elements; or

19 (2) refusal to submit to a chemical test under AS 28.35.032
 20 or another law or ordinance with substantially similar elements.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

PUBLIC DEFENDER AGENCY

900 W. 5TH AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 279-7541

February 10, 1987

John Hartle
House Judiciary Committee
P.O. Box V
Juneau, Alaska 99811

RE: HOUSE BILL NO. 52

Dear Mr. Hartle:

I am writing this letter in response to your request for comment by the Public Defender Agency to House Bill No. 52, which would amend A.S. 28.35.036(a) to require the state to move the court to order forfeiture of a motor vehicle involved in the commission of the offense of Driving While Intoxicated under A.S. 28.35.030 or Refusal to Submit to a Chemical Test under A.S. 28.35.032 in every case where the convicted person has been previously convicted more than once of the same or substantially similar offenses.

Although the Public Defender Agency sees no problem with enforcement of the forfeiture provision of the present law in appropriate circumstances, we believe that the proposed amendment would not serve to punish defendants in any appreciable way but would instead create an expensive, time consuming, and generally fruitless exercise for the criminal justice system as a whole.

In our experience, the vast majority of defendants who would be subject to the provisions of this law do not own the vehicles that they were driving at the time they were apprehended. Forfeiture of a vehicle not belonging to a defendant would therefore not serve to penalize a defendant in any way, but it could very well devolve into a confrontation between the state and the legal owner, who could be a completely innocent third party who owned the vehicle outright, or an equally completely innocent lienholder, such as a lending institution or financing agency.

The effect of the mandatory forfeiture procedure, then, would be to embroil the state and the legal owners of the vehicles in an unnecessary and burdensome legal battle refereed at additional time and expense by our court system, while the defendant would no longer be involved or affected in any way. In addition, these forfeiture proceedings would typically involve vehicles whose