

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4797 HLAB HB 46

309

1 \* Sec. 29. AS 21.27.460(a) is amended to read:

2 (a) Each license issued under this chapter, although issued and  
3 delivered to the licensee agent, broker, solicitor, or adjuster, is  
4 the property of the state. Upon the [EXPIRATION,] termination, sus-  
5 pension, or revocation of the license, the licensee or other person  
6 having possession or custody of the license shall immediately deliver  
7 it to the director either by personal delivery or by mail.

8 \* Sec. 30. AS 21.34.040(c) is amended to read:

9 (c) A nonadmitted insurer may be eligible to provide coverage in  
10 this state if it qualifies under one of the following:

11 (1) a foreign but nonalien insurer may qualify under this  
12 subsection if it has a minimum capital and surplus equal to that  
13 required in its domiciliary jurisdiction, or [,] \$1,500,000 on Septem-  
14 ber 18, 1984, [AND] \$2,500,000 on June 20, 1985, [AND] \$3,500,000 [,]  
15 on June 20, 1986, and \$5,000,000 on June 20, 1987, whichever is great-  
16 er;

17 (2) an alien insurer may qualify under this subsection if  
18 it meets the minimum capital and surplus requirements in (1) of this  
19 subsection and maintains in the United States an irrevocable trust  
20 fund in either a national bank or a member of the Federal Reserve  
21 system, in an amount not less than \$1,500,000 [THAT REQUIRED AS MINI-  
22 MUM CAPITAL AND SURPLUS IN (1) OF THIS SUBSECTION], for the protection  
23 of all its policyholders in the United States; the trust fund must  
24 [SHALL] consist of instruments of substantially the same character and  
25 quality as those that are eligible investments for the capital and  
26 statutory reserves of admitted insurers authorized to write like kinds  
27 of insurance in this state or of irrevocable letters of credit; the  
28 trust fund must [FUNDS SHALL] have an expiry date that at no time is  
29 less than five years;

1 (3) a Lloyd's or other similar unincorporated group of  
2 alien individual insurers may qualify if it maintains a trust fund of  
3 not less than \$50,000,000 as security to the full amount, for all  
4 policyholders and creditors in the United States, of each member of  
5 the group;

6 (4) an "insurance exchange" created by the laws of indi-  
7 vidual states may qualify if it maintains capital and surplus, or the  
8 substantial equivalent, of not less than \$15,000,000 in the aggregate;  
9 in the event the insurance exchange does not maintain funds for the  
10 protection of all its policyholders, each individual syndicate shall  
11 meet the minimum capital and surplus requirements of (1) of this  
12 subsection.

13 \* Sec. 31. AS 21.36.210(a) is amended to read:

14 (a) An insurer may not exercise its right to cancel a policy of  
15 personal [AN] automobile insurance [POLICY] except for the following  
16 reasons:

17 (1) nonpayment of premium; or

18 (2) the driver's license or motor vehicle registration of  
19 either the named insured or of an operator who resides in the same  
20 household as the named insured or who customarily operates a motor  
21 vehicle insured under the policy has been under suspension or revoca-  
22 tion during the policy period or, if the policy is a renewal, during  
23 its policy period or the 180 days immediately preceding its effective  
24 date.

25 \* Sec. 32. AS 21.36.210(d) is amended to read:

26 (d) This section does not apply to

27 (1) the failure to renew a policy, except as to coverage in  
28 force for less than 12 months;

29 (2) a policy that has been in effect less than 60 days at

1 the time notice of cancellation is mailed or delivered by the insurer,  
2 unless it is a renewal policy;

3 (3) a policy issued under an automobile assigned risk plan  
4 or automobile insurance plan;

5 (4) a policy insuring more than four motor vehicles;

6 (5) a policy covering the operation of a garage; automobile  
7 sales agency, repair shop, or service station; or public parking  
8 place;

9 (6) a policy providing insurance only on an excess basis;

10 (7) any other contract providing insurance to the named  
11 insured, even though the contract may incidentally provide insurance  
12 with respect to motor vehicles.

13 \* Sec. 33. AS 21.36.210(f) is amended to read:

14 (f) An [NOTWITHSTANDING (e) OF THIS SECTION, AN] insurer may not  
15 exercise its right to cancel a policy of personal insurance other than  
16 personal automobile insurance, except for the following reasons [THE  
17 TYPE DESCRIBED IN (e) OF THIS SECTION IF ONE OF THE FOLLOWING CON-  
18 DITIONS OR CIRCUMSTANCES ARISES]:

19 (1) nonpayment of premiums, including nonpayment of addi-  
20 tional premiums, calculated in accordance with the current rating  
21 manual of the insurer, justified by a physical change in the insured  
22 property or a change in its occupancy or use;

23 (2) conviction of the insured of a crime having as one of  
24 its necessary elements an act increasing a hazard insured against;

25 (3) discovery of fraud or material misrepresentation made  
26 by the insured or a representative of the insured in obtaining the  
27 insurance or by the insured in pursuing a claim under the policy;

28 (4) discovery of a grossly negligent act or omission by the  
29 insured that substantially increases the hazards insured against; or

1 (5) physical changes in the insured property that result in  
2 the property becoming uninsurable.

3 \* Sec. 34. AS 21.36 is amended by adding a new section to read:

4 Sec. 21.36.215. LIMITS ON THE CANCELLATION OF BUSINESS OR COM-  
5 MERCIAL INSURANCE POLICIES. (a) Except as allowed by the director  
6 under (b) of this section, an insurer may exercise its right to cancel  
7 a policy of business or commercial insurance only for the following  
8 reasons:

9 (1) nonpayment of premiums, including nonpayment of addi-  
10 tional premiums, calculated in accordance with the current rating  
11 manual of the insurer, justified by a physical change in the insured  
12 property or a change in its occupancy or use;

13 (2) conviction of the insured of a crime having as one of  
14 its necessary elements an act increasing a hazard insured against;

15 (3) discovery of fraud or material misrepresentation made  
16 by the insured or a representative of the insured in obtaining the  
17 insurance or by the insured in pursuing a claim under the policy;

18 (4) discovery of a grossly negligent act or omission by the  
19 insured that substantially increases the hazards insured against;

20 (5) physical changes in the insured property that result in  
21 the property becoming uninsurable;

22 (6) physical changes in the operations of the insured that  
23 result in the property becoming uninsurable;

24 (7) changes in the reinsurance program of the insurer that  
25 results in an increase of the insurer's retention of risk on a subject  
26 of insurance;

27 (8) changes in the financial condition of the insurer  
28 resulting in a violation of AS 21.12.010;

29 (9) a material change in the law that affects the coverage

1 provided under the policy; or

2 (10) an excessive number of claims by the insured.

3 (b) Before issuing a notice of cancellation, an insurer may  
4 request the director to determine in a particular case whether a  
5 reason for cancellation not specified in (a) of this section is a  
6 valid reason for cancellation. The director may allow the insurer to  
7 exercise its right to cancel if the director finds that the cancella-  
8 tion is justified. The insurer may not implement the requested can-  
9 cellation before receiving the approval of the director.

10 \* Sec. 35. AS 21.36.220 is amended to read:

11 Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not  
12 exercise its right to cancel a personal insurance policy unless a  
13 written notice of cancellation is mailed or delivered to the named  
14 insured, at the address shown in the policy, at least 60 [20] days  
15 before the effective date of cancellation. However, if [, EXCEPT THAT  
16 WHEN] cancellation is for nonpayment of premium, the notice shall be  
17 mailed or delivered to the named insured at the address shown in the  
18 policy at least 10 days before the effective date of cancellation, and  
19 must [SHALL] include or be accompanied by a statement of the reason  
20 for the cancellation. [THIS SECTION DOES NOT APPLY TO THE FAILURE TO  
21 RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR LESS THAN 12  
22 MONTHS.]

23 \* Sec. 36. AS 21.36.220 is amended by adding new subsections to read:

24 (b) An insurer may not exercise its right to cancel a policy of  
25 business or commercial insurance unless a written notice of cancella-  
26 tion is mailed or delivered to the named insured, at the address shown  
27 in the policy, and to the agent or broker of record, at least 60 days  
28 before the effective date of cancellation. However, if cancellation  
29 is for nonpayment of premium, the notice shall be mailed or delivered

1 to the named insured at the address shown in the policy and to the  
2 agent or broker of record at least 10 days before the effective date  
3 of cancellation, and must include or be accompanied by a statement of  
4 the reason for the cancellation.

5 (c) If an insurer cancels a policy under (b) of this section, it  
6 shall return or credit any unearned premium to the agent or broker of  
7 record or directly to the insured or premium finance company, if  
8 applicable, before the effective date of cancellation, except that

9 (1) if cancellation is for nonpayment of premium, any  
10 unearned premium shall be returned or credited within 45 days after  
11 the notice of cancellation is given;

12 (2) if the policy is cancelled for other than nonpayment of  
13 premium and is subject to audit, the insurer shall perform or waive  
14 the audit before the effective date of the cancellation and return or  
15 credit any estimated unearned premium before the effective date of  
16 cancellation.

17 (d) A postal receipt indicating a mailing to the named insured  
18 as required under this section is presumptive proof that notice has  
19 been mailed as required under this section.

20 (e) The division may require an insurer to perform an audit that  
21 the insurer has elected to waive under (c) of this section.

22 \* Sec. 37. AS 21.36.240 is amended to read:

23 Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to  
24 renew a personal insurance policy in force for less than 12 months.  
25 An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR  
26 MORE] unless a written notice of nonrenewal is mailed or delivered to  
27 the named insured, at the address shown in the policy, at least 20  
28 days for a personal insurance policy, and at least 45 days for a  
29 business or commercial insurance policy. before the expiration date of

1 the policy [,] or of the anniversary date of a policy written for a  
2 term longer than one year or with no fixed expiration date. This  
3 section does not apply

4 (1) if the insurer has in good faith manifested in any way  
5 its willingness to renew;

6 (2) in case of nonpayment of premium for the expiring  
7 policy; or

8 (3) if the insured fails to pay the premium as required by  
9 the insurer for renewal.

10 \* Sec. 38. AS 21.36.250 is amended to read:

11 Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automo-  
12 bile liability insurance is cancelled, other than for nonpayment of  
13 premium, or is not renewed in accordance with [FOR FAILURE TO RENEW A  
14 POLICY OF AUTOMOBILE LIABILITY INSURANCE TO WHICH] AS 21.36.240 [AP-  
15 PLIES], the insurer shall notify the named insured of possible eligi-  
16 bility for automobile insurance through the automobile assigned risk  
17 plan, or automobile insurance plan. The notification must [SHALL]  
18 accompany or be included in the notice of cancellation or nonrenewal  
19 required by AS 21.36.220 [AS 21.36.230] and 21.36.240.

20 \* Sec. 39. AS 21.36 is amended by adding a new section to read:

21 Sec. 21.36.255. PREMIUM REFUND. (a) If an insurance policy is  
22 cancelled, rejected, or rescinded by the insurer or the insured, the  
23 insurer shall refund the unearned premium paid to the insured. The  
24 insurer may not provide a penalty for midterm cancellation of a policy  
25 by the insured or by the insurer and the premium charged may not be  
26 more than that provided by the rating plan of the insurer for that  
27 coverage.

28 (b) Notwithstanding (a) of this section, if the insurer clearly  
29 indicates one or more of the following features in the policy, an

1 insurer may issue a policy

2 (1) whose premium is earned at a varying rate due to season-  
3 ality of exposure;

4 (2) that contains a minimum earned premium; or

5 (3) with a fluctuating premium base.

6 \* Sec. 40. AS 21.36.310 is amended to read:

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

8 (1) "business or commercial insurance" means insurance  
9 other than personal insurance, life insurance, disability insurance,  
10 fidelity and surety insurance, title insurance, wet marine and trans-  
11 portation insurance as defined in AS 21.34.900, or an annuity con-  
12 tract;

13 (2) "nonpayment of premium" means failure of the named  
14 insured to discharge when due any obligations of the named insured in  
15 connection with the payment of premium on a policy, or any installment  
16 of the premium, whether the premium is payable directly to the insurer  
17 or its agent or indirectly under any premium finance plan or extension  
18 of credit;

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

29 (A) a motor vehicle of the private passenger or

1 station wagon type that is not used as a public or livery convey-  
2 ance, nor rented to others; or

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

7 (4) "personal insurance"

8 (A) means personal automobile insurance, or insurance  
9 covering

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

13 (ii) loss of or damage to personal property,  
14 including personal effects, household furniture, fixtures  
15 and equipment located in not more than four dwelling units;  
16 or

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

21 (B) does not include an annuity contract or a polic  
22 of life insurance, disability insurance, or title insurance;

23 (5) [(3)] "renewal" or "renew" means

24 (A) the issuance and delivery [BY AN INSURER] of an  
25 insurance [A] policy [REPLACING] at the end of the policy period,  
26 that replaces a policy previously issued and delivered by the  
27 same insurer; [,]

28 (B) the issuance and delivery of a certificate or  
29 notice extending the term of a policy beyond its policy period or

1 term; [,] or

2 (C) the extension of the term of a policy beyond its  
3 policy period or term under a provision for extending the policy  
4 by payment of a continuation premium.

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

6 (c) The director may refuse to issue or may suspend or revoke  
7 [RENEW] an insurance agent's license if, in the judgment of the direc-  
8 tor, the proposed licensee is not trustworthy and competent to act as  
9 agent, or has given cause for revocation or suspension of the license,  
10 or has failed to comply with a prerequisite for the issuance [OR  
11 RENEWAL, AS THE CASE MAY BE,] of the license.

12 \* Sec. 42. AS 21.88.050 is amended to read:

13 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The  
14 corporation shall

15 (1) in the form approved by the director, issue to all  
16 physicians, nurses, and hospitals who are found to be acceptable risks  
17 under standards developed under (5) of this subsection, and who pay  
18 the premiums for it, a contract or contracts indemnifying physicians,  
19 nurses, and hospitals and their employees who are health care provid-  
20 ers against loss by reason of liability for covered claims for an act  
21 or omission in the delivery of professional health care in this state,  
22 and agreeing to tender on behalf of the physicians, nurses, and hos-  
23 pitals and their employees who are health care providers a defense to  
24 a covered claim in a proceeding brought under AS 09.55.530 - 09.55.  
25 560; the limits of liability for policies issued by the corporation  
26 shall be approved by the director; the contract shall cover the de-  
27 fense against but need not indemnify liability for punitive damages  
28 arising from a covered claim; at the option of the corporation, if  
29 approved by the director, and for an additional premium the contract

1 may cover claims against the physician, nurse, or hospital that arise  
2 out of professional services performed by the physician, nurse, or  
3 hospital for any period before the contract is issued, except that  
4 coverage will not be provided for a claim already filed or that [OF  
5 WHICH] the physician, nurse, or hospital had or reasonably should have  
6 had notice at the time the retroactive insurance was purchased;

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

11 (3) comply with or be subject to AS 21.06.090, 21.06.120,  
12 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,  
13 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and  
14 AS 21.36; and shall be exempt from participation as a member insurer  
15 in the Alaska Insurance Guaranty Corporation;

16 (4) carry out the obligations of the contracts issued by  
17 the corporation by defending all covered claims made against insured  
18 health care providers and by paying all liabilities that [WHICH] are  
19 finally adjudicated against the insured health care provider or that  
20 [WHICH] may in the opinion of the corporation reasonably be expected  
21 to be finally adjudicated against the health care provider to the  
22 extent of the contract obligation;

23 (5) establish standards for the acceptability of risks; in  
24 establishing these standards the corporation may exclude an applicant  
25 for insurance based on individual risk selection factors, but may not  
26 exclude an applicant based only on the classification of the appli-  
27 cant.

28 (b) The corporation may

29 (1) employ or retain persons, individual or corporate, to

1 discharge its obligations and pay reasonable compensation for these  
2 services; employees of the corporation are not considered state em-  
3 ployees;

4 (2) negotiate for and procure reinsurance from private  
5 casualty insurers or reinsurers for any and all liability incurred by  
6 contracts issued by it;

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

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

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

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

17 (7) provide risk management advice and services to hospi-  
18 tals;

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

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

23 (10) in a form approved by the director and for an addition-  
24 al premium determined under AS 21.88.080, issue endorsements which  
25 provide indemnity for claims not yet reported which arise out of  
26 professional services rendered during a period of continuous coverage  
27 under the originally issued contract, to physicians, nurses, and  
28 hospitals who pay the premium for it and who are terminating their  
29 original covered claims contract with the corporation for a period of

1 not less than one year;

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

5 \* Sec. 43. AS 21.88.900 is amended by adding a new paragraph to read:

6 (17) "nurse" means a nurse licensed under AS 08.68.

7 \* Sec. 44. AS 21.90.900 is amended to read:

8 Sec. 21.90.900. DEFINITIONS FOR TITLE. In this title, unless  
9 the context requires otherwise,

10 (1) "adjuster" means a person who, for compensation as an  
11 independent contractor or as an employee of an independent contractor,  
12 or for fee or commission, investigates and adjusts claims arising  
13 under insurance contracts on behalf of the insurer, but does not  
14 include an attorney at law who adjusts insurance losses from time to  
15 time incidental to the practice of law or a salaried employee of an  
16 insurer;

17 (2) "agent" means a person appointed by an insurer to  
18 solicit applications for insurance or annuities on its behalf, and if  
19 authorized to do so, to effectuate and countersign insurance con-  
20 tracts, except life or disability insurance or annuities, and to  
21 collect premiums on insurance or annuities;

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

25 (4) [(2)] "authorized insurer" means an insurer authorized  
26 by a [SUBSISTING] certificate of authority issued by the director to  
27 transact insurance in this state;

28 (5) "broker" means a person who is not an agent of the  
29 insurer and who, on behalf of the insured, for compensation as an

1 independent contractor by commission or fee, solicits, negotiates, or  
2 procures insurance or reinsurance or the renewal or continuance of  
3 insurance or reinsurance; or in any manner aids in the solicitation,  
4 negotiation, procurement, renewal, or continuance of insurance or  
5 reinsurance, for insureds or prospective insureds not including the  
6 broker;

7 (6) [(3)] "commissioner" means the commissioner of the  
8 Department of Commerce and Economic Development;

9 (7) [(4)] "court" means superior court;

10 (8) [(5)] "director" means the director of the division of  
11 insurance;

12 (9) [(6)] "division" means the division of insurance,  
13 Department of Commerce and Economic Development;

14 (10) [(7)] "domestic insurer" means an insurer formed under  
15 the laws of this state;

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

20 (12) [(8)] "foreign insurer" means an insurer formed under  
21 the laws of a jurisdiction other than this state and includes an alien  
22 insurer;

23 (13) "independent adjuster" means an adjuster representing  
24 the interests of the insurer;

25 (14) [(9)] "industrial life insurance" means that form of  
26 life insurance written under policies with a face amount of \$1,000 or  
27 less, with the words "industrial policy" imprinted on the face as part  
28 of the descriptive matter, and under which premiums are payable month-  
29 ly or more often;

1           (15) [(10)] "insurance" means a contract whereby one under-  
2 takes to indemnify another or pay or provide a specified or determin-  
3 able amount or benefit upon determinable contingencies;

4           (16) [(11)] "insurer" includes a person engaged as indemni-  
5 tor, surety, or contractor in the business of entering into contracts  
6 of insurance or of annuity;

7           (17) [(12)] "person" has the meaning given in AS 01.10.060  
8 and includes an insurer, Lloyds, fraternal benefit society, medical  
9 service or hospital service plan as defined in AS 21.87, reciprocal or  
10 interinsurance exchange, syndicate, and any other legal entity engaged  
11 in the business of transacting insurance, including agents, brokers,  
12 and claims adjusters;

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

17           (19) [(14)] "premium" means the consideration for insurance,  
18 by whatever name called, and by whatever method paid or collected  
19 including an assessment, or membership, policy, survey, inspection,  
20 service or similar fee or charge made in consideration for an insur-  
21 ance contract;

22           (20) "solicitor" means an individual authorized by an agent  
23 or broker to solicit applications for insurance as a representative of  
24 the agent or broker and to collect premiums in connection with the  
25 insurance;

26           (21) [(15)] "state" means a state, District of Columbia  
27 territory, commonwealth, or possession of the United States of  
28 America;

29           (22) [(16)] "transact" with respect to insurance includes

March 23, 1987

TO: House Labor and Commerce Committee

Re: Concerns of the American Insurance Association  
on CSHB 46

INTRODUCTION

Historically, the AIA has taken the position that onerous restrictions should not be imposed on insurance in the area of cancellation and renewal of commercial insurance. While regulation in this area is intended to promote insurance availability, undue intervention in the process by which underwriting capacity is allocated, can actually have the opposite effect. The AIA does recognize that the public has a legitimate interest in being assured that it will not be denied access to coverage on an arbitrary basis.

The AIA is in particular concerned about the cancellation and non-renewal legislation contained in HB46.

NOTICE OF CANCELLATION (SECTIONS 35 & 36, p.19)

These sections propose a 60 day mandatory cancellation notice on personal insurance policies, and business and commercial policies. The AIA would prefer that any cancellation requirements be through regulation rather than legislation. The AIA agrees with the comments of Frank B. Hall and Company, and Ajustco, Inc., that a jump to 30 days would be far less threatening to the industry than 60 days.

LIMITS ON THE CANCELLATION OF BUSINESS AND COMMERCIAL INSURANCE  
POLICIES (SECTION 34, pp. 18, 19)

This section prescribes that business and commercial policies can only be cancelled for 10 specified reasons, or by special permission by the Director of Insurance. This section ties in with the 60 day cancellation notice. Among the reasons specified, which would allow for 60 day cancellation are discovery of fraud or material misrepresentation---in obtaining the insurance policy; physical changes in the insured property that result in the property becoming uninsurable and physical changes in the operation of the insured that result in the property becoming uninsurable.

It is unreasonable to require 60 or even a 30 day notice of cancellation, especially when there is fraud or misrepresentation. It is suggested that the reasons in subparagraphs 1 through 6 require only a 10 day cancellation notice and that the additional sections require a 30 day cancellation.

FAILURE TO RENEW (Subsection 37, p. 20)

This section requires 45 days notice for non-renewal of a business or commercial insurance policy. For the same reasons involving cancellation, the AIA requests that this be changed to 30 days.

REMARKS

It would be beneficial to have clarification on the potential penalties should the cancellation, and non-renewal sections go into effect. The AIA suggests that a sound cancellation/non-renewal regulation should not exact a penalty from an insurer, but place the insured in the position it would have been had compliance taken place. Accordingly, if the company fails to provide the notice, coverage remains in effect until proper notice of the change is given. Once the proper notice is provided, the insured has 30 days to accept a non-renewal. Coverage for any period of time that extends beyond the expiration date shall be determined prorata based upon the prior year's rate.

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TJS:mb:dd:46

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.

HB46

AMERICAN COLLEGE OF NURSE-MIDWIVES,  
ALASKA CHAPTER

February 22, 1987

FEB 25 1987

Representative John Sund  
Alaska State Legislature  
House of Representatives  
PO Box 11  
Juneau, Alaska 99811

Dear Representative Sund:

I have been in contact with your aide, Shari Kochman, and at her request I am writing to formalize my organization's request for legislative action this session.

It is my understanding that House Bills 71 and 45 are being considered this week in the House Labor and Commerce committee. I would like to offer an update on our needs for your use in writing this bill.

As you may recall, the American College of Nurse-Midwives, our national organization, lost its professional liability insurance in June 1985. (See 'Fact Sheet: Nurse-Midwives and the Malpractice Insurance Crisis').

The American College of Nurse-Midwives (ACNM) successfully passed two 'Risk Retention' bills in Congress this past summer. These bills lay the groundwork for ACNM to start it's own insurance company if it becomes necessary in the future. However, we would do so only as an extreme last resort.

During the course of our national efforts, the insurance industry was pressed enough to come through at the 'eleventh hour' with a consortium of companies that were willing to offer us a new liability insurance policy. The company is the American Casualty Company, a CNA insurance company based in Chicago. We have received reasonable rates but desire higher limit coverage in the future. (See ACNM Memo regarding Insurance Update dated September 9, 1986).

As you can see, we are in a very different position this year. We have

a reasonably priced policy available to us and we have passed legislation that will allow us to set up a company in the future if necessary. However, I have received requests from state members who desire access to MICA as an alternative to the CNA policy.

There are at least four Alaskan CNM's who are being backed by physicians who get their insurance through MICA. The CNM's have contacted MICA to inform the company that they have their own liability insurance policies through CNA. ~~However, in effect, MICA has penalized the physicians for working with CNM's as the company is~~

~~charging the collaborating physicians higher rates if they work with a~~  
CNM. They are apparently totally disregarding the nurse-midwife's own coverage. A MICA statute amendment would make it possible for a certified nurse-midwife to acquire an individual policy through MICA. Perhaps if the CNM had her own coverage through MICA, the physician 'penalty' factor (and, therefore, a CNM practice hindrance) would be eliminated. In addition, those CNM's needing higher coverage might be able to get it through MICA.

In pursuing a MICA amendment there are two issues to consider. To my knowledge, there are few nurse-midwives who would choose MICA coverage unless MICA's rate structure was similar to that offered by the national policy with CNA. I have been told in the past by Art Stanford at MICA that we would be placed in the Family Practice physician category for rate purposes. Those rates are prohibitively high. It is my hope that MICA would have to justify this move to the state Division of Insurance rather than arbitrarily placing us in that category. National data does exist regarding lawsuits against nurse-midwives and Mr. Stanford was given that information last March. It is our hope that this data would be used in formulating a rate structure for certified nurse-midwives.

~~Current wording in HB-21 provides for a certified nurse-midwife on the MICA Board of Directors. I do not feel that this is necessary, at~~

~~this point in time.~~ I propose that language be changed to read 'nurses and advanced nurse practitioners'. Certified nurse-midwives are defined by nursing statute as advanced nurse practitioners and this wording would give a broader category of nurses access to MICA if future liability policies were unavailable to nurse practitioners and nurses. (See enclosed brochure regarding roles of nurse practitioners in Alaska ).

In summary, certified nurse-midwives in Alaska continue to seek access to MICA liability insurance as an alternative to the CNA policy and it is our hope that this can be accomplished this legislative session. Thanks for your time and efforts.

Feel free to contact me as questions arise.

Sincerely,

*Marilyn Pierce-Bulger*

Marilyn Pierce-Bulger, CNM  
Chairman, Alaska Chapter, ACNM  
Box 9416 Hilland Road  
Eagle River, AK 99577  
wk 265-9245 hm 694-6076

Enclosures



# AMERICAN COLLEGE OF NURSE-MIDWIVES

1522 K Street, N.W., Suite 1120, Washington, D.C. 20005

202/347-5445

Mary Rita Prah  
Executive Director

## MEMO

TO: Chapter Chairs

FROM: Mary Rita Prah *MCP*

RE: Insurance Update: Please share this information with CNMs in your chapter.

DATE: September 9, 1986

### Filings and Applications

ACNM has been informed by CNA that rate filings for each state were sent to state insurance commissioners on Friday, August 29, 1986. The applications will be sent to CNMs as the filings are approved. Although some states have "file and use" regulations, this applies only to the insurance "rates," not to the "forms," which still need to be approved by the state before the insurance may become effective. CNA is expecting most approvals to come through this week and has applications ready to mail as the approvals come in.

It is therefore in the hands of the individual states at this time. To hasten the process you can find out who in your state insurance office approves new insurance filings and ask them to expedite the approval. The policy will be filed under the name American Casualty Company, a CNA insurance company. The effective date of the policy in your state will be the date on which your state gives approval. There is absolutely no provision for retroactive coverage of any kind.

### Hospital Privileges and the Amount of Coverage: 1 million/1million

ACNM has received many calls from CNMs requesting 1 million/3 million coverage under this CNA policy. The CNMs are concerned about losing hospital privileges since they are unable to purchase the 1 million/3 million coverage required by many hospitals.

ACNM did try to obtain 1 million/3 million coverage from the insurance consortium. However, because of conditions in the market place, this coverage is not available at the present time. ACNM will continue to try to obtain this coverage in the future and CNA has indicated that they may reevaluate the coverage in not less than 1 year.

In the meantime, CNMs and other health care providers (including physicians) are faced with the difficult task of convincing hospital administrators and hospital risk managers to accept the lower level of coverage during this interim time

period. In some areas of the country CNMs and physicians have been successful in achieving this outcome. The following is some information which may be useful in this regard.

Generally, it is the individual hospital which determines the regulations for medical staff privileges regarding the requirements for adequate insurance coverage. Many times the hospital by-laws specify a specific amount of coverage. In other circumstances they read "adequate" coverage. You need to first become familiar with the specific situation in the hospital you are dealing with. Next you need to learn how these regulations are voted upon or decided in order to change this situation. (For example, if the word "adequate" is used, you need to influence the person whose job it is to determine what "adequate" means. In other cases, you may need to amend the by-laws.) It would also help to be familiar with the laws in your particular state that influence malpractice claims. There are a number of states which have placed a "cap" on awards and other tort reform efforts are being discussed. Do take the time to become informed with these issues prior to scheduling an appointment with your appropriate decision-maker.

In discussing this problem with the chief underwriter at CNA, the following advice was given: Impress on your hospital that CNA is an A+ rated carrier and that the \$1 million per loss is the most important limit. It is extremely rare for a provider to reach or need a \$3 million aggregate limit. (In fact, this CNA underwriter indicated that she had not seen a case where a physician or other provider needed the \$3 million annual aggregate out of the thousands of cases which she had handled). Perhaps ask your hospital to investigate/document when any of their staff had needed the \$3 million aggregate. Without being antagonistic, it would be very useful to force them in this way to confront the reality of this perceived need.

It would also be helpful to look at the ACNM claims data for your state. Most chapter chairs have used this information in discussions with state insurance commissioners. Present the data accurately but select the most favorable data to highlight. Remember that CNM cases are very infrequent, and that the \$1 million per loss limit provides the hospital with protection against severity.

Try to get support from the other health providers in the hospitals. This insurance crisis has hit everyone and physician premiums are also skyrocketing. They may be considering similar by-laws changes or administrative appeals.

Chapter Chairs  
September 9, 1986  
Page 3

Remember that hospital personnel are influenced by a number of people. Could your insurance commissioner help? What about your state health commissioner? The governor? The mayor? Would an article in the paper informing consumers..help? ... Also, Helen V. Burst heads up the College's Task Force on JCAH. Only CNMs in a particular situation can determine the best strategy. Good luck.

MRP:wh

cc: Board of Directors  
Staff



# AMERICAN COLLEGE OF NURSE-MIDWIVES

1522 K Street, N.W., Suite 1120, Washington, D.C. 20005

202/347-5445

## FACT SHEET: NURSE-MIDWIVES AND THE MALPRACTICE INSURANCE CRISIS

### THE PROBLEM

Over half of the American College of Nurse-Midwives' members have lost their malpractice insurance, and so far no company in the insurance industry appears willing to write a replacement policy. The threat of an eventual loss of coverage hangs over many other members as well. This situation is caused by general conditions in the insurance industry and not by ACNM professional performance. In an attempt to keep practicing, nurse-midwives have been forced to pursue a variety of temporary coverages (see options, page 3). But the outlook for a more satisfactory remedy is bleak. Virtually an entire profession is in jeopardy of extinction.

### BACKGROUND

The American College of Nurse-Midwives (ACNM) is the professional organization for nationally certified nurse-midwives (CNMs) in the United States. Its 2,500 members represent close to 85 percent of the profession.

Members of the College are experts in care for the healthy woman during her pregnancy, labor and delivery, as well as care for both mother and child after the baby is born.

No member is an "ordinary midwife" in the usual concept of that term. Each is a nurse educated at schools of midwifery associated with 28 institutions of higher learning, among them Yale, Columbia, Stanford, George-

town and many state universities. CNMs work in clinical collaboration with physicians.

DETAILS OF  
THE CURRENT  
CRISIS

Between July 1, 1984, and July 1, 1985, about 1,400 CNMs had malpractice insurance under a blanket ACNM policy written by the Mutual Fire, Marine & Inland Insurance Company of Philadelphia.

The company notified ACNM in May 1985 that the policy would not be renewed -- not because of its members' professional performance, but because of general conditions in the insurance industry (the unavailability of reinsurance).

Mutual Fire Marine and Inland is the third insurance carrier the ACNM has worked with in the past three years. In the 1970s the premium per member was \$38 per year. It had risen to an average of \$1,000 a year in 1985.

PROFESSIONAL  
RECORD

Suits have been filed against only six percent of all nurse-midwives -- a number considered low among medical professionals.

STEPS TAKEN  
TO OBTAIN NEW  
INSURANCE

After Mutual Fire's non-renewal, ACNM, through its insurance broker, contacted 17 insurance companies in the U. S. ACNM believes this represents most carriers who write professional liability insurance. To date the College has been turned down by all of them.

Personal appeals to insurance company executives yielded no results, and additional appeals to them emphasizing the low risk of nurse midwife practice have been made.

Nurse-midwives have been talking with insurance commissioners, legislators and other officials of individual states. To date only one state out of fifty -- New Jersey -- has been able to offer insurance from a private carrier.

CNMs feel both a moral and a practical obligation to carry malpractice insurance to protect their patients and themselves from any unintentional human error on their part. In addition, many CNMs must carry malpractice insurance to retain their employment and/or hospital privileges.

INSURANCE OPTIONS  
FOR CNMs IN 1985

- In some states, individual CNMs have found coverage through an insurer such as a physician-owned company, but these policies usually carry practice restrictions.

- Some CNMs may be covered through their employers. This may not shield them from personal liability therefore ACNM encourages CNMs to carry their own professional liability insurance as well.

- Providing that certain conditions are met, CNMs may, for the time being, obtain coverage through the American Nurses Association's (ANA's) or the American College of Obstetricians and Gynecologists' (NAACOG's) insurance policies.

- Some states -- e.g., New York and Texas -- have extended joint underwriting authority to include nurse-midwives. However, anticipated premium levels will be prohibitive given that the average income of nurse midwives is \$25,000.

- Nurse midwives are appealing to Congress to enact emergency legislation to provide relief.

**NURSE PRACTITIONERS** are Registered Nurses who have obtained advanced education. They are licensed by the State of Alaska and identified by the initials A.N.P. (Advanced Nurse Practitioner).

**NURSE PRACTITIONERS** are skilled in helping you achieve your maximum potential of wellness. Teaching and education are important to help you understand your body and live a healthier life.

**NURSE PRACTITIONERS** emphasize the **PREVENTION** of illness and the **PROMOTION** of health. In addition to health teaching and counseling, **NURSE PRACTITIONERS** perform complete physical examinations, diagnose and treat common illnesses, manage stable chronic conditions and prescribe and monitor medications. When necessary **NURSE PRACTITIONERS** consult with and/or refer you to other health professionals in the community.

As with other professions, **NURSE PRACTITIONERS** have special areas of expertise:

**PEDIATRIC NURSE PRACTITIONERS** work with infants, children, adolescents and their parents. Their expertise is in child growth and development and the special needs of the handicapped or gifted child and family. They diagnose, treat, and manage acute and chronic illnesses and provide parent education.

**GERIATRIC NURSE PRACTITIONERS** work with elderly individuals and families to manage chronic illnesses and assist the client to maintain the highest degree of independence possible.

**WOMEN'S HEALTH CARE NURSE PRACTITIONERS** provide complete obstetrical and gynecological care to women of all ages.

**ADULT NURSE PRACTITIONERS** work with adults to achieve and maintain a healthy lifestyle. Their expertise is in adult growth and development through the lifespan.

**CERTIFIED NURSE MIDWIVES** work with the pregnant family. Their expertise is prenatal care, labor and delivery, and post partum care.

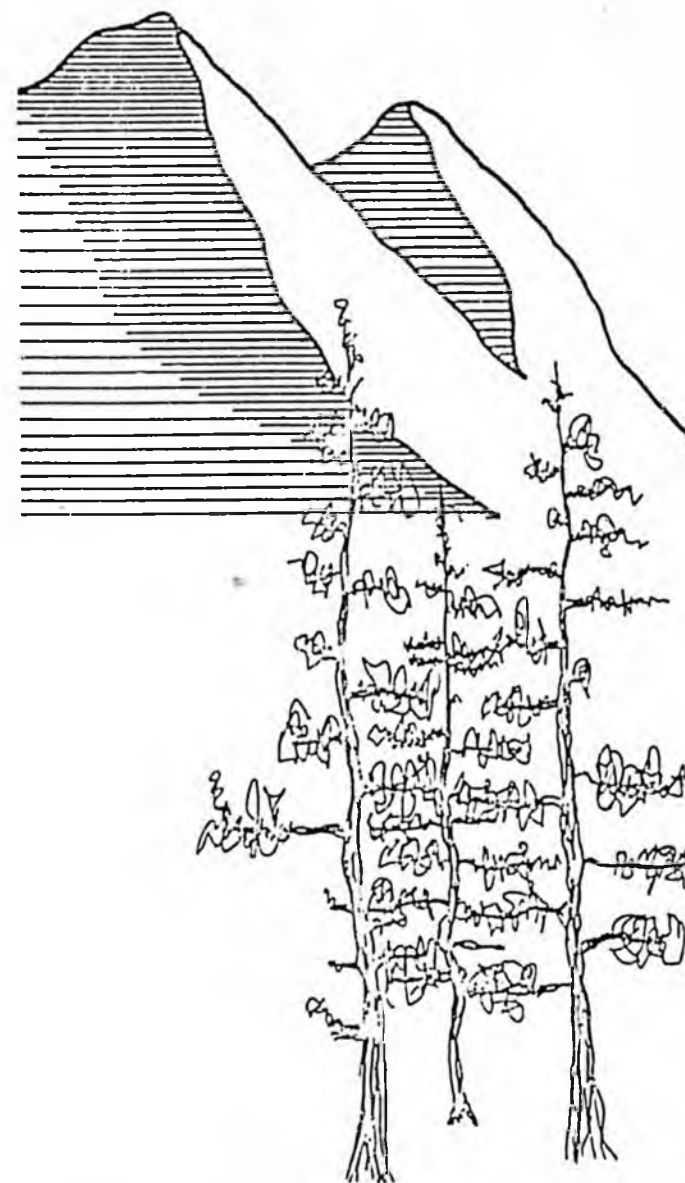
**FAMILY NURSE PRACTITIONERS** work with individuals and families of all ages. They are considered the generalist of nurse practitioners. Their expertise is in viewing the overall health and well-being of the family unit. They diagnose and treat acute and chronic illnesses of individuals of all ages.

ALASKA  
NURSE  
PRACTITIONERS

NURSE PRACTITIONERS work in emergency rooms, hospitals, clinics, ambulatory care centers, physician offices, health departments, student health centers and visiting nurse agencies.

Also, NURSE PRACTITIONERS may have their own private practices.

NURSE PRACTITIONERS work with you to reduce your health care cost. In general, they cost no more and often less than a physician in your area.



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**SECTION BY SECTION COMMENTARY**

**CSHB 46 (L&C)**

**Work Draft - Ford 3/10/87**

**Prepared by: Alaska Division of Insurance**

**Date: 3/10/87**

**OVERVIEW**

This work draft committee substitute encompasses about 12 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, comment section by section, and where appropriate, suggest amendments. Numerous amendments suggested previously have been incorporated in this draft. An additional amendment is suggested on page 18.

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)
- Commercial Cancellation (Pages 10-12)
- Broker Bond (Page 13)
- Broker as Agent (Pages 14-15)
- Producer Financial / Fiduciary Accounts (Pages 16-17)
- Pro Rata on Cancellations (Page 18)
- Alien Trusts Deposits (Page 19)
- Nurses, Nurse Midwife Coverage (Page 20)
- Relocation of Definitions (Page 21)
- Removal of Obsolete or Duplicative Provisions (Page 22)

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 8-19)

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 20-29; Page 2, Lines 1-15)

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 16-29; Page 3, Line 1)

§ (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 30, Lines 16-18)

This Section includes a repeal of AS 21.27.500, on line 17.

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 20-29; Page 2, Lines 1-15)

Continuous license language appears on Page 2, Lines 8-12.

Section 4. (Page 3, Lines 2-9)

Reference to renew removed on Lines 4 & 5. Change on Line 8 is not substantive.

Section 5. (Page 3, Lines 10-27)

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

Section 6. (Page 3, Lines 28-29; Page 4, Lines 1-6)

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

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

Reference to renewal removed on Page 5, Line 5.

Section 10. (Page 6, Lines 14-29; Page 7, Line 1-2)

Reference to date of expiration removed on Page 7, Line 1.

Section 12. (Page 7, Lines 24-29; Page 8, Lines 1-7)

This Section addresses licenses for vending machines that dispense policies of personal travel accident insurance. The only change of substance is that on Line 1 where reference to annual continuation and expiration is removed.

Section 13. (Page 8, Lines 8-20)

The references to renewal are addressed on Lines 9-11.

Section 17 (Page 9, Lines 19-23)

The reference to renewal appears on Line 21.

Section 18. (Page 9, Lines 24-29; Page 10, Line 11)

The reference to date of expiration is removed on Line 28.

Section 22. (Page 11, Lines 10-26)

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 sur-

charge 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 15-29; Page 13, Lines 1-18)

The reference to refuse to renew is removed on Line 17. Surplus lines brokers licenses are not being changed to continuous license. This accounts for the inserted language on Lines 18 and 19. 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 there before we recommend a continuous license for surplus lines brokers.

Section 26. (Page 13, Lines 24-29; Page 14, Lines 1-6)

References relating to renewal removed.

Section 27. (Page 14, Lines 7-18)

References relating to renewal removed.

Section 28. (Page 14, Lines 19-28)

References relating to renewal removed.

Section 29. (Page 14, Line 29; Page 15, Lines 1-6)

Reference relating to expiration removed.

Section 41. (Page 23, Lines 23-29)

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 control 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 7-29; Page 5, Lines 1-8)

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 9 and Page 5, Line 2.

Section 8. (Page 5, Lines 9-29; Page 6, Lines 1-7)

This Section addresses the qualifications for license. It has been modified to make it applicable to individual licensees. The language on Lines 29 and 1, 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 8-13)

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

Section 10. (Page 6, Lines 14-29; Page 7, Line 1-2)

The only changes of substance in this Section are found on Lines 21-24. The distinction between firm and corporation is removed. A definition for firm is introduced in Section 44 on Page 29, Lines 11-14. Also, the only person to be named on a firm license will be the principal or manager of the firm.

Section 11. (Page 7, Lines 3-23)

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

Section 14. (Page 8, Lines 21-24)

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

Section 23. (Page 11, Lines 27-29; Page 12, Lines 1-14)

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 19-23)

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 2-29; Page 28, Lines 1-29; Page 29, Lines 1-29; Page 30, Lines 1-2)

Definition of "firm" introduced on Page 28, Lines 11-14.

Section 46. (Page 30, Lines 16-18)

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

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 extended from 20 days to 60 days.

The business or commercial insurance notice has a similar period. This statute is similar to those in other states with one major exception. The proposed bill requires that any unearned premium be returned to the insured before the effective date of cancellation.

Section 31. (Page 16, Lines 12-23)

No substantive change.

Section 32. (Page 16, Lines 24-29; Page 17, Lines 1-11)

No substantive change. This is merely a relocation of AS 21.36.300.

Section 33. (Page 17, Lines 12-29; Page 18, Line 11)

No substantive change.

Section 34. (Page 18, Lines 2-29; Page 19, Lines 1-8)

This Section establishes the permissible reasons for cancellation of a

business or commercial insurance policy. In addition, the Director of Insurance is granted discretion in the event another valid reason to cancel has not been anticipated with this legislation.

Section 35. (Page 19, Lines 9-21)

This Section extends the notice period for personal insurance cancellations from 20 days to 60 days.

Section 36. (Page 19, Lines 22-29; Page 20, Lines 1-14)

§(b) of this Section establishes a 60 day period of notice on business or commercial insurance, except for nonpayment of premium, which is 10 days. In each case a reason for the action must also accompany the notice.

§(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 45 days after cancellation. Audits on auditable policies must also be made before the effective date of cancellation and unearned premium returned before the expiration of the policy. 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 know they are going to cancel, so 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.

Section 37. (Page 20, Lines 15-29; Page 21, Lines 1-2)

The notice of nonrenewal is unchanged for personal insurance at 20 days. The notice of nonrenewal for business or commercial insurance is 45 days.

Section 38. (Page 21, Lines 3-12)

No substantive change.

Section 40. (Page 21, Lines 24-29; Page 22, Lines 1-29;  
Page 23, Lines 1-22)

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 30, Lines 16-18)

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 22, Lines 25-29 and on Page 23, Lines 1-11.

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.

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BROKER BOND

This section proposes to increase the bond required of a broker from the current \$5,000 to \$50,000. The bond is available for the people of the state. The increased bond will have an increased cost, but the amount is not known at this time. This is not a Division of Insurance proposal, but we have no objection to it. There is a concern that the size of the bond may act as a barrier to new brokers entering the profession.

Section 13. (Page 8, Lines 8-20)

The increased bond amount appears on Lines 14 and 16.

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.

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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 25-28)

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

Section 16. (Page 8, Line 29; Page 9, Lines 1-18)

This Section establishes the concept of "broker as agent for purposes of premium collection." It also establishes disclosure and premium handling requirements for persons acting as a broker.

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.

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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.

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§(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 21-29; Page 11, Lines 1-9)

§(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."

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 and in our view is no longer necessary. It was originally intended to reflect an expense of the insurer that was, for the most part, beyond the insurers' control. The Division has considered the elimination of short rate by regulation, but authority is vague.

Section 39. (Page 21, Lines 13-23)

This Section requires pro rata cancellation and effectively prohibits short rate cancellation.

Suggested Amendment

This Section has the effect of changing the insurance contract. To avoid any hint of a constitutional problem, it should apply only to new contracts after the Section becomes law, it should not apply to in-force policies. To accomplish this, add the following language on Line 23, at the end of the Section. "This section shall not be applicable to existing policies."

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.

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Section 30. (Page 15, Lines 7-29; Page 16, Lines 1-11)

The language to accomplish the change noted above appears on Page 15, Lines 20-21. Other changes are not substantive.

NURSES / NURSE MIDWIFE COVERAGE

This proposal will add nurses and nurse midwives 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 42. (Page 24, Lines 1-29; Page 25, Lines 1-29;  
Page 26, Lines 1-24)

"Nurse, nurse midwives" added on Page 24, Lines 5, 8, 12, 20, 21, 22, and 24 and on Page 26, Lines 18-19.

Section 43. (Page 26, Lines 25-29; Page 27, Line 1)

Nurse is defined in §(17) on Page 26, Line 26.

Nurse midwife is defined in §(18) on Page 26, Lines 27-29 and Page 27, Line 1.

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 and 44.

Section 44. (Page 27, Lines 2-29; Page 28, Lines 1-29;  
Page 29, Lines 1-29; Page 30, Lines 1-21)

§(1), "adjuster" on Page 27, Lines 5-11, was formerly AS 21.27.510(a).

§(2), "agent" on Page 27, Lines 12-16, was formerly AS 21.27.470.

§(5), "broker" on Page 27, Lines 23-29 and Page 28, Line 1, was formerly AS 21.27.480.

§(11), "firm" on Page 28, Lines 11-14, is new. See discussion on Page 8.

§(13), "independent adjuster" on Page 28, Lines 18-19, was formerly AS 21.27.510(b).

§(20), "solicitor" on Page 29, Lines 17-20, was formerly AS 21.27.490.

Section 45. (Page 30, Lines 3-15)

This Section was formerly AS 21.27.520. No substantive change.

Section 46. (Page 30, Lines 16-18)

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.

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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 30, Lines 16-18)

AS 21.03.030, AS 21.03.040, AS 21.03.050 and AS 21.06.040 are repealed.

**SECTION BY SECTION COMMENTARY  
CSHB 46 (L&C)  
Work Draft - Ford 3/23/87**

**Prepared by: Alaska Division of Insurance  
Date: 3/24/87**

**OVERVIEW**

**This work draft committee substitute encompasses about 11 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. Numerous amendments suggested previously have been incorporated in this draft.**

**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)**
- Commercial Cancellation (Pages 10-12)**
- Broker as Agent (Pages 13-14)**
- Producer Financial / Fiduciary Accounts (Pages 15-16)**
- Pro Rata on Cancellations (Page 17)**
- Alien Trusts Deposits (Page 18)**
- Nurse Coverage (Page 19)**
- Relocation of Definitions (Page 20)**
- Removal of Obsolete or Duplicative Provisions (Page 21)**

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 21-29; 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

**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 30, Lines 21-23)**

**This Section includes a repeal of RS 21.27.500, on line 22.**

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 removed on Lines 5 & 6. Change on Line 9 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 the next Section. §(a) is revised in a way to deal with the new applicant. Continuing licenses are addressed in the Section 6. 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 issued license.

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

Reference to renewal removed on Page 5, Line 6.

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

Reference to date of expiration 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 sur-

charge 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 brokers 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 41. (Page 24, Lines 5-11)

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 control 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 16-19. Also, 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 7-29; Page 28, Lines 1-29; Page 29, Lines 1-29; Page 30, Lines 1-7)

**Definition of "firm" introduced on Page 28, Lines 16-19.**

**Section 46.** (Page 30, Lines 21-23)

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

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 extended from 20 days to 60 days.

The business or commercial insurance notice has a similar period. This statute is similar to those in other states with one major exception. The proposed bill requires that any unearned premium be returned to the insured before the effective date of cancellation.

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

No substantive change.

Section 32. (Page 16, Lines 25-29; Page 17, Lines 1-12)

No substantive change. This is merely a relocation of AS 21.36.300.

Section 33. (Page 17, Lines 13-29; Page 18, Lines 1-2)

No substantive change.

Section 34. (Page 18, Lines 3-29; Page 19, Lines 1-9)

This Section establishes the permissible reasons for cancellation of a

business or commercial insurance policy. In addition, the Director of Insurance is granted discretion in the event another valid reason to cancel has not been anticipated with this legislation.

Section 35. (Page 19, Lines 10-22)

This Section extends the notice period for personal insurance cancellations from 20 days to 60 days.

Section 36. (Page 19, Lines 23-29; Page 20, Lines 1-21)

§(b) of this Section establishes a 60 day period of notice on business or commercial insurance, except for nonpayment of premium, which is 10 days. In each case a reason for the action must also accompany the notice.

§(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 45 days after cancellation. 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. 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 know they are going to cancel, so 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 (e).

A postal receipt is presumptive proof that a notice has been mailed as required under this section.

Section 37. (Page 20, Lines 22-29; Page 21, Lines 1-9)

The notice of nonrenewal is unchanged for personal insurance at 20 days. The notice of nonrenewal for business or commercial insurance is 45 days.

Section 38. (Page 21, Lines 10-19)

No substantive change.

Section 40. (Page 22, Lines 6-29; Page 23, Lines 1-29;  
Page 24, Lines 1-4)

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 30, Lines 21-23)

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 7-22.

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.

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.

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Section 39. (Page 21, Lines 20-29; Page 22, Lines 1-5)

This Section requires pro rata cancellation and effectively prohibits short rate cancellation.

Section 47. (Page 30, Lines 24-26)

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

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.

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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 20-21. Other changes are not substantive.

Section 48. (Page 30, Lines 27-28)

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

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.

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**CSHB 46 (L&C) INDEX**

**Offered: 3/30/87**

**Prepared by: Alaska Division of Insurance**

**Date: 3/31/87**

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**SECTION BY SECTION COMMENTARY  
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**Prepared by: Alaska Division of Insurance  
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**OVERVIEW**

**This committee substitute encompasses about 12 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. Numerous amendments suggested previously have been incorporated in this bill.**

**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)**
- Commercial Cancellation (Pages 10-13)**
- Broker Bond (Page 14)**
- Broker as Agent (Pages 15-16)**
- Producer Financial / Fiduciary Accounts (Pages 17-18)**
- Pro Rata on Cancellations (Page 19)**
- Alien Trusts Deposits (Page 20)**
- Nurse Coverage (Page 21)**
- Relocation of Definitions (Page . 2)**
- Removal of Obsolete or Duplicative Provisions (Page 23)**

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 21-29; 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 45. (Page 31, Lines 2-4)

This Section includes a repeal of AS 21.27.500, on line 3.

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 Line 9 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 the next Section. §(a) is revised in a way to deal with the new applicant. Continuing licenses are addressed in the Section 6. 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 issued 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 41. (Page 24, Lines 17-23)

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 43 on Page 28, Lines 16-19. Also, 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 43. (Page 27, Lines 17-29; Page 28, Lines 1-29; Page 29, Lines 1-29; Page 30, Lines 1-17)

Definition of "firm" introduced on Page 28, Lines 26-29.

Section 46. (Page 31, Lines 2-4)

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

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.

The business or commercial insurance notice has a similar period. This statute is similar to those in other states with one major exception. The proposed bill requires that any unearned premium be returned to the insured before the effective date of cancellation.

The normal period of notice for cancellation will be 60 days. 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 1-12)

No substantive change. This is merely a relocation of AS 21.36.300.

Section 33. (Page 17, Lines 13-29; Page 18, Lines 1-2)

No substantive change.

Section 34. (Page 18, Lines 3-29; Page 19, Lines 1-9)

This Section establishes the permissible reasons for cancellation of a business or commercial insurance policy. In addition, the Director of Insurance is granted discretion in the event another valid reason to cancel has not been anticipated with this legislation.

Section 35. (Page 19, Lines 10-25)

This Section lists the notice periods for personal insurance.

Section 36. (Page 19, Lines 26-29; Page 20, Lines 1-29  
Page 21, Lines 1-4)

§(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 45 days after cancellation. 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. 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 know they are going to cancel, so 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 §(e).

§(d) requires that cancellation be made by certified mail with a return receipt requested. §(d) also requires that in the event notice is returned undeliverable, that an additional good faith effort to contact the insured be made.

Suggested Amendment

The Division of Insurance is uncomfortable with the provision that an additional "good faith" effort be made to deliver notice. We would prefer to see a more definable action described if an additional effort is to be required. If an additional effort is required, we believe it should be specifically defined or that specific authority be given the Director of Insurance to define it by regulation.

Option 1. Delete sentence starting on Page 20, Line 25 with the word "If" and ending on Page 20, Line 28.

Option 2. Following the word "effort" on Page 20, Line 27, insert ", as defined in regulations adopted by the director,"

§(e) 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.

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

Section 37. (Page 21, Lines 5-21)

The notice of nonrenewal is unchanged for personal insurance at 20 days. The notice of nonrenewal for business or commercial insurance is 45 days.

Section 38. (Page 21, Lines 22-29; Page 22, Lines 1-2)

No substantive change.

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Section 40. (Page 22, Lines 18-29; Page 23, Lines 1-29;  
Page 24, Lines 1-16)

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 45. (Page 31, Lines 2-4)

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 19-29 and Page 24, Lines 1-5.

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.

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

**The increased bond amount appears on Lines 16 and 18.**