

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

5042 HRIS HB 43 - HB 46

614

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

VI

REQUEST:
Revision Date: _____
Title: "An Act relating to return
transportation for workers."
Sponsor: Donley and Koponen
Requestor: Labor and Commerce

Bill Version: HB 43
Publish Date: HOUSE 2/4/87

Agency Affected: Labor
BRU: Labor Standards and Safety
Components: Wage and Hour

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

[Empty box for analysis]

Prepared by: Tom Stuart *TS* Phone: 465-4870
Division: Labor Standards and Safety Date: 1/23/87
Prepared by: _____
Approved by Commissioner: Jim Sampson *JS* Date: 1/23/87
Agency: Labor

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

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

No. 2

Bill Version: CSHB 43 (L&C)
Publish Date: HOUSE 2/4/87

REQUEST _____

Revision Date: _____
Title: An Act Relating to Return
Transportation for Workers

Agency Affected: A11
BRU: A11

Sponsor: Donley and Koponen
Requestor: _____

Components: A11

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

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

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

POSITIONS:

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

ANALYSIS: Attach a separate page if necessary

^(L&C)
CSHB 43 deals with paying return transportation costs for workers whose employment is terminated within the first year.

Provision for financing the return transportation of new employees to their original place of residence upon termination of employment has been public policy since 1949. The significance of CSHB 43 is that the proposed definition of "employer" would, for the first time, make the law applicable to State employees.

Prepared By: Diana DeSimone *Diana DeSimone* Phone: 465-4430
Division: Personnel Date: 1/30/87

Approved by Commissioner: Garrey Peska *Garrey Peska* Date: 1/31/87
Agency: Department of Administration

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

In FY 86, the State expended \$1,232,000 for moving and relocation costs. This figure includes legislative relocation costs which totaled \$219,100 in FY 86. Deducting costs for legislative moves leaves approximately \$1,000,000 for moving other State employees. The average cost of moving these employees is between \$10,000 and \$15,000. (Costs are higher because these are permanent versus temporary moves.) At an average of \$12,500 per move, this equates to about 80 moves of "regular" State employees.

We estimate that only about 10 percent of these paid moves are to entice new employees to join the State workforce, the only situation to which CSHB 43 would apply. (Paying moves of "on-board" State employees is usually associated with getting a seasoned, trained employee to change their location for the good of the service.)

In the eight situations to which CSHB 43 is applicable, it is unlikely that more than one or two of the employees would terminate within the first year. Therefore, the associated moving costs could be absorbed with existing resources.

STATE OF ALASKA
THE LEGISLATURE

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

Mary Van Nimwegen

H. Juc. February 16, 1987

HB

46

SECTION BY SECTION COMMENTARY

CSHB 46 (AIs)

4/29/87

Prepared by: Alaska Division of Insurance

Date: 4/30/87

OVERVIEW

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

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

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

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

GENERAL AGENTS / MANAGERS

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

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

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

Section 2. (Page 1, Lines 21-29; 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 46 (Page 31, Lines 5-8)

This Section includes a repeal of AS 21.27.500, on line 6.

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 licenses, however, will still pay an annual fee, and failure to pay will result in revocation or suspension of the license. This change should reduce the paperwork currently handled by the Division.

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

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

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

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

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

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

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

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

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

Reference to renewal removed on Page 5, Line 6.

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

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

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

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

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

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

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

The reference to renewal appears on Line 17.

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

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

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

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

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

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

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

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

References relating to renewal removed.

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

References relating to renewal removed.

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

References relating to renewal removed.

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

Reference relating to expiration removed.

Section 42. (Page 24, Lines 19-25)

Reference relating to renewal removed.

FIRM / INDIVIDUAL LICENSE

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

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

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

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

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

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

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

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

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

The only changes of substance in this Section are found on Page 6, Lines 22-25. The distinction between firm and corporation is removed. A definition for firm is introduced in Section 44 on Page 28, Lines 28-29 and Page 29, Lines 1-3. 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 19-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-20)

Definition of "firm" introduced on Page 28, Lines 28-29 and Page 29,
Page 1-3.

Section 46. (Page 31, Lines 5-8)

AS 21.27.040(b) is repealed on Line 6. This is the subsection that
requires firms to designate all individuals on the firm license.

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BROKER BOND

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

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

The increased bond amount appears on Lines 16 and 18.

BROKER AS AGENT

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

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

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

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

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

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

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

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

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

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

PRODUCE / FINANCIAL / FIDUCIARY ACCOUNTS

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

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

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

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

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

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

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

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

it except as specifically permitted in Section 21.

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

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

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

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

ALIEN TRUST DEPOSITS

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

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

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

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

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

Section 48. (Page 31, Lines 12-13)

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

COMMERCIAL CANCELLATION

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

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

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

The normal period of notice for cancellation will be 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 1-2)

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

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

No substantive change.

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

This Section lists the notice periods for personal insurance.

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

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

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

While this may cause some difficulty for the insurer, it should be remembered that this speaks to an insurer initiated cancellation. Insurers can use tentative or projected numbers for the period following the notice of cancellation. They often know they are going to cancel, so usually they can also control the audit process. The insured with an auditable policy is entitled to the same protection as an insured with a nonauditable policy. The insurer may elect to waive an audit on cancellation, which is their right currently. If the Division finds that the waiver is not in the insureds interest, it can require that an audit be made under §(d).

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

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

Section 36. (Page 20, Lines 3-24)

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

Section 37. (Page 20, Lines 25-29; Page 21, Lines 1-15)

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

Section 38. (Page 21, Lines 16-25)

No substantive change.

Section 40. (Page 22, Lines 13-19)

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

Section 41. (Page 22, Lines 20-29; Page 23, Lines 1-29;
Page 24, Lines 1-18)

The definition of "business or commercial insurance" is new. The remainder of the changes in this Section are not substantive. The limit

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on cancellation will extend to vessels under 50 displacement tons which will cover most of Alaska's fishing fleet.

Section 46. (Page 31, Lines 5-8)

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 21-29 and Page 24, Lines 1-7.

AS 21.36.230 is repealed as it is not needed.

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

PRO RATA ON CANCELLATIONS

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

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

Section 39. (Page 21, Lines 26-29; Page 22, Lines 1-12)

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

Section 47. (Page 31, Lines 9-11)

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

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NURSE COVERAGE

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

Section 43. (Page 24, Lines 26-29; Page 25, Lines 1-29;
Page 26, Lines 1-29; Page 27, Lines 1-18)

"Nurse" or "nurses", is added on Page 25, Lines 1, 4, 7, 15, 16, & 19 and on Page 27, Line 12.

RELOCATION OF DEFINITIONS

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

Section 44. (Page 27, Lines 19-29; Page 28, Lines 1-29;
Page 29, Lines 1-29; Page 30, Lines 1-20)

§(1), "adjuster" on Page 27, Lines 22-28, was formerly AS 21.27.510(a).

§(2), "agent" on Page 27, Line 29 and Page 28, Lines 1-4, was formerly AS 21.27.470.

§(5), "broker" on Page 28, Lines 11-18, was formerly AS 21.27.480.

§(11), "firm" on Page 28, Lines 28-29 and Page 29, Lines 1-3 is new. See discussion on Page 8.

§(13), "independent adjuster" on Page 29, Lines 7-8, was formerly AS 21.27.510(b).

§(20), "solicitor" on Page 30, Lines 6-9, was formerly AS 21.27.490.

Section 45. (Page 30, Lines 21-29; Page 31, Lines 1-4)

This Section was formerly AS 21.27.520. No substantive change.

Section 46. (Page 31, Lines 5-8)

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

ELIMINATION OF DOMESTIC TAX EXEMPTION

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

Section 46. (Page 31, Lines 5-8)

AS 21.09.210(c) is repealed on Line 7, eliminating the domestic tax exemption.

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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 31, Lines 5-8)

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

OVERVIEW
CSHB 46 (Rls)
4/29/87

Prepared by: Alaska Division of Insurance
Date: 4/30/87

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

GENERAL AGENTS / MANAGERS

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

CONTINUOUS LICENSE

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

FIRM / INDIVIDUAL LICENSE

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

BROKER BOND

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

BROKER AS AGENT

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

OVERVIEW
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4/29/87

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

PRODUCER FINANCIAL / FIDUCIARY ACCOUNTS

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

ALIEN TRUST DEPOSITS

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

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

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

COMMERCIAL CANCELLATION

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

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PRO RATA ON CANCELLATIONS

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

NURSE COVERAGE

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

RELOCATION OF DEFINITIONS

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

ELIMINATION OF DOMESTIC TAX EXEMPTION

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

REMOVAL OF OBSOLETE OR DUPLICATIVE PROVISIONS

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

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**Prepared by: Alaska Division of Insurance
Date Prepared: 4/30/87**

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STATE OF ALASKA
THE LEGISLATURE

FOUCH Y STATE CAPITOL
JUNEAU, ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

April 16, 1987

SUBJECT: Domestic insurer tax exemption
(HB 230)

TO: Representative Dave Donley

FROM: Michael F Ford *M.F.*
Legislative Counsel

RECEIVED
APR 16 1987

Robertson, Monagle & Eastaugh, P.C.
Juneau, Alaska

You have asked whether the domestic insurer tax exemption under AS 21.09.210(c) is a constitutionally valid exercise of the state's taxing authority. In light of the latest U.S. Supreme Court decision striking down a state law that imposed a different rate of tax on foreign insurers, this form of exemption would appear to be equally defective. In Metropolitan Life Insurance Company v. Ward, 470 U.S. ___, 84 L.Ed 2d 751 (1985), the court held that neither the promotion of domestic business within a state nor the encouragement of capital investment are legitimate reasons that would permit discrimination against foreign corporations, in light of the equal protection clause. The court also noted that this type of discrimination would also be prohibited under the commerce clause. See Bacchus Imports, Ltd. v. Dias, 468 U.S. ___, 82 L Ed 2d 200 (1984). The exemption contained in AS 21.09.210(c) creates an impermissible discrimination between foreign and domestic insurers.] *

The present language of sec. 2 in HB 230 that limits the exemption to corporations organized before July 1, 1987 and may eliminate this issue as a practical matter. To avoid any possibility of litigation, the exemption should probably be repealed rather than limited.] *

MFF:mkr
m11/029

1
passed

A M E N D M E N T

Offered in the HOUSE

By Navarre

TO: CSHB 46 (Rules)

Page 17, line 27:

Delete "60"

Insert "30"

2
Failed

A M E N D M E N T

Offered in the HOUSE

By Navarre

TO: CSHB 46 (Rules)

Page 1, after line 8:

Insert a new bill section to read:

"* Section 1. AS 21.09.210(c) is amended to read:

ok

(c) A domestic company organized before July 1, 1987, is exempt from taxation under this section for a period of five years from the date of its organization." - *premium tax*

Page 1, line 9:

ok

Delete "Section 1"

Insert "Sec. 2"

Renumber remaining bill sections accordingly.

Page 31, lines 5 - 6:

Delete "AS 21.09.210(c);"

Page 31, line 9:

Delete "29"

Insert "30"

Delete "31 - 46"

Insert "32 - 47"

Page 31, line 11:

Delete "29"

Insert "30"

Delete "31 - 46"

Insert "32 - 47"

Page 31, line 12:

Delete "30"

Insert "31"

Original sponsors: Navarre, Swackhammer
and Sund

1 IN THE HOUSE

BY THE RULES COMMITTEE

2 CS FOR HOUSE BILL NO. 46 (Rules)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIFTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to regulation of insurance; and
7 providing for an effective date."

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

9 * Section 1. AS 21.09.250 is amended to read:

10 Sec. 21.09.250. PROHIBITED ACTS. An insurer doing business in
11 this state may not make, write, place or cause to be made, written or
12 placed in this state a policy, duplicate policy or contract of insur-
13 ance of any kind or character, or general or floating policy upon
14 persons or property resident, situated or located in this state, from
15 or through a broker, agent, general agent, surplus line broker, or
16 person who has not secured a license in this state. An insurer may
17 not pay a commission or any form of remuneration to a person, firm, or
18 organization for the writing or placing of insurance coverage in this
19 state unless that person, firm, or organization holds a license issued
20 by the director.

21 * Sec. 2. AS 21.09.280 is amended to read:

22 Sec. 21.09.280. GENERAL AGENTS [AND MANAGERS]. (a) An insurer
23 appointing a person as its general agent [OR MANAGER] to represent it
24 in this state shall file notice of the appointment with the director
25 on forms prescribed and furnished by the director.

26 (b) A general agent [OR MANAGER] has the authority, consistent
27 with this title, that may be conferred by the insurer. A general
28 agent, resident or nonresident, qualified in AS 21.27.090, licensed as
29 provided in this section in the same manner as is provided for agents

1 in AS 21.27, may exercise the powers conferred by this title upon
2 agents licensed for the kinds of insurance that the general agent is
3 authorized to transact for the insurer appointing the agent.

4 (c) The [EXCEPT AS PROVIDED UNDER AS 21.27.500, THE] appointment
5 of a resident or nonresident general agent is not effective unless the
6 person appointed is licensed as the general agent of the insurer by
7 the director upon application and payment of a fee set under AS 21.-
8 06.250.

9 (d) Every license is subject to the payment of an annual fee set
10 under AS 21.06.250 and payable on or before [EXPIRES AT] the close of
11 business on the 30th day of June of each year [FOLLOWING THE DATE OF
12 ISSUE, AND MAY BE RENEWED FOR AN ADDITIONAL YEAR UPON APPLICATION AND
13 PAYMENT OF THE FEE].

14 (e) The director may deny, suspend, or revoke a license for any
15 cause specified in AS 21.27.410 in the manner provided in AS 21.27.-
16 420.

17 * Sec. 3. AS 21.09.280 is amended by adding new subsections to read:

18 (f) Persons employed on salary by an insurer, including officers
19 and salaried employees performing the same services as general agents,
20 are considered to be service representatives and are not required to
21 be licensed.

22 (g) For purposes of this section, a person, firm, or corporation
23 that performs management services for an insurer is not considered a
24 general agent if

25 (1) the person, firm, or corporation is a wholly-owned
26 subsidiary of the insurer;

27 (2) the person, firm, or corporation wholly owns the insur-
28 er; or

29 (3) the person, firm, or corporation is a wholly-owned

1 subsidiary of the insurance holding company that owns or controls the
2 insurer.

3 * Sec. 4. AS 21.27.020 is amended to read:

4 Sec. 21.27.020. GENERAL QUALIFICATIONS FOR LICENSE. For the
5 protection of the people of this state, the director may not issue [CR
6 RENEW] a license except in compliance with this chapter [, OR] to a
7 person, or to be exercised by [,] a person, found by the director to
8 be untrustworthy, incompetent, or who has not established to the
9 satisfaction of the director that the person is qualified under [IN
10 ACCORDANCE WITH] this chapter.

11 * Sec. 5. AS 21.27.030(a) is amended to read:

12 (a) The director may not grant an agent, solicitor, or broker
13 license to a person if the director has reasonable cause to believe
14 that

15 [(1) DURING EITHER OF THE TWO CALENDAR YEARS IMMEDIATELY
16 PRECEDING THE REQUEST FOR RENEWAL OF THE LICENSE THE AGGREGATE AMOUNT
17 OF COMMISSIONS REPRESENTED BY THE CONTROLLED BUSINESS PROCURED BY OR
18 THROUGH THE LICENSEE EXCEEDED THE AGGREGATE AMOUNT OF COMMISSIONS
19 REPRESENTED BY ALL OTHER INSURANCE BUSINESS PROCURED BY OR THROUGH THE
20 LICENSEE; OR

21 (2)] the circumstances of the applicant for the license [OR
22 OF A LICENSEE] are such [AS TO CAUSE THE DIRECTOR REASONABLY TO BE-
23 LIEVE] that during the 12-month period immediately following issuance
24 [OR RENEWAL] of the license, if issued [OR RENEWED], the aggregate
25 amount of commissions to be represented by the controlled business
26 would exceed the aggregate amount of commissions to be represented by
27 all other insurance business to be procured by or through the appli-
28 cant [OR LICENSEE].

29 * Sec. 6. AS 21.27.030 is amended by adding a new subsection to read:

1 (d) The director may revoke an agent, solicitor, or broker
2 license if the director has reasonable cause to believe that during
3 either of the two preceding calendar years the aggregate amount of
4 commissions represented by the controlled business procured by or
5 through the licensee exceeded the aggregate amount of commissions
6 represented by all other insurance business procured by or through the
7 licensee.

8 * Sec. 7. AS 21.27.060 is amended to read:

9 Sec. 21.27.060. EXAMINATION OF APPLICANTS. (a) Each applicant
10 for an individual license as agent, broker, solicitor, or adjuster
11 shall, before the issuance of the license, personally take and pass,
12 to the satisfaction of the director, an examination given by the
13 director as a test of the qualifications and competence of the appli-
14 cant. This requirement does not apply to

15 (1) applicants for limited licenses, as travel insurance
16 agents only, under AS 21.27.150, or, at the discretion of the direc-
17 tor, to applicants for licenses as disability insurance agents for the
18 purpose of handling limited coverages pertaining to sports and recre-
19 ation;

20 (2) applicants who at any time within the five-year period
21 immediately preceding the date of application have been licensed in
22 this state under a license requiring qualifications required by the
23 license applied for and who are considered by the director to be fully
24 qualified and competent;

25 (3) applicants for license as nonresident agent or as
26 nonresident broker who have fulfilled qualification requirements in
27 their state or province of residence and who are considered by the
28 director to be fully qualified and competent;

29 (4) applicants for an agent or solicitor license covering

1 the same kinds of insurance as an agent's or solicitor's license then
2 held by them.

3 (b) The director may at any time require an individual [A]
4 licensed as an agent, broker, solicitor, or adjuster to take and
5 successfully pass an examination testing competence and qualifications
6 as a condition to the continuance [OR RENEWAL] of the license if the
7 licensee has been guilty of violation of this title, or has so con-
8 ducted affairs under the license as to cause the director reasonably
9 to desire further evidence of the qualifications of the licensee.

10 * Sec. 8. AS 21.27.090(a) is amended to read:

11 (a) To qualify for an individual agent or broker license an
12 applicant shall comply with this title and

13 (1) be 19 years of age or over [, IF AN INDIVIDUAL];

14 (2) if for a resident agent's or broker's license, be a
15 bona fide resident before issuance of license [,] and actually reside
16 in the state [RESIDING IN ALASKA, OR IF A CORPORATION, BE OTHER THAN
17 AN INSURER AND MAINTAIN A LAWFULLY ESTABLISHED PLACE OF BUSINESS IN
18 THIS STATE, EXCEPT AS PROVIDED IN AS 21.27.270];

19 (3) [BE EMPOWERED TO BE AN AGENT OR BROKER, AS THE CASE MAY
20 BE, UNDER ITS MEMBERS' AGREEMENT, IF A FIRM, OR BY ITS ARTICLES OF
21 INCORPORATION, IF A CORPORATION;

22 (4)] successfully pass any examination required under
23 AS 21.27.060;

24 (4) [(5)] be a trustworthy person;

25 (5) [(6)] not use or intend to use [OR USE] the license for
26 the purpose principally of writing controlled business, as defined in
27 AS 21.27.030;

28 (6) [(7)] if for an agent license, be appointed as its
29 agent by one or more authorized insurers, subject to issuance of the

1 license, except that an individual acting on behalf of a firm is not
2 required to have an appointment as an agent for that activity;

3 (7) [(8)] if for broker license, have had experience either
4 as an agent, solicitor, adjuster, general agent, broker, or as an
5 employee of insurers or representatives of insurers, or special educa-
6 tion or training of sufficient duration and extent reasonably to
7 satisfy the director that the applicant possesses the competence
8 necessary to fulfill the responsibilities of broker.

9 * Sec. 9. AS 21.27.090 is amended by adding a new subsection to read:

10 (c) To qualify for a firm agent or broker license an applicant
11 shall comply with this title and

12 (1) comply with (a)(4) and (5) of this section;

13 (2) if a corporation, maintain a lawfully established place
14 of business in this state, except as provided in AS 21.27.270.

15 * Sec. 10. AS 21.27.130 is amended to read:

16 Sec. 21.27.130. CONTENT OF AGENT, BROKER, SOLICITOR LICENSES.
17 Agent, solicitor, and broker licenses must [SHALL] be in the form the
18 director prescribes, and must [SHALL] set out

19 (1) the name and address of the licensee, or if the lic-
20 ensee is required to have a place of business, the address of the
21 place of business;

22 (2) if the agent or broker is a firm [OR CORPORATION], the
23 name of the principal or manager of the firm holding an individual
24 license as required by AS 21.27.140 [EACH INDIVIDUAL AUTHORIZED TO
25 EXERCISE THE POWERS CONFERRED BY THE LICENSE];

26 (3) the kind or kinds of insurance the licensee is [THERE-
27 BY] licensed to handle;

28 (4) if a solicitor's license, the name and address of the
29 agent or broker represented by the solicitor;

1 (5) the condition under which the license is granted;

2 (6) the date of issuance [AND DATE OF EXPIRATION] of the
3 license.

4 * Sec. 11. AS 21.27.140 is amended to read:

5 Sec. 21.27.140. LICENSES TO FIRMS [AND CORPORATIONS]. A firm
6 shall have a firm license of the same degree as each individual li-
7 icensee acting on behalf of the firm. A firm [OR CORPORATION] may not
8 be licensed as an adjuster, agent, or broker unless each individual
9 acting as or representing to be an adjuster, agent, or broker on
10 behalf of the firm is licensed as an individual, and the principal or
11 manager of the firm is licensed as an individual to exercise all the
12 powers conferred by the firm's license. If the licensee knows of and
13 consents to an act or representation on behalf of the firm by an
14 individual who is not licensed as required by this chapter, that act
15 or representation [TO BE EMPOWERED AND DESIGNATED IN THE LICENSE TO
16 EXERCISE THE POWERS CONFERRED BY THE LICENSE IS QUALIFIED AS THOUGH
17 THE INDIVIDUAL WERE THE SOLE INDIVIDUAL TO BE SO EMPOWERED, EXCEPT
18 THAT A FIRM OR CORPORATION LICENSED FOR ALL LINES MAY EMPOWER AND
19 DESIGNATE ANY INDIVIDUAL, OTHER THAN THE PRINCIPAL OR MANAGER, LI-
20 CENSED FOR ONLY PROPERTY-CASUALTY OR LIFE-DISABILITY TO EXERCISE THE
21 POWERS CONFERRED BY THE LICENSE TO THE EXTENT THAT INDIVIDUAL IS
22 QUALIFIED TO ACT. EXERCISE OR ATTEMPTED EXERCISE OF THE POWERS BY AN
23 INDIVIDUAL NOT SO DESIGNATED, WITH THE KNOWLEDGE OR CONSENT OF THE
24 LICENSEE,] is cause for the revocation or suspension of the firm
25 license.

26 * Sec. 12. AS 21.27.170(b) is amended to read:

27 (b) The director shall issue to the agent a special vending
28 machine license for each machine to be used. The license must [SHALL]
29 specify the name and address of the insurer and agent, the name of the

1 policy to be sold, the serial number of the machine, and the place
2 where the machine is to be in operation. The license is [SHALL BE]
3 subject to [ANNUAL CONTINUATION, TO EXPIRATION,] suspension or revoca-
4 tion coincidentally with that of the agent. The director shall also
5 revoke the license on a machine if the director finds that the condi-
6 tions upon which the machine was licensed, under [AS REFERRED TO IN]
7 (a) of this section, no longer exist. Proof of the existence of a
8 [SUBSISTING] license shall be displayed on or about each vending
9 machine in use in the manner the director may reasonably require.

10 * Sec. 13. AS 21.27.190(a) is amended to read:

11 (a) Each applicant for a broker license [OR FOR THE RENEWAL OF A
12 BROKER LICENSE EXISTING ON JULY 1, 1966,] shall file with the applica-
13 tion [OR REQUEST FOR RENEWAL] and shall after that [THEREAFTER] main-
14 tain in force while [SO] licensed a bond in favor of the people of the
15 state, executed by an authorized corporate surety approved by the
16 director, in the amount of \$10,000 [\$5,000]. The bond may be continu-
17 ous in form, and total aggregate liability on the bond may be limited
18 to the payment of \$10,000 [\$5,000]. The bond must [SHALL] be contin-
19 gent on the accounting by the broker, to a [ANY] person requesting the
20 broker to obtain insurance or to a person from whom the broker obtains
21 insurance, for money or premiums collected in connection with the
22 insurance [THEREWITH].

23 * Sec. 14. AS 21.27.190 is amended by adding a new subsection to read:

24 (c) An individual who acts on behalf of a firm that files and
25 maintains in force the bond described in (a) of this section is exempt
26 from the requirements of (a) of this section.

27 * Sec. 15. AS 21.27.200(a) is repealed and reenacted to read:

28 (a) A broker is not an agent or other representative of an
29 insurer and does not have power as a broker to bind the insurer

1 regarding a risk or an insurance contract.

2 * Sec. 16. AS 21.27.200 is amended by adding new subsections to read:

3 (c) In determining an insured's entitlement to coverage or
4 return premium, a premium payment made to a broker shall be considered
5 received by the insurer if

6 (1) the payment was, at the time it was made, designated
7 for specific coverage; and

8 (2) the insurer accepted or acknowledged coverage by issu-
9 ing a policy, binder, or other contract for temporary insurance.

10 (d) A broker may not knowingly accept payment for coverage until
11 coverage is authorized by an insurer.

12 (e) Except as provided under (c) of this section, this section
13 is not intended to alter the common law of agency as applied to trans-
14 actions under this title.

15 * Sec. 17. AS 21.27.240(a) is amended to read:

16 (a) An agent or broker who employs a solicitor shall pay the
17 [THE] fee for issuance or annual fee for continuation [RENEWAL] of a
18 solicitor license [SHALL BE PAID BY THE AGENT OR BROKER BY WHOM THE
19 SOLICITOR IS EMPLOYED].

20 * Sec. 18. AS 21.27.300 is amended to read:

21 Sec. 21.27.300. CONTENTS OF LICENSE. The director shall pre-
22 scribe the form of adjuster license, which must contain

23 (1) the name and business address of the adjuster:

24 (2) date of issuance [AND DATE OF EXPIRATION] of the li-
25 cense;

26 (3) other statements proper to the purposes of the license.

27 * Sec. 19. AS 21.27.350 is amended by adding a new subsection to read:

28 (c) In addition to the record required under (a) of this sec-
29 tion, each agent or broker shall have and maintain at the agent's or

1 broker's principal place of business current accounting and financial
2 records maintained in accordance with generally accepted accounting
3 principles. The director may request summary or detailed copies for
4 examination by the division. Records examined under this subsection
5 are confidential when in the possession of the division, but may be
6 used by the director in a proceeding against the licensee. For pur-
7 poses of this subsection, the records of a firm shall be considered
8 the records of an individual agent or broker acting on behalf of the
9 firm.

10 * Sec. 20. AS 21.27.360(b) is amended to read:

11 (b) All funds, except those made payable to the insurer, repre-
12 senting premiums or return premiums received by an agent or broker,
13 shall be received in the fiduciary account of the agent or broker, and
14 shall be deposited in a bank account or depository separate from any
15 other account or depository, and shall be promptly accounted for and
16 paid to the insured, insurer, or agent entitled to the funds. For
17 purposes of this subsection, the fiduciary account of the firm shall
18 be considered the fiduciary account of an individual agent or broker
19 acting on behalf of the firm. Funds deposited into a fiduciary ac-
20 count may not be commingled or otherwise combined with other funds,
21 except as allowed under (d) of this section.

22 * Sec. 21. AS 21.27.360 is amended by adding new subsections to read:

23 (d) An agent or broker may commingle with premium funds, addi-
24 tional funds for the purpose of advancing premiums, establishing
25 reserves for the payment of return premiums, or reserves for receiving
26 and transmitting premium or return premium funds. Funds collected for
27 the payment of premium taxes, policy or filing fees, late payment
28 charges, and interest from fiduciary funds on deposit, may be com-
29 mingled in a fiduciary account, but shall be separately accounted for

1 and periodically removed from the fiduciary account.

2 (e) An agent or broker may not treat funds required to be in a
3 fiduciary account as a personal asset, as collateral for a personal or
4 business loan, or as a personal asset or income on a financial state-
5 ment, except that funds in a fiduciary account may be included in a
6 financial statement of the agent or broker if clearly identified as
7 fiduciary account assets.

8 (f) In this section, "fiduciary account" means an account in
9 which the agent or broker holds funds as a trustee for the insured,
10 insurer, or agent entitled to the funds.

11 * Sec. 22. AS 21.27.380 is repealed and reenacted to read:

12 Sec. 21.27.380. ANNUAL FEE FOR LICENSES. (a) An annual fee set
13 under AS 21.06.250 for resident and nonresident agent, solicitor, and
14 adjuster licenses is due on or before the close of business on the
15 30th day of June.

16 (b) An annual fee set under AS 21.06.250 for resident and non-
17 resident broker licenses is due on or before the close of business on
18 the 31st day of December.

19 (c) An agent or broker shall file the annual fee set under
20 AS 21.06.250 on behalf of a solicitor employed by the agent or broker.

21 (d) If payment of the annual license fee is not received by the
22 director before the due date as required under this section, the
23 licensee shall pay to the director and the director shall collect, in
24 addition to the regular fee, a surcharge as established by regulation
25 under AS 21.06.250. This subsection may not be considered to exempt a
26 person from a penalty provided by law for transacting business without
27 a valid license.

28 * Sec. 23. AS 21.27.390(a) is amended to read:

29 (a) The director may adopt regulations regarding the issuance of

1 an agent or broker temporary license to

2 (1) the surviving spouse or next of kin or to the adminis-
3 trator or executor of a deceased licensed agent or broker;

4 (2) the spouse, next of kin, employee, or legal guardian of
5 a licensed agent or broker who is disabled because of sickness, insan-
6 ity, or injury;

7 (3) a surviving member, [OF A FIRM OR SURVIVING] officer,
8 or employee of a firm [CORPORATION] licensed as agent or broker, upon
9 the death of the principal or manager of the firm holding the same
10 licenses as the firm [AN INDIVIDUAL DESIGNATED IN THE FIRM OR CORPO-
11 RATION'S LICENSE TO EXERCISE POWERS THEREUNDER];

12 (4) the designee of a licensed agent who enters active
13 service in the armed forces of the United States;

14 (5) a person preparing for examination for permanent li-
15 cense under the supervision of an authorized insurer.

16 * Sec. 24. AS 21.27.410(a) is amended to read:

17 (a) The director may refuse to issue a license or may suspend or
18 [,] revoke [, OR REFUSE TO RENEW] a license issued under this chapter
19 or a surplus line broker license, or may refuse to renew a surplus
20 line broker license, for a cause specified in another [ANY OTHER]
21 provision of this title, or for any of the following causes:

22 (1) for a a [ANY] cause for which issuance of the license
23 could have been refused had it then existed and been known to the
24 director;

25 (2) if the licensee or applicant wilfully violates or
26 knowingly participates in the violation of a provision of this title,

27 (3) if the licensee or applicant has obtained or attempted
28 to obtain the license through wilful misrepresentation or fraud, or
29 has failed to pass an [ANY] examination required under this chapter;

1 (4) if the licensee or applicant has misappropriated or
2 converted to personal use or has illegally withheld money required to
3 be held in a fiduciary capacity;

4 (5) if the licensee or applicant has, with intent to de-
5 ceive, materially misrepresented the terms or effect of an insurance
6 contract; or has engaged or is about to engage in a fraudulent trans-
7 action;

8 (6) if the licensee or applicant has been guilty of "twist-
9 ing," under AS 21.36.050, or of rebating, under AS 21.36.100;

10 (7) if the licensee or applicant has been convicted, by
11 final judgment, of a felony;

12 (8) if in the conduct of affairs under the license, the
13 licensee exhibits conduct considered by the director to reflect incom-
14 petence, untrustworthiness, or a source of injury and loss to the
15 public;

16 (9) if the licensee or applicant has dealt with, or at-
17 tempted to deal with, insurances or to exercise powers relative to
18 insurance outside the scope of the licenses of the licensee or appli-
19 cant.

20 * Sec. 25. AS 21.27.410(b) is amended to read:

21 (b) The license of a firm [OR CORPORATION] may be suspended,
22 revoked, or refused for any of the causes that [WHICH] relate to a
23 [ANY] person acting on behalf of the firm [DESIGNATED IN THE LICENSE
24 TO EXERCISE ITS POWERS].

25 * Sec. 26. AS 21.27.420 is amended to read:

26 Sec. 21.27.420. PROCEDURE FOR SUSPENDING OR [,] REVOKING [OR
27 REFUSING TO RENEW] A LICENSE. The director may suspend or [,] revoke
28 [, OR REFUSE TO RENEW] a license

29 [(1) BY ORDER GIVEN TO THE LICENSEE NOT LESS THAN 15 DAYS

1 BEFORE THE EFFECTIVE DATE OF THE LICENSE, SUBJECT TO THE RIGHT OF THE
2 LICENSEE TO HAVE A HEARING AS PROVIDED IN AS 21.06.180(b); PENDING A
3 HEARING THE LICENSE SHALL BE SUSPENDED; OR

4 (2)] by an order on hearing made as provided in AS 21.06.-
5 220 effective 10 days after the date of the giving of the order,
6 subject to the right of the licensee to appeal to the superior court
7 as provided in AS 21.06.230.

8 * Sec. 27. AS 21.27.440 is amended to read:

9 Sec. 21.27.440. CIVIL PENALTIES MAY BE IMPOSED. After hearing
10 and in addition to or in lieu of the suspension or [,] revocation of
11 [, OR REFUSAL TO RENEW] a license, the director may levy a civil
12 penalty upon the licensee not to exceed \$2,500. The order levying the
13 civil penalty must [SHALL] specify the period within which the civil
14 penalty shall be fully paid. The [, WHICH] period may not be less
15 than 15 or more than 30 days after [FROM] the date of the order. Upon
16 failure to pay the civil penalty when due, the director shall revoke
17 the licenses of the licensee if not already revoked. A [THE] civil
18 penalty collected [SHALL BE PAID] by the director shall be paid to the
19 commissioner of revenue for deposit in the general fund.

20 * Sec. 28. AS 21.27.450 is amended to read:

21 Sec. 21.27.450. FINE IN LIEU OF ACTION AGAINST THE LICENSE.
22 Upon the hearing of an appeal from an order suspending or [,] revoking
23 [, OR REFUSING TO RENEW] a license issued under this chapter, the
24 court, if it finds that the licensee is guilty of violation of the law
25 and if it considers the suspension or [,] revocation [, OR REFUSAL TO
26 RENEW THE LICENSE] too severe a penalty under the facts as found, may
27 instead impose a fine of not more than \$2,500. Payment of the fine
28 within 10 days after its imposition reinstates or restores [SHALL
29 REINSTATE, RESTORE, OR RENEW] the license.

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

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

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; or

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

22 * Sec. 34. AS 21.36.220 is amended to read:

23 Sec. 21.36.220. NOTICE OF CANCELLATION. An insurer may not
24 exercise its right to cancel a personal insurance policy unless a
25 written notice of cancellation is mailed [OR DELIVERED] to the named
26 insured as required by AS 21.36.260 [, AT THE ADDRESS SHOWN IN THE
27 POLICY,] at least 60 [20] days before the effective date of cancella-
28 tion. However, if [, EXCEPT THAT WHEN] cancellation is for nonpayment
29 of premium, the notice shall be mailed [OR DELIVERED] to the named

1 insured as required by AS 21.36.260 [AT THE ADDRESS SHOWN IN THE
2 POLICY] at least 20 [10] days before the effective date of cancella-
3 tion. If cancellation is for a reason described in AS 21.36.210(a)(2)
4 or (f)(2) or (3), the notice shall be mailed to the named insured as
5 required by AS 21.36.260 at least 10 days before the effective date of
6 cancellation [AND SHALL INCLUDE OR BE ACCOMPANIED BY A STATEMENT OF
7 THE REASON FOR THE CANCELLATION. THIS SECTION DOES NOT APPLY TO THE
8 FAILURE TO RENEW A POLICY, EXCEPT AS TO COVERAGE IN FORCE FOR LESS
9 THAN 12 MONTHS].

10 * Sec. 35. AS 21.36.220 is amended by adding new subsections to read:

11 (b) An insurer may not exercise its right to cancel a policy of
12 business or commercial insurance unless a written notice of cancella-
13 tion is mailed to the named insured as required by AS 21.36.260 and to
14 the agent or broker of record at least 60 days before the effective
15 date of cancellation. However, if cancellation is for nonpayment of
16 premium, or for failure or refusal of the insured to provide the
17 information necessary to confirm exposure or necessary to determine
18 the policy premium, the notice shall be mailed to the named insured as
19 required by AS 21.36.260 and to the agent or broker of record at least
20 20 days before the effective date of cancellation. If cancellation is
21 (1) for conviction of the insured of a crime having as one of its
22 necessary elements an act increasing a hazard insured against, or (2)
23 for discovery of fraud or material misrepresentation made by the
24 insured or a representative of the insured in obtaining the insurance
25 or by the insured in pursuing a claim under the policy, the notice
26 shall be mailed to the named insured as required by AS 21.36.260 and
27 to the agent or broker of record at least 10 days before the effective
28 date of cancellation.

29 (c) If an insurer cancels a policy under this section, it shall

1 return or credit any unearned premium to the agent or broker of record
2 or directly to the insured or premium finance company, if applicable,
3 before the effective date of cancellation, except that

4 (1) an unearned premium shall be returned or credited within
5 30 days after notice of cancellation is given, if cancellation is for

6 (A) nonpayment of premium, including nonpayment of
7 additional premiums, calculated in accordance with the current
8 rating manual of the insurer, justified by a physical change in
9 the insured property, a change in its occupancy or use, or a
10 change in payroll, receipts, values, or other exposure units;

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

14 (C) discovery of fraud or material misrepresentation
15 made by the insured or a representative of the insured in obtain-
16 ing the insurance or by the insured in pursuing a claim under the
17 policy;

18 (D) failure or refusal of the insured to provide the
19 information necessary to confirm exposure or necessary to deter-
20 mine the policy premium;

21 (E) a reason described in AS 21.36.210(a)(2);

22 (2) the insurer shall perform or waive the audit before the
23 effective date of the cancellation and return or credit any estimated
24 unearned premium before the effective date of cancellation if the
25 policy is subject to audit and is canceled for a reason other than
26 those described in (1)(A) - (D) of this subsection.

27 (d) The division may require an insurer to perform an audit that
28 the insurer has elected to waive under (c) of this section.

29 (e) A notice of cancellation of insurance required to be given

1 under this section must include or be accompanied by a statement of
2 the reason for the cancellation.

3 * Sec. 36. AS 21.36 is amended by adding a new section to read:

4 Sec. 21.36.235. NOTICE OF PREMIUM OR COVERAGE CHANGES UPON
5 RENEWAL. (a) Except as provided in AS 21.36.420, if the renewal
6 premium is increased more than 10 percent for a reason other than an
7 increase in coverage or exposure base, or if after renewal there will
8 be a material restriction or reduction in coverage not specifically
9 requested by the insured, written notice shall be mailed to the
10 insured and to the agent or broker of record as required by AS 21.36.-
11 260

12 (1) at least 20 days before expiration of a personal insur-
13 ance policy;

14 (2) at least 45 days before expiration of a business or
15 commercial policy; or

16 (3) by the anniversary date of the year before expiration
17 of a policy written for a term longer than one year or without a fixed
18 expiration date.

19 (b) If notice before expiration of the policy is not given as
20 required by (a) of this section, the existing policy shall continue
21 until the insurer provides notice for the time period required by (a)
22 of this section for that policy.

23 (c) This section does not apply to workers' compensation insur-
24 ance.

25 * Sec. 37. AS 21.36.240 is amended to read:

26 Sec. 21.36.240. FAILURE TO RENEW. An insurer may not fail to
27 renew a personal insurance policy in force for less than 12 months.
28 An insurer may not fail to renew a policy [IN FORCE FOR 12 MONTHS OR
29 MORE] unless a written notice of nonrenewal is mailed [OR DELIVERED]

1 to the named insured as required by AS 21.36.260 [, AT THE ADDRESS
2 SHOWN IN THE POLICY,] at least 20 days for a personal insurance
3 policy, and at least 45 days for a business or commercial insurance
4 policy. before the expiration date of the policy [,] or of the anni-
5 versary date of a policy written for a term longer than one year or
6 with no fixed expiration date. If notice of nonrenewal is not given
7 as required by this section, the existing policy shall continue until
8 the insurer provides notice for the time period required by this
9 section for that policy. This section does not apply

10 (1) if the insurer has in good faith manifested [IN ANY
11 WAY] its willingness to renew;

12 (2) in case of nonpayment of premium for the expiring
13 policy; or

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

16 * Sec. 38. AS 21.36.250 is amended to read:

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

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

27 Sec. 21.36.255. PREMIUM REFUND. (a) If an insurance policy is
28 cancelled, rejected, or rescinded by the

29 (1) insurer, the insurer shall refund the unearned premium

1 paid to the insured or premium finance company; or

2 (2) insured, the insurer shall return any unearned premium
3 paid to the insured or premium finance company, less a cancellation
4 fee not to exceed 7.5 percent of the unearned premium; a cancellation
5 fee may not be charged unless the fee is clearly stated in the policy.

6 (b) Notwithstanding (a) of this section, if the insurer clearly
7 indicates one or more of the following features in the policy, an
8 insurer may issue a policy

9 (1) whose premium is earned at a varying rate due to sea-
10 sonality of exposure;

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

12 (3) with a fluctuating premium base.

13 * Sec. 40. AS 21.36.260 is repealed and reenacted to read:

14 Sec. 21.36.260. PROOF AND METHOD OF MAILING NOTICE. If a notice
15 is required from an insurer under this chapter, the insurer shall

16 (1) mail the notice by first class mail to the last known
17 address of the insured; and

18 (2) obtain a certificate of mailing from the U.S. Postal
19 Service.

20 * Sec. 41. AS 21.36.310 is amended to read:

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

22 (1) "business or commercial insurance" means insurance
23 other than personal insurance, reinsurance, life insurance, disability
24 insurance, fidelity and surety insurance, title insurance, wet marine
25 and transportation insurance as defined in AS 21.34.900, or an annuity
26 contract;

27 (2) "nonpayment of premium" means failure of the named
28 insured to discharge when due any obligations of the named insured in
29 connection with the payment of premium on a policy, or any installment

1 of the premium, whether the premium is payable directly to the insurer
2 or its agent or indirectly under any premium finance plan or extension
3 of credit;

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

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

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

21 (4) "personal insurance"

22 (A) means personal automobile insurance, or insurance
23 covering

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

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

1 or

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

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

8 (5) [(3)] "renewal" or "renew" means

9 (A) the issuance and delivery [BY AN INSURER] of an
10 insurance [A] policy [REPLACING] at the end of the policy period,
11 that replaces a policy previously issued and delivered by the
12 same insurer; [,]

13 (B) the issuance and delivery of a certificate or
14 notice extending the term of a policy beyond its policy period or
15 term; [,] or

16 (C) the extension of the term of a policy beyond its
17 policy period or term under a provision for extending the policy
18 by payment of a continuation premium.

19 * Sec. 42. AS 21.84.430(c) is amended to read:

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

26 * Sec. 43. AS 21.88.050 is amended to read:

27 Sec. 21.88.050. POWERS AND DUTIES OF THE CORPORATION. (a) The
28 corporation shall

29 (1) in the form approved by the director, issue to all

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

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

25 (3) comply with or be subject to AS 21.06.090, 21.06.120,
26 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,
27 21.09.280, AS 21.12.020(b)-(e), AS 21.18, AS 21.21, AS 21.24 and
28 AS 21.36; and shall be exempt from participation as a member insurer
29 in the Alaska Insurance Guaranty Corporation;

1 (4) carry out the obligations of the contracts issued by
2 the corporation by defending all covered claims made against insured
3 health care providers and by paying all liabilities that [WHICH] are
4 finally adjudicated against the insured health care provider or that
5 [WHICH] may in the opinion of the corporation reasonably be expected
6 to be finally adjudicated against the health care provider to the
7 extent of the contract obligation;

8 (5) establish standards for the acceptability of risks; in
9 establishing these standards the corporation may exclude an applicant
10 for insurance based on individual risk selection factors, but may not
11 exclude an applicant based only on the classification of the appli-
12 cant.

13 (b) The corporation may

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

18 (2) negotiate for and procure reinsurance from private
19 casualty insurers or reinsurers for any and all liability incurred by
20 contracts issued by it;

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

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

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

- 1 (6) sue or be sued in the name of the corporation;
- 2 (7) provide risk management advice and services to hospi-
- 3 tals;
- 4 (8) negotiate and become a party to contracts for manage-
- 5 ment services for the corporation;
- 6 (9) perform all other acts necessary and proper to carry
- 7 out the duties of the corporation;
- 8 (10) in a form approved by the director and for an addition-
- 9 al premium determined under AS 21.88.080, issue endorsements which
- 10 provide indemnity for claims not yet reported which arise out of
- 11 professional services rendered during a period of continuous coverage
- 12 under the originally issued contract, to physicians, nurses, and
- 13 hospitals who pay the premium for it and who are terminating their
- 14 original covered claims contract with the corporation for a period of
- 15 not less than one year;
- 16 (11) subject to approval by the director, extend coverage
- 17 to a person, entity, or facility that renders health care services in
- 18 the state under the supervision of a physician.

19 * Sec. 44. AS 21.90.900 is amended to read:

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

21 the context requires otherwise,

22 (1) "adjuster" means a person who, for compensation as an

23 independent contractor or as an employee of an independent contractor,

24 or for fee or commission, investigates and adjusts claims arising

25 under insurance contracts on behalf of the insurer, but does not

26 include an attorney at law who adjusts insurance losses from time to

27 time incidental to the practice of law or a salaried employee of an

28 insurer;

29 (2) "agent" means a person appointed by an insurer to

1 solicit applications for insurance or annuities on its behalf, and if
2 authorized to do so, to effectuate and countersign insurance con-
3 tracts, except life or disability insurance or annuities, and to
4 collect premiums on insurance or annuities;

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

8 (4) [(2)] "authorized insurer" means an insurer authorized
9 by a [SUBSISTING] certificate of authority issued by the director to
10 transact insurance in this state;

11 (5) "broker" means a person who is not an agent of the
12 insurer and who, on behalf of the insured, for compensation as an
13 independent contractor by commission or fee, solicits, negotiates, or
14 procures insurance or reinsurance or the renewal or continuance of
15 insurance or reinsurance; or in any manner aids in the solicitation,
16 negotiation, procurement, renewal, or continuance of insurance or
17 reinsurance, for insureds or prospective insureds not including the
18 broker;

19 (6) [(3)] "commissioner" means the commissioner of the
20 Department of Commerce and Economic Development;

21 (7) [(4)] "court" means superior court;

22 (8) [(5)] "director" means the director of the division of
23 insurance;

24 (9) [(6)] "division" means the division of insurance,
25 Department of Commerce and Economic Development;

26 (10) [(7)] "domestic insurer" means an insurer formed under
27 the laws of this state;

28 (11) "firm" means an organization of two or more licensees
29 acting in association with each other, either in a partnership,

1 corporation, or otherwise, or an organization in which a single
2 licensee has less than 50 percent ownership interest in the organiza-
3 tion;

4 (12) [(8)] "foreign insurer" means an insurer formed under
5 the laws of a jurisdiction other than this state and includes an alien
6 insurer;

7 (13) "independent adjuster" means an adjuster representing
8 the interests of the insurer;

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

14 (15) [(10)] "insurance" means a contract whereby one under-
15 takes to indemnify another or pay or provide a specified or determin-
16 able amount or benefit upon determinable contingencies;

17 (16) [(11)] "insurer" includes a person engaged as indemni-
18 tor, surety, or contractor in the business of entering into contracts
19 of insurance or of annuity;

20 (17) [(12)] "person" has the meaning given in AS 01.10.060
21 and includes an insurer, Lloyd's, fraternal benefit society, medical
22 service or hospital service plan as defined in AS 21.87, reciprocal or
23 interinsurance exchange, syndicate, and any other legal entity engaged
24 in the business of transacting insurance, including agents, brokers,
25 and claims adjusters;

26 (18) [(13)] "policy" means the written contract of or writ-
27 ten agreement for or effecting insurance, by whatever name called, and
28 includes all clauses, riders, endorsements and papers attached to it
29 and a part of it;

1 (19) [(14)] "premium" means the consideration for insurance.
2 by whatever name called, and by whatever method paid or collected,
3 including an assessment, or membership, policy, survey, inspection,
4 service or similar fee or charge made in consideration for an insur-
5 ance contract;

6 (20) "solicitor" means an individual authorized by an agent
7 or broker to solicit applications for insurance as a representative of
8 the agent or broker and to collect premiums in connection with the
9 insurance;

10 (21) [(15)] "state" means a state, District of Columbia,
11 territory, commonwealth, or possession of the United States of
12 America;

13 (22) [(16)] "transact" with respect to insurance includes
14 (A) solicitation and inducement;
15 (B) preliminary negotiations;
16 (C) effectuation of a contract of insurance;
17 (D) transaction of matters subsequent to effectuation
18 of the contract of insurance and arising out of it;

19 (23) [(17)] "unauthorized insurer" means an insurer not
20 authorized to transact insurance in this state.

21 * Sec. 45. AS 21.90 is amended by adding a new section to read:

22 Sec. 21.90.910. EXCEPTIONS FROM DEFINITIONS. The definitions of
23 "adjuster," "agent," "broker," "firm," and "solicitor" in AS 21.90.900
24 do not include

25 (1) individuals employed and used by agents for the perfor-
26 mance of clerical, stenographic, and similar office duties; incidental
27 taking of an application for insurance from time to time in the office
28 of the employing agent if the employee's compensation is not contin-
29 gent upon or related to the volume of applications, insurance, or

1 premiums;

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

5 * Sec. 46. AS 21.03.030, 21.03.040, 21.03.050; AS 21.06.040; AS 21.09.-
6 210(c); AS 21.27.040(b), 21.27.470, 21.27.480, 21.27.490, 21.27.500, 21.-
7 27.510, 21.27.210; AS 21.36.210(c), 21.36.210(e), 21.36.230, and 21.36.300
8 are repealed.

9 * Sec. 47. Sections 1 - 29 and 31 - 46 of this Act apply to insurance
10 policies entered into or renewed on or after the effective date of secs.
11 1 - 29 and 31 - 46 of this Act.

12 * Sec. 48. Section 30 of this Act takes effect immediately under
13 AS 01.10.070(c).



Official Business

Alaska State Legislature

House of Representatives

Committee on Rules

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HOUSE RULES STANDING COMMITTEE MEETING
MONDAY, APRIL 27, 1987
CAPITOL, ROOM 208

CSHB 46(JUD) - "An Act relating to insurance; and providing for an effective date."

(Representative Navarre)

I N D E X

- I. Section-by-Section Analysis CSHB 46(JUD)
- II. MEMO - To : Rules Committee
From : Thomas J. Slagle, American Insurance Association
- III. CSHB 46(JUDICIARY)
- IV. CSHB 46(L&C)
- IV. Fiscal Note Published March 30, 1987

SECTION BY SECTION COMMENTARY
CSHB 46 (Jud)
4/27/87

Prepared by: Alaska Division of Insurance
Date: 4/27/87

OVERVIEW

This committee substitute encompasses about 14 insurance issues in one "omnibus" bill on insurance issues. Most of the items contained in the bill have, at one time or another, been requested by the Division of Insurance. The Division of Insurance supports this legislation.

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

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

- General Agents / Managers (Pages 2-3)
- Continuous License (Pages 4-6)
- Firm / Individual License (Pages 7-9)
- Broker Bond (Page 10)
- Broker as Agent (Pages 11-12)
- Producer Financial / Fiduciary Accounts (Pages 13-14)
- Alien Trusts Deposits (Page 15)
- Repeal of Rebate Provisions (Page 16-17)
- Commercial Cancellation (Pages 18-21)
- Pro Rata on Cancellations (Page 22)
- Nurse Coverage (Page 23)
- Relocation of Definitions (Page 24)
- Elimination of Domestic Tax Exemption (Page 25)
- Removal of Obsolete or Duplicative Provisions (Page 26)

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 52 (Page 33, Lines 21-24)

This Section includes a repeal of AS 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 is removed on Lines 5 & 6. The change on Lines 9 & 10 is not substantive.

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

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

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

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

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

Reference to renewal removed on Page 5, Line 6.

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

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

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

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

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

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

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

The reference to renewal appears on Line 17.

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

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

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

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

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

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

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

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

References relating to renewal removed.

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

References relating to renewal removed.

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

References relating to renewal removed.

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

Reference relating to expiration removed.

Section 47. (Page 27, Lines 1-7)

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 50 on Page 31, Lines 16-19. 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 50. (Page 30, Lines 7-29; Page 31, Lines 1-29;
Page 32, Lines 1-29; Page 33, Lines 1-7)

Definition of "firm" introduced on Page 31, Lines 16-19 .

Section 52. (Page 33, Lines 21-24)

AS 21.27.040(b) is repealed on Line 22. This is the subsection that requires firms to designate all individuals on the firm license.

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BROKER BOND

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

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

The increased bond amount appears on Lines 16 and 18.

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BROKER AS AGENT

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

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

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

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

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

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

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

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

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

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

PRODUCER FINANCIAL / FIDUCIARY ACCOUNTS

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

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

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

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

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

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

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

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

it except as specifically permitted in Section 21.

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

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

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

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