

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672

7069 HOUSE LABOR & COMMERCE

ishment, have passed laws that heavily regulate the reviewers. These laws—half of them not yet implemented—will increase reviewers' costs and in some cases interfere with review. Some examples:

• A new Georgia law requires that reviewers base some decisions on local medical practices. That negates a key principle of review, which is to look extra hard at local pockets where, say, patients are kept in the hospital longer than average.

• Virginia has drafted regulations stating that only a board-certified specialist can deny coverage for a procedure performed by another specialist. Thus, for example, a cardiologist could not review a surgeon's decision to do a coronary bypass.

• Maine's rules state that an insurer can't reduce payment for any state-mandated mental health benefit even if a patient refuses to go through the review process. But the threat of reduced insurance coverage is key to getting an employee's cooperation.

Mental health is, in fact, one of the trickiest areas. Costs here are growing so fast that many companies now monitor mental health care more intensively than other care, requiring, for example, prior review of outpatient mental health services but not other outpatient care. That's bad news for the earning power of psychiatrists. But the American Psychiatric Association is defending its members. It is circulating to its state affiliates a draft state law that would make it illegal to apply different review procedures to mental health care.

Where are the lawyers in all this? Licking their chops. A recent California court decision implies that the utilization review firm may be held liable if, for example, a patient is released from the hospital early because of pressure from reviewers and some harm results. In fact, warns Richard Hinden, a health care lawyer at Chicago's Altheimer & Gray, an employer might also be held liable if it is negligent in picking its utilization review firm.

Perhaps the fear of litigation, despite the rapid growth of utilization review, explains at least partly why health care costs are continuing to rise much faster than the general rate of inflation.

How perseverance earned PepsiCo the enviable position of Mexico's largest consumer products company.

Pepsi's newest generation

By Claire Poole

SOMETIMES IT JUST PAYS to hang in there. When price controls and peso devaluations persuaded multinationals like Nabisco and Anderson Clayton to cut back their Mexican operations sharply in the wake of Mexico's 1982 economic collapse, PepsiCo elected to build. It is now cashing in on one of the world's most promising economies.

To counteract the peso devaluations, it started exporting wheat, later expanding to taco shells, frozen juices and pineapples—a business now worth \$30 million in sales. In 1984 it added candy and gum to its basic line of soft drinks and chips. And this past fall it spent \$320 million to buy nearly 80% of Empresas Gamsa, Mexico's largest cookie company. PepsiCo, based in Purchase, N.Y., is now Mexico's largest consumer products company, with an estimated \$1.2 billion

in sales—larger than Procter & Gamble or Colgate-Palmolive. Its probable prerax profits in Mexico last year: \$140 million.

Now price controls are easing, the peso has strengthened, and the government of President Carlos Salinas de Gortari is taking an enlightened view toward foreign investment. But it will take other multinationals years to catch Pepsi.

Michael Jordan, PepsiCo International's chairman and the man responsible for Pepsi's Mexican strategy, expects PepsiCo to be doing \$2 billion in annual revenues in Mexico by 1995. "Mexico will be one of the boom economies of the 1990s, with more explosive growth than Eastern Europe," says the 54-year-old Jordan, a 16-year PepsiCo veteran who's considered the strategic mind behind Dallas-based Frito-Lay, PepsiCo's



Stocking Sabritas products in a Monterrey store. A network of now supplies 400,000 shops in Mexico.

by

Christine M. Solomon
Director of State Legislation
Federation of American Health Systems



Utilization Review — Managing the Reviewers

Although the issue of utilization review is not new, growth in the number of private utilization review (PUR) companies has kept pace with rapid expansion in the managed care industry. More and more frequently, hospitals and doctors are confronted with a maze of PUR companies, all clamoring for data and issuing determinations without the aid of standardized guidelines. In an attempt to inject some organization and safeguards into the way utilization review companies operate, state legislatures and other groups have begun to take action, either through the drafting of legislation or the development of guidelines.

Four states

Thus far, four states have adopted legislation to address the problem. In the forefront of these activities is Maryland, which in 1988 passed legislation, the major requirements of which include: certification of all review agents; submission to the credentialing body of reviewers; standards and procedures for conducting reviews; process for appeals of denials, and confidentiality of patient records. By addressing their legislation to the review organizations and not the providers, the Maryland law seems to have avoided any pre-emption through ERISA. The law also requires adoption of uniform standards for some aspects of PUR, including standardizing information forms. Implementation of the law still hinges on the adoption of regulations by the state health department; regulations are expected to be in place by this summer.

The newest PUR legislation was passed in January in South Carolina. The law is similar to the Maryland legislation, requiring registration and certification of PUR companies by the Commissioner of Insurance. Utilization review programs must meet certain requirements, including: notification of adverse decisions within five days; pro-

cedure for consideration of appeal of denials; availability of reviewer by telephone 40 hours a week, during normal working hours, and types and qualifications of review personnel must be furnished to the Commissioner.

In addition to Maryland and South Carolina, legislation has been adopted in Maine and Arkansas, basically requiring certification of companies meeting certain requirements to do business in the state.

A number of other states have either already introduced bills into their legislatures, or such bills are drafted and awaiting introduction. At this writing, these states include Pennsylvania, Georgia, Virginia, Massachusetts, Illinois, Florida and North Carolina. Most of the bills contain aspects of the Maryland law as well as the guidelines adopted for use in Tennessee.

The Tennessee provider groups have been meeting with representatives of the managed care industry, and have developed a set of standards for utilization review agents. These standards address certification of agents, description of the review process used and an appeals process to be used in the event claims are denied. The standards do not address the problem of retroactive denial of claims. It is expected that these standards will be put in place in Tennessee for at least a six-month period, after which time their effectiveness will be evaluated.

National level

At the national level, a number of groups are developing guidelines designed to satisfy not only managed care companies but also health care providers. Working together, guidelines were developed and published by the American Medical Association, Blue Cross and Blue Shield Association and the Health Insurance Association of America. Entitled "Guidelines for Health Benefits

Administration," they address both prior authorization and claims submission and review. These guidelines are currently under review for possible revision by the groups involved.

Most recently, a coalition of leading U.S. utilization review companies announced the formation of a national credentialing, organization and development of national voluntary review standards. The newly formed Utilization Review Accreditation Commission (URAC) will encourage voluntary compliance with the national review standards. The standards developed by URAC include guidelines that address such UR areas as: the role of UR organizations; the scope of inpatient UR review and responsibility of those parties involved; the process of notification and appeal of determinations; confidentiality of patient records, and qualifications of review company staff.

One group has developed draft model state legislation. The National Association of Private Psychiatric Hospitals (NAPPH) convened a special task force to draft the model bill, with the objective of "bringing about a means of establishing a level of uniformity and appropriateness in the conduct of utilization review." The model bill's requirements include: certification of review agents; provision for utilization review plan, including cri-

teria used in evaluating care; provision for process for appeals of denials by providers or patients; descriptions of requirements necessary to be a reviewer; use of physician-specialists to make the final determination of whether prescribed care is inappropriate; reasonable access to review agents during normal business hours, and confidentiality of patient records. The model bill also would prohibit reviewers from interviewing patients without approval of the admitting physician; and prohibit payments to reviewers based on number of denials.

Trends

A crystal ball is not necessary to see that the trend in health care is toward managed care — not just for medical and dental care, but for psychiatric, alcohol and drug abuse treatment as well. And key to any successful managed care program will be the cost-effective utilization of available services, together with the review of that utilization. Some form of regulation of the reviewers

— whether by legislation or guidelines — is the logical next step. The coming months will bring a clearer picture of just how such regulation will occur.

The Federation is working with those national organizations developing voluntary guidelines, as well as monitoring the possible need for state legislation. ■

*The newly formed
Utilization Review
Accreditation Commission
(URAC) will encourage
voluntary compliance
with the national
review standards.*

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HOUSE BILL NO. 1477
(DeMers, Svedjan, Clayburgh)

AN ACT to provide for utilization review of health care services; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. Purpose. The purpose of this Act is to:

1. Promote the delivery of quality health care in a cost-effective manner;
2. Assure that utilization review agents adhere to reasonable standards for conducting utilization review;
3. Foster greater coordination and cooperation between health care providers and utilization review agents;
4. Improve communications and knowledge of benefits among all parties concerned before expenses are incurred; and
5. Ensure that utilization review agents maintain the confidentiality of medical records in accordance with applicable laws.

SECTION 2. Definitions. For purposes of this Act, unless the context requires otherwise:

1. "Commissioner" means the commissioner of insurance.
2. "Enrollee" means an individual who has contracted for or who participates in coverage under an insurance policy, a health maintenance organization contract, a health service corporation contract, an employee welfare benefit plan, a hospital or medical services plan, or any other benefit program providing payment, reimbursement, or indemnification for health care costs for the individual or the individual's eligible dependents.
3. "Provider of record" means the physician or other licensed practitioner identified to the utilization review agent as having primary responsibility for the care, treatment, and services rendered to an individual.
4. "Utilization review" means a system for prospective and concurrent review of the necessity and appropriateness in the allocation of health care resources and services given or proposed to be given to an individual within this state. Utilization review does not include elective requests for clarification of coverage.

- a. An agency of the federal government; or
- b. An agent acting on behalf of the federal government, but only to the extent that the agent is providing services to the federal government.

SECTION 3. Certification. A utilization review agent may not conduct utilization review in this state unless the utilization review agent has certified to the commissioner in writing that the agent is in compliance with section 4 of this Act. Certification must be made annually on or before March first of each calendar year. In addition, a certification review agent must file the following information:

1. The name, address, telephone number, and normal business hours of the utilization review agent;
2. The name and telephone number of a person for the commissioner to contact; and
3. A description of the appeal procedures for utilization review determinations.

Any material changes in the information filed in accordance with this section must be filed with the commissioner within thirty days of the change.

SECTION 4. Minimum standards of utilization review agents. All utilization review agents must meet the following minimum standards:

1. Notification of a determination by the utilization review agent must be mailed or otherwise communicated to the provider of record or the enrollee or other appropriate individual within two business days of the receipt of the request for determination and the receipt of all information necessary to complete the review.
2. Any determination by a utilization review agent as to the necessity or appropriateness of an admission, service, or procedure must be reviewed by a physician or, if appropriate, a licensed psychologist, or determined in accordance with standards or guidelines approved by a physician or licensed psychologist.
3. Any notification of a determination not to certify an admission or service or procedure must include the principal reason for the determination and the procedures to initiate an appeal of the determination.
4. Utilization review agents shall maintain and make available a written description of the appeal procedure by which enrollees or the provider of record may seek review of determinations by the utilization review agent. The appeal procedure must provide for the following:
 - a. On appeal, all determinations not to certify an admission, service, or procedure as being necessary or appropriate must be

- b. Utilization review agents shall complete the adjudication of appeals of determinations not to certify admissions, services, and procedures no later than thirty days from the date the appeal is filed and the receipt of all information necessary to complete the appeal.
 - c. Utilization review agents shall provide for an expedited appeals process for emergency or life-threatening situations. Utilization review agents shall complete the adjudication of expedited appeals within forty-eight hours of the date the appeal is filed and the receipt of all information necessary to complete the appeal.
5. Utilization review agents shall make staff available by toll-free telephone at least forty hours per week during normal business hours.
 6. Utilization review agents shall have a telephone system capable of accepting or recording incoming telephone calls during other than normal business hours and shall respond to these calls within two working days.
 7. Utilization review agents shall comply with all applicable laws to protect confidentiality of individual medical records.
 8. Physicians or psychologists making utilization review determinations shall have current licenses from a state licensing agency in the United States.
 9. Utilization review agents shall allow a minimum of twenty-four hours following an emergency admission, service, or procedure for an enrollee or the enrollee's representative to notify the utilization review agent and request certification or continuing treatment for that condition.

However, the commissioner may find that the standards in this section have been met if the utilization review agent has received approval or accreditation by a utilization review accreditation organization.

SECTION 5. Utilization review agent violations - Penalty. Whenever the commissioner has reason to believe that a utilization review agent subject to this Act has been or is engaged in conduct that violates section 3 or 4 of this Act, the commissioner shall notify the utilization review agent of the alleged violation. The utilization review agent has thirty days from the date the notice is received to respond to the alleged violation.

If the commissioner believes that the utilization review agent has violated this Act, or is not satisfied that the alleged violation has been corrected, the commissioner shall conduct a hearing on the alleged violation in accordance with chapter 28-32.

If, after the hearing, the commissioner determines that the utilization review agent has engaged in violations of this Act, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon

1. Payment of a penalty of not more than ten thousand dollars for a violation that occurred with such frequency as to indicate a general business practice; or
2. Suspension or revocation of the authority to do business in this state as a utilization review agent if the utilization review agent knew that the act was in violation of this Act.

Ronald A. Larson
Speaker of the House

Lloyd B. Borchert
President of the Senate

W. R. Gilheath
Chief/Clerk of the House

Marianne Hansen
Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-second Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1477.

House Vote:	Yeas	89	Nays	1	Absent	16
Senate Vote:	Yeas	51	Nays	0	Absent	2

W. R. Gilheath
Chief/Clerk of the House

Received by the Governor at 11:36 A.M. on April 5, 1991.
Approved at 9:07 A.M. on April 8, 1991.

George A. Alverson
Governor

Filed in this office this 8th day of April, 1991,
at 2:25 o'clock P M.

[Signature]
Secretary of State

U R Kul

UTILIZATION REVIEW BILL

Section 1. The purpose of this act is to:

- (A) Promote the delivery of quality health care in a cost effective manner;
- (B) Assure that Utilization Review Agents adhere to reasonable standards for conducting Utilization Review;
- (C) Foster greater coordination and cooperation between health care providers and Utilization Review Agents;
- (D) Improve communications and knowledge of benefits among all parties concerned before expenses are incurred; and
- (E) Ensure that Utilization Review Agents maintain the confidentiality of medical records in accordance with applicable laws.

Section 2. As used in this act, the following words have the meaning indicated:

- (A) "Utilization Review" means a system for prospective and concurrent review of the necessity and appropriateness in the allocation of health care resources and services given or proposed to be given to an individual within this state. Utilization review shall not include elective requests for clarification of coverage.
- (B) "Utilization Review Agent" means any person or entity performing utilization review, except:
 - (1) An agency of the federal government or
 - (2) An agent acting on behalf of the federal government, but only to the extent that the agent is providing services to the federal government.
- (C) "Commissioner" means the Commissioner of Insurance.
- (D) "Enrollee" means an individual who has contracted for or who participates in coverage under an insurance policy, a health maintenance organization contract, an employee welfare benefit plan, a hospital or medical services plan or any

other benefit program providing payment, reimbursement or indemnification for health care costs for himself and/or his eligible dependants.

[Drafting Note: Where "hospital or medical services plan" is inappropriate, insert the appropriate statutory designation for Blue Plans in the state.]

- (E) "Provider of Record" means the physician or other licensed practitioner identified to the Utilization Review Agent as having primary responsibility for the care, treatment and services rendered to an individual.

Section 3. A Utilization Review Agent may not conduct utilization review in this state unless the Utilization Review Agent has certified to the Commissioner in writing that it is in compliance with Section 4 of this Act. Certification pursuant to this Section shall be made annually on or before March 1 of each calendar year. In addition, the following information is required to be filed:

- (A) Name, address, telephone number and normal business hours of the Utilization Review Agent;
- (B) Name and telephone number of a person for the Commissioner to contact; and
- (C) A description of the appeal procedures for utilization review determinations.

Any material changes in the information filed in accordance with this section shall be filed with the Commissioner within 30 days of the change.

[Drafting Note: Staff may need authority to agree to a prior approval or filing process.]

Section 4. All Utilization Review Agents must meet the following minimum standards:

- (A) Notification of a determination by the Utilization Review Agent shall be mailed or otherwise communicated to the provider of record and/or the Enrollee or other appropriate individual within two business days of the receipt of the request for determination, and the receipt of all information necessary to complete the review.
- (B) Any determination by a Utilization Review Agent as to the necessity or appropriateness of an admission, service or procedure shall be reviewed

by a physician or determined in accordance with standards or guidelines approved by a physician.

- (C) Any notification of a determination not to certify an admission or service or procedure shall include:
- (1) the principal reason for the determination, and
 - (2) the procedures to initiate an appeal of the determination.
- (D) Utilization Review Agents shall maintain and make available a written description of the appeal procedure by which enrollees or the provider of record may seek review of determinations by the Utilization Review Agent. The appeal procedure shall provide for the following:
- (1) On appeal, all determinations not to certify an admission, service, or procedure as being necessary or appropriate shall be made by a physician.
 - (2) Utilization Review Agents shall complete the adjudication of appeals of determinations not to certify admissions, services and procedures no later than 30 days from the date the appeal is filed, and the receipt of all information necessary to complete the appeal.
 - (3) Utilization Review Agents shall also provide for an expedited appeals process for emergency or life threatening situations. Utilization Review Agents shall complete the adjudication of such expedited appeals within 48 hours of the date the appeal is filed, and the receipt of all information necessary to complete the appeal.

[Drafting Note: Pay heed to the state definition of "physician", which may be inclusive of other health care providers.]

- (E) Utilization Review Agents shall make staff available by toll-free telephone, at least 40 hours per week during normal business hours.
- (F) Utilization Review Agents shall have a phone system capable of accepting and/or recording incoming phone calls during other than normal business hours, and shall respond to these calls within two working days.

- (G) Utilization Review Agents shall comply with all applicable laws to protect confidentiality of individual medical records.
- (H) Physicians making utilization review determinations shall have current licenses from a state licensing agency in the United States.
- (I) Utilization Review Agents shall allow a minimum of 24 hours following an emergency admission, service or procedure for an enrollee or his representative to notify the Utilization Review Agent and request certification or continuing treatment for that condition.

Provided, however, that the Commissioner may, find that the standards in this Section have been met if the Utilization Review Agent has received approval or accreditation by a utilization review accreditation organization.

Section 5. Whenever the Commissioner has reason to believe that a Utilization Review Agent subject to this act has been or is engaged in conduct which violates the provisions of Sections 3 or 4 of this act, the Commissioner shall notify the Utilization Review Agent of the alleged violation. The Utilization Review Agent shall have 30 days from the date the notice is received to respond to the alleged violation.

If the Commissioner believes that the Utilization Review Agent has violated this act, or is not satisfied that the alleged violation has been corrected, he shall conduct a hearing on the alleged violation, in accordance with the state's Administrative Procedures Act [citation to the appropriate code section].

If, after such hearing, the Commissioner determines that the Utilization Review Agent has engaged in violations of this Act, he shall reduce his findings to writing and shall issue and cause to be served upon the Utilization Review Agent a copy of such findings and an order requiring the Utilization Review Agent to cease and desist from engaging in such violations. The Commissioner may also, at his discretion, order:

- (A) Payment of a monetary penalty of not more than \$10,000 for a violation which occurred with such frequency as to indicate a general business practice; or
- (B) Suspension or revocation of the authority to do business in this state as a Utilization Review Agent if the Utilization Review Agent knew that it was in violation of this Act.

1992 LEGISLATIVE SESSION

Revision Date: 02/24/92 Department Affected: Commerce & Economic Development
 Title: Providing for the licensing and regulation of BRU: Occupational Licensing
private health care review agents. Component: Administration
 Sponsor: Reps. Boyer & Navarre
 Requestor: House HES COMPONENT SERIAL NO.

0	3	5	6
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Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 93	FY 94	FY 95	FY 96	FY 97	FY 98
PERSONAL SERVICES	65.9	65.9	65.9	65.9	65.9	65.9
TRAVEL	2.0	2.0	2.0	2.0	2.0	2.0
CONTRACTUAL	6.0	6.0	6.0	6.0	6.0	6.0
SUPPLIES	2.0	2.0	2.0	2.0	2.0	2.0
EQUIPMENT	10.2					
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	86.1	75.9	75.9	75.9	75.9	75.9

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

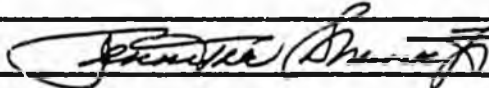
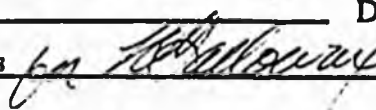
GENERAL FUND						
FEDERAL FUNDS						
OTHER - GF/PR	86.1	75.9	75.9	75.9	75.9	75.9
TOTAL	86.1	75.9	75.9	75.9	75.9	75.9

POSITIONS:

FULL-TIME	1	1	1	1	1	1
PART-TIME	1	1	1	1	1	1
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)
 The bill establishes a licensing program for private health care review agents that perform utilization review services. (Continued on attached)

Prepared By: Jennifer Strickler  Phone: 465-2144
 Division: Occupational Licensing Date: 02/24/92
 Approved by Commissioner: Glenn A. Olds 
 Agency: Commerce & Economic Development Date: _____

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

CONTINUATION OF FISCAL NOTE ANALYSIS - CSHB 269(HES)

Section 08.85.030 of the bill requires applicants to submit a utilization review plan consisting of fifteen (15) items listed in this section of the bill. Since each utilization review plan must be thoroughly reviewed to ensure compliance with Section 08.85.030, and to meet the enforcement timeline required by Section 08.85.070; this fiscal note requests funding authorization for the following:

Personal Services \$ 65.9

1 - Occupational Licensing Examiner I, Range 12A
GGU, 12 months (PFT), (\$39.0); and

1 - Investigator III, Range 18A, GGU
6 months (PPT), (\$26.9)

Travel \$ 2.0

This funding provides travel for the Investigator III to conduct investigations where necessary in preparation for the administrative proceedings described in Section 08.85.070.

Contractual Services \$ 6.0

This funding will provide for printing, advertising, communications, and other contractual costs.

Supplies \$ 2.0

This funding will provide daily operating supplies for the two positions shown above.

Equipment (one-time costs) \$ 10.2

This funding will provide one-time equipment costs for the two positions mentioned above.

TOTAL: \$ 86.1

***REVENUE

Revenue will be generated from licensing fees, however, until we have some idea of the number of individuals that would be affected by this legislation, we cannot estimate the amount of revenue that will be generated. It is the intent of the department however, that licensing fees will be set to cover the costs of the program to the extent possible.

HB

274

REPRESENTATIVE
JERRY MACKIE

P. O. BOX 73
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CHAIRMAN,
COMMUNITY & REGIONAL AFFAIRS COMMITTEE

VICE CHAIRMAN,
TRANSPORTATION COMMITTEE

Alaska State Legislature



WHILE IN JUNEAU
P. O. BOX V
JUNEAU, ALASKA 99811
(907) 485-4925

House of Representatives

SPONSOR STATEMENT

on

HB 274, an appropriation for the Chilkat Valley
Electrification Project.

The Chilkat Valley Electrification Project is a proposal to bring central power generation and a distribution system to residents of the Chilkat valley between 17 mile and the Alaska-Canada border. There are approximately 186 homes, businesses, and a school in the area that currently rely on individual generators to supply electricity needs.

Installation of a central generation plant within the area is the most feasible and economic solution for providing reliable central station energy. Geophysical features along the Alaska Highway, before 17 mile, preclude extension of transmission lines from an upgraded Haines electrical utility. In certain sections along the Alaska Highway, the combination of Chilkat River abutment on one side of the highway and mountain cliffs on the other would require transmission line burial within the roadway itself. This is a most expensive engineering solution and potentially conflicts with the transportation use (e.g. maintenance of the lines). Another complication of the Haines extension is the proximity to the Chilkat Bald Eagle Preserve.

HB 274 makes a \$1,000,000 appropriation of general funds to the Alaska Energy Authority for construction of a power plant and distribution system for the Chilkat Valley. Expenditure of the state funds is contingent on substantial contributions of funds by the Tlingit and Haida Regional Electrical Authority and the federal Rural Electrification Authority. In this latter regard, THREA is one of the

few electrical utilities that can qualify for the 2% federal rural electrification loan program.

This project would bring central station electrical service to the largest community of Alaskan residents who are without such service. It is desired by the residents of the area. It is a cost sharing project with private and federal participation. And, it is the most economical manner and method for installing this service.

CHILKAT VALLEY ELECTRIFICATION A JOINT PUBLIC-PRIVATE PROJECT

Tlingit-Haida Regional Electrical Authority (THREA) is requesting State assistance in a cost sharing project to further consolidate a group of Haines Highway communities into a regional power system currently served by THREA. These small communities (17-mile, Wells, Mosquito Lake, Covenant Life, Border, 33-mile) are collectively known as the "Chilkat Valley," and are all part of the Haines Borough. A long-established Native village, Klukwan, would also be included in the power system consolidation project, pending agreement by Klukwan.

This would be a joint private-sector/state/federal project, with each sector contributing financially. THREA would contribute \$550,000, the state would contribute \$1 million, and the federal government would provide \$3.7 million in 2% loans through the Rural Electrification Administration (REA). Total project cost is \$5.25 million. The project would involve construction of a 1 megawatt diesel-power plant, 29.5 miles of three-phase distribution lines, and 11.3 miles of single-phase distribution lines. The project would be operated and maintained by THREA.

As a non-profit regional electrical authority, THREA currently serves five rural Southeast communities; Hoonah, Angoon, Kake, Klawock and Kasaan. THREA is overseen by a Board of Commissioners with a representative from each community. Chilkat Valley and Klukwan would also be represented on the THREA Board. THREA also is negotiating with the City of Yakutat to manage, operate and maintain that municipal power system.

THREA is a stable, well managed system, and is highly regarded within the utility industry in Alaska and by REA. THREA has a strong equity level of nearly 20%, of which more than 20% is in cash or cash-equivalents.

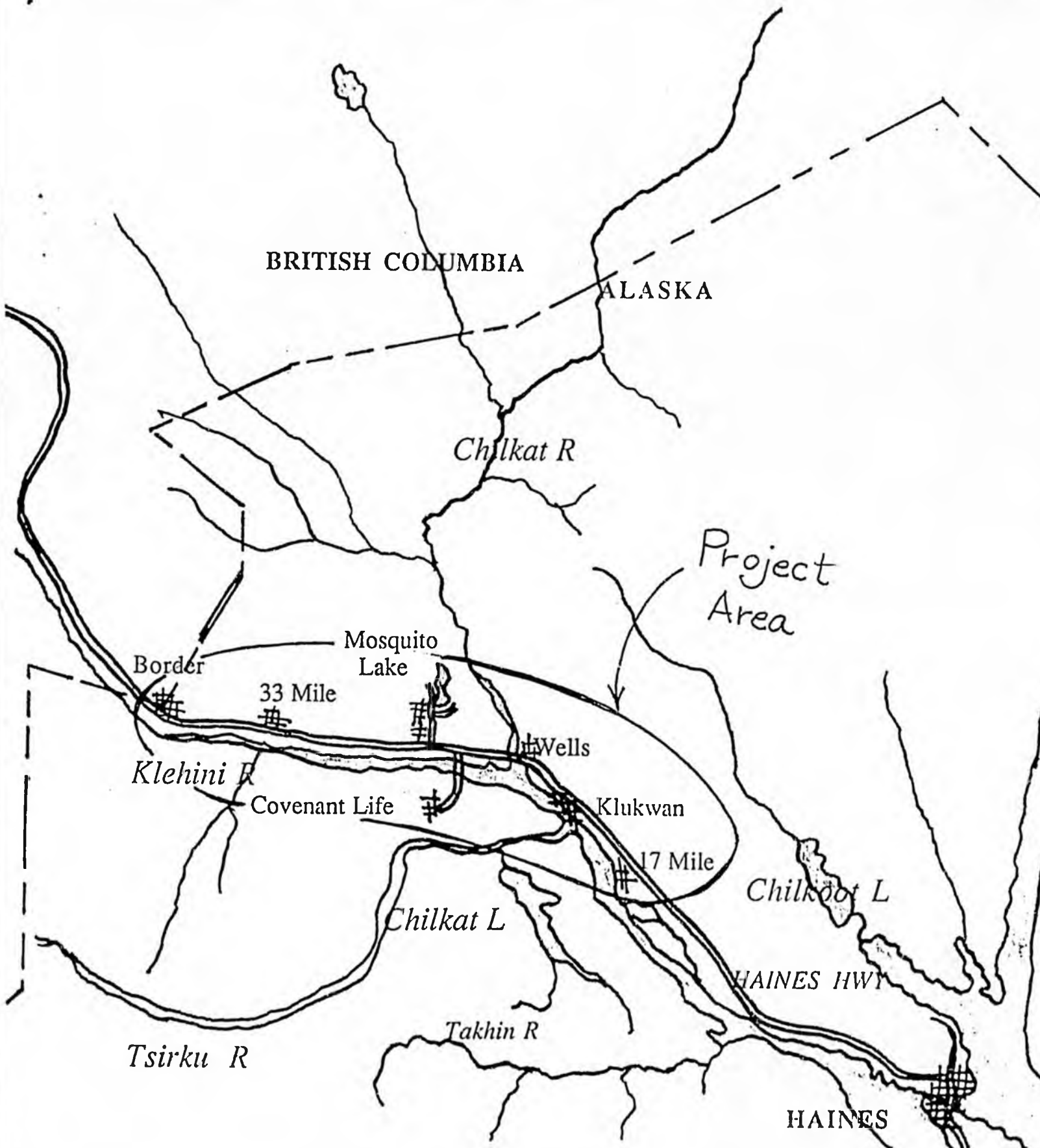
The Chilkat Valley, with 186 homes and businesses, is the largest community in Alaska that is unserved by central-station electric service. Most residents provide their own electricity with tiny generators in an inefficient and expensive manner. The residents of Chilkat Valley have expressed strong desire and support for this project to go forward. Klukwan, which has 68 homes and businesses, is located on the same highway and has an existing system that has experienced numerous operational difficulties in the past. Klukwan is not currently eligible for Power Cost Equalization.

The benefits of utility consolidation are well known. They include economy-of-scale, sharing of administrative burden, financial strength, sharing of risks, and decreased dependence on Power Cost Equalization. Families and businesses in Chilkat Valley would benefit from dependable, lower-cost power and would be freed from the tyranny of keeping small generators running. Air quality would be improved by eliminating numerous small and inefficient generators.

Other rural communities could likewise benefit from this type of consolidation, and some have made preliminary contact with THREA to investigate possible inclusion of their areas. THREA has long range plans to contact other communities who may be struggling with the severe problem of owning and operating a rural electric system.

Discussions on the Chilkat Valley and Klukwan consolidation are underway with the federal REA, which has indicated preliminary support. However, REA is in a process of change, and the 2% loan program may be curtailed or eliminated. THREA is anxious to move this project forward while the program is still intact.

THREA believes strongly in this project, is willing to commit its own limited funds toward construction, and is already underwriting up-front feasibility and design costs.



CHILKAT VALLEY PROJECT AREA



HAINES BOROUGH

P.O. Box 1209 • Haines, Alaska 99827 • (907) 766-2711

April 19, 1991

APR 21 1991

Honorable David Finkelstein
State House of Representatives
P.O. Box V
Juneau, AK 99811

Dear David:

I would like to express support for HB 274. This bill would fund the electrification project currently planned for the Haines Highway from 18 Mile to the border.

The area that would benefit from this project is the largest population group in the state who are without power, with 168 households and 18 commercial properties. An additional 64 households from the village of Klukwan might be included in the future. The future growth of this area is dependent on this power project being funded. I hope that this bill passes and funds are made available this year. Thank you for your time and attention to this matter.

Sincerely,

Frederick L. Shields, Mayor
Haines Borough

TO WHOM IT MAY CONCERN:

WE THE RESIDENTS OF THE HAINES HIGHWAY, CHILKAT LAKE ROAD AND MOSQUITO LAKE ROAD URGE THE ALASKA POWER AUTHORITY TO PROMOTE AND DEVELOP THE WALKER LAKE HYDRO PROJECT AND DO WHATEVER IS NECESSARY TO BRING POWER TO OUR COMMUNITY OF OVER 300 PEOPLE.

NAME (PRINT)	SIGNATURE	BOX #
6/29/89 Heidi Henricksen	Heidi Henricksen	852 (1)
" John MARQUAEDT	John Marquardt	955 (8)
" Geir Marquardt	Geir Marquardt	955
" JAMES MARQUARDT	James Marquardt	955 (2)
" Tula Marquardt	Tula Marquardt	
" FLOY E. McDowell	Floy E. McDowell	#1237 (2)
" DANIEL L. TURNER	Daniel L. Turner	826 (2) 25 miles
" Christine Turner	Christine Turner	826
" MICHAEL SLATER	Michael Slater	508 (2)
" SALLY SLATER	Sally Slater	508
" DAN EGOLF	Dan Egolf	491
" Rebecca Heston	Rebecca Heston	957
" Jim Heston	Jim Heston	957
" Jim & Deb STANFORD	Jim & Deb Stanford	1021 (5) kid
" Gregory B Rasmussen	GREGORY B RASMUSSEN	737 (1)
" Marianne C Rasmussen	Marianne C. Rasmussen	1
" Raymond & Emma Smith	Raymond & Emma Smith	
July 11/89 Gregory J. Laurson	Gregory J. Laurson	285
" Dena Chanin	Dena Chanin	285
" HANK JACQUET	Henry Jacquet	412
" Edith Jacquet	Edith Jacquet	412
" Bill Valentine	Bill Valentine	412
" MARY JANE Valentine	Mary Jane Valentine	412

TO WHOM IT MAY CONCERN:

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	NAME (PRINT)	SIGNATURE	BOX #
6-24	JACK S. PORTER	Jack Porter	33 1/2 MI HAINES
6/24	WEST D. SMITH	West D. Smith	"
"	AUTA SMITH	Auta Smith	"
6/24	BARBARA COX	Barbara Cox	Box 354
"	MARION E. LONG	Marion E. Long	Box 813
"	MERYL LONG	Meryl Long	Box 248
6/21/89	JOYCE SIMONS	Joyce Simons	Mile 33 1/2 HAINES
"	FRIEDT SIMONS	Friedt Simons	33 1/2 HAINES
"	MERRILL PALMER	Merrill Palmer	Mile 31
"	ALBERT ALLEN	Albert Allen	33 MILE
"	CINDY R. FISH	Cindy R. Fish	33 mile (3)
"	DAVID WILLS	David Wills	33 mile
"	TERRY HAPP	Terry Happ	33 mile (3)
"	ROBERT HUNT	Robert Hunt	40 MILE
"	MICHAEL BOLANDER	Michael Bolander	39 1/2 MILE
"	JUDY K. BOLANDER	Judy K. Bolander	39 1/2 mile (1)
"	SALLY J. RENO	Sally J. Reno	Box 1217
"	BONNIE J. POTTER	Bonnie J. Potter	Box 86 (3/4 mile)
"	JERRY L. POTTER	Jerry L. Potter	Box 86
6/26/89	MARCIA C. COLE	MARCIA C. COLE	Box 138 (32 mile) (2)
6/28/89	CLAYTON BEARD	Velma Beard	32 1/2 mile
"	HEATHER FREDRICKSON	Heather Fredrickson	27 mile
"	HEATHER FREDRICKSON	Heather Fredrickson	27 mile (1)

TO WHOM IT MAY CONCERN:

WE THE RESIDENTS OF THE HAINES HIGHWAY, CHILKAT LAKE ROAD AND MOSQUITO LAKE ROAD URGE THE ALASKA POWER AUTHORITY TO PROMOTE AND DEVELOP THE WALKER LAKE HYDRO PROJECT AND DO WHATEVER IS NECESSARY TO BRING POWER TO OUR COMMUNITY OF OVER 300 PEOPLE.

NAME (PRINT)	SIGNATURE	BOX #
6-23-59 JAMES H. COX	James H. Cox	354 Haines
" Janis M Dale	Janis M Dale	852 "
" Tom I Dale	Tom Dale	852 "
" Chuck Groves	Chuck Groves	1509 "
" Eleanor Liddell	Eleanor Liddell	1142 "
" WILLIAM SOUSA	William D. Sousa	1099 " (2)
" JODY SOUSA	Jody Sousa	1097 "
" JOHN L LAWSON	John Lawson	P.O. 142 " (3)
" Sean McLaughlin	Sean McLaughlin	Box 810 " (1)
" MARGARET McLaughlin	Margaret McLaughlin	Box 810 " (1)
" Leetta Roth	Leetta Roth	Box 349 " (2)
" John W. Roth	John W. Roth	Box 349 " (1)
" Christy L. Perkins	Christy L. Perkins	Box 354 " (4)
6-24-59 JAMES R. WOODRUFF	James Woodruff	Box 555
" Kathi Lapp	Kathi Lapp	Box 633
" James Mock	33 1/2 mile	Box 629
" MARGARET L. Mock	Margaret L. Mock	Box 629
" Judy Ewald	Judy Ewald	Box 1509
" Ronald E. Weishahn	Ronald E. Weishahn	Mile 40, Haines ?
" Carolyn Weishahn	Carolyn Weishahn	Mile 40, Haines Hwy.
" Adrian Avenaug & Bochart	39 mi. Haines Hwy.	(3)
" Robert McLaughlin	Robert McLaughlin	34 mile Haines Hwy, Box 845
" Beverly McLaughlin	Beverly McLaughlin	34 mile Haines Hwy, Box

TO WHOM IT MAY CONCERN:

WE THE RESIDENTS OF THE HAINES HIGHWAY, CHILKAT LAKE ROAD AND MOSQUITO LAKE ROAD URGE THE ALASKA POWER AUTHORITY TO PROMOTE AND DEVELOP THE WALKER LAKE HYDRO PROJECT AND DO WHATEVER IS NECESSARY TO BRING POWER TO OUR COMMUNITY OF OVER 300 PEOPLE.

NAME (PRINT)

SIGNATURE

BOX #

COVENANT LIFE COMMUNITY IS
ON 120 ACRES AND CURRENTLY
CONSIST OF APPROXIMATELY 60 PEOPLE
IN 11 HOUSES. THERE IS ALSO A
CHURCH / FELLOWSHIP HALL, A WOOD SHOP,
A MECHANICAL SHOP, A 15 ROOM
SCHOOL, A SEPARATE SCIENCE SCHOOL
BUILDING (ONE ROOM) AND A SMALL
OFFICE BUILDING (ONE ROOM). TWO
ADDITIONAL HOUSES ARE BEING
PLANNED FOR NEAR-TERM CONSTRUCTION.

T. S. LEWIS

T. S. Lewis

Box 1269

12/10/90 MEETING

send info

Ken & Marcie Scott Box 138, Haines X

Nick Casana + Roeyn Blake, Box 1023, Haines

Al Gilliam Box 124 Haines

Chiz and Erma Slater 33 mi - Box 546 Haines X

Deb Stanford PO Box 1021 Hns X

CJ NEWS

Fonnie Hedrick Box 630 Haines

MARINIA DARLING Box 289 HAINES X

WILLIAM D. SOUSA POB 1097 HAINES 99827 X

LEONARD V. BANASZAK P.O. Box 1269 HAINES AK 99827 X

Chris Turner P.O. Box 824 Haines X

33 mi
east

Kathi Lapp P.O. Box 633 Haines, AK 99827

Walter & Barbara Arg Box 982 Haines X

Sean McLaughlin Box 810 Haines

Has grant for
small hydro

« Doug Pahl Box 702 Haines X

Maud Jacquet Box 412 Hns of 99827

Eleanor Hiddell Box 1142 Haines AK 99827 X

767-5521 Debra Lawson - Box 142 Haines AK. 99827 X

620: Mary Jane Pellantini - 5377 Meander Way - Juneau 99801

HB

279

CS FOR HOUSE BILL NO. 279 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to reinsurance credit, reserves, securities, and investments of certain
2 insurers; and providing for an effective date."

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

4 * Section 1. AS 21.12.020(a) is amended to read:

5 (a) Credit for reinsurance transactions shall be allowed a domestic ceding insurer as
6 either an asset or a deduction from liability on account of reinsurance ceded only if the
7 reinsurance is ceded to an

8 (1) assuming insurer that is licensed to transact insurance or reinsurance in this
9 state;

10 (2) assuming insurer that is accredited as a reinsurer in this state; an accredited
11 reinsurer is one that

12 (A) submits to this state's jurisdiction, submits to this state's authority to
13 examine its books and records, [AND] is licensed to transact insurance or reinsurance in
14 at least one state, and files annually with the director a copy of the reinsurer's annual

statement filed with the insurance department of the reinsurer's state of domicile and a copy of the reinsurer's most recent audited financial statement; or

(B) in the case of a United States branch of an alien assuming insurer, is entered through, and licensed to transact insurance or reinsurance in, at least one state, files annually with the director a copy of its annual financial statement that is filed with the insurance regulatory agency of its state of domicile, and maintains at least \$20,000,000 in policyholder surplus; the surplus requirements in this subparagraph do not apply to reinsurance ceded and assumed under a pooling arrangement among insurers in the same holding company system;

(3) assuming insurer that is domiciled in a state, or in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance ceded substantially similar to those applicable under (1) and (2) of this subsection, the assuming insurer maintains a policyholder surplus of at least \$20,000,000, and the assuming insurer submits to the authority of this state to examine its books and records; the surplus requirements in this paragraph do not apply to reinsurance ceded and assumed under a pooling arrangement among insurers in the same holding company system;

(4) assuming alien insurer that

(A) maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, and their assigns and successors in interest, that conforms to the following requirements:

(i) the trust shall be established in a form approved by the director; the trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States; the trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns, and successors in interest; the trust and the assuming insurer are subject to examination as determined by the director; the trust must remain in effect for so long as the assuming insurer has outstanding liabilities due under the reinsurance agreements subject to the trust;

(ii) on or before March 1 of each year the trustees shall report in writing to the director on the balance of the trust and list the trust's investments at the end of the preceding year, and shall certify the date of termination of the

1 trust, if so planned, or certify that the trust does not expire before the following
2 December 31;

3 (iii) in the case of a single assuming insurer, the trust shall consist
4 of trust money representing the assuming insurer's liabilities attributable to
5 business written in the United States and, in addition, include a trust surplus of not
6 less than \$20,000,000; the single assuming insurer shall make available to the
7 director an annual certification of the insurer's solvency by the insurer's
8 domiciliary regulator and by an independent public accountant;

9 (iv) in the case of a group of individual unincorporated insurers,
10 the trust shall consist of trust money representing the group's liabilities attributable
11 to business written in the United States and, in addition, include a trust surplus not
12 less than \$100,000,000 [~~\$50,000,000~~]; the group shall make available to the
13 director an annual certification of the solvency of each of the individual
14 unincorporated insurers by the group's domiciliary regulator and by an
15 independent certified public accountant;

16 (v) in the case of a group of incorporated insurers under
17 common administration that complies with the reporting requirements
18 contained in (ii) of this subparagraph, that has continuously transacted an
19 insurance business outside the United States for at least three years
20 immediately before making application for accreditation, that submits to this
21 state's authority to examine its books and records and bears the expense of
22 the examination, and that has aggregate policyholders' surplus of
23 \$10,000,000,000, the trust shall be in an amount equal to the group's several
24 liabilities attributable to business ceded by United States ceding insurers to
25 a member of the group under reinsurance contracts issued in the name of the
26 group, and the group shall maintain a joint trustee surplus, of which
27 \$100,000,000 shall be held jointly for the benefit of United States ceding
28 insurers of a member of the group as additional security for the group's
29 liabilities, and each member of the group shall make available to the director
30 an annual certification of the member's solvency by the member's domiciliary
31 regulator and the member's independent certified public accountant; and

1 (B) reports annually to the director information substantially the same as
2 that required to be reported on the National Association of Insurance Commissioners'
3 annual statement form by licensed insurers to enable the director to determine the
4 sufficiency of the trust fund;

5 (5) assuming insurer that does not meet the requirements of (1) - (4) of this
6 subsection, but only with respect to the insurance of risks located in jurisdictions where the
7 reinsurance is required by applicable law or regulation of that jurisdiction.

8 * Sec. 2. AS 21.12.020(c) is amended to read:

9 (c) A reduction from liability, for reinsurance ceded to an assuming insurer not meeting
10 the requirements of (a) of this section, shall be allowed in an amount not exceeding the liabilities
11 carried by the ceding insurer. The reduction shall be equal to the amount of money held by or
12 on behalf of the ceding insurer, including money held in trust for the ceding insurer, under a
13 reinsurance contract with the assuming insurer as security for the payment of obligations under
14 it. If the security is held in the United States subject to withdrawal solely by, and under the
15 exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States
16 financial institution, the security must be in the form of

17 (1) cash;

18 (2) securities listed by the Securities Valuation Office of the National Association
19 of Insurance Commissioners that qualify as admitted assets under AS 21.21;

20 (3) clean, irrevocable, unconditional letters of credit that contain an evergreen
21 clause issued or confirmed by a qualified United States financial institution not later than
22 December 31 in the year for which filing is made, and in the possession of the ceding
23 company on or before the filing date of the ceding company's annual statement; letters of
24 credit meeting applicable standards of issuer acceptability as of the dates of their issuance or
25 confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to
26 meet applicable standards of issuer acceptability, continue to be acceptable as security until their
27 expiration, extension, renewal, modification, or amendment, whichever occurs first; or

28 (4) other security acceptable to and approved in advance by the director.

29 * Sec. 3. AS 21.12.020 is amended by adding a new subsection to read:

30 (g) An insurer may receive credit for reinsurance transactions if the reinsurance
31 agreement meets all applicable requirements established by the director. The director may

1 establish requirements for reinsurance agreements by regulation.

2 * Sec. 4. AS 21.18.100 is amended to read:

3 Sec. 21.18.100. INCREASE OF [INADEQUATE] RESERVES. If loss experience shows
4 that an insurer's loss reserves or reserves for incurred but not reported losses, however
5 computed or estimated, are inadequate, the director shall require the insurer to maintain loss
6 reserves or reserves for incurred but not reported losses in the increased amount needed to
7 make them adequate.

8 * Sec. 5. AS 21.18.130 is amended to read:

9 Sec. 21.18.130. VALUATION OF OTHER SECURITIES. (a) Securities, other than
10 those referred to in AS 21.18.120 or AS 21.21.260, held by an insurer shall be valued, in the
11 discretion of the director, at [THEIR MARKET VALUE, OR AT] their appraised value as
12 determined by a competent appraisal acceptable to the director, or at prices determined by
13 the director as representing their fair market value, all consistent with the current method for the
14 valuation of a security formulated or approved by the National Association of Insurance
15 Commissioners.

16 (b) Preferred or guaranteed stocks or shares, while paying full dividends, may be carried
17 at a fixed value in lieu of market value at the discretion of the director and consistent [IN
18 ACCORDANCE WITH] the method of computation the director approves.

19 * Sec. 6. AS 21.18.130 is amended by adding a new subsection to read:

20 (c) Securities referred to in AS 21.21.260 at any time after the date of investment by an
21 insurer shall be valued on that insurer's quarterly and annual statement at an amount that may
22 not exceed the larger of the following amounts:

23 (1) 100 percent of the market value of the real property or leasehold securing the
24 same as determined by a competent appraisal acceptable to the director or at values determined
25 by the director as representing fair market value of the real property or leasehold;

26 (2) the amount of insurance or guaranty of the loan by the United States or by
27 an agency or instrumentality of the United States; or

28 (3) the amount provided in (1) of this subsection plus the amount by which the
29 excess of the loan over the amount provided in (1) of this subsection is insured or guaranteed by
30 the United States or by an agency or instrumentality of the United States.

31 * Sec. 7. AS 21.18.140(b) is amended to read:

1 (b) Other real property held by an insurer shall [MAY NOT] be valued at the lower cost
2 or [AN AMOUNT IN EXCESS OF] fair market value as determined by recent appraisal. If
3 valuation is based on an appraisal more than three years old, the director may call for and require
4 a new appraisal in order to determine fair market value. The reasonable cost of the appraisal
5 shall be borne by the insurer.

6 * Sec. 8. AS 21.21.050 is amended to read:

7 Sec. 21.21.050. DIVERSIFICATION OF INVESTMENTS. An insurer shall invest in
8 or hold as admitted assets categories of investments only within applicable limits as follows:

9 (1) an insurer may not, except with the consent of the director, have a
10 combination of investments in or loans upon the security of the obligations, property, or securities
11 of any one person, or insurer, aggregating an amount exceeding five percent of the insurer's
12 assets; this restriction does not apply to

13 (A) general obligations of the United States; or

14 (B) general obligations of a state of the United States that is not insolvent
15 and whose securities are not then in default; or

16 (C) policy loans made under AS 21.21.210;

17 (2) an insurer may not invest in or hold at any one time more than 10 percent of
18 the outstanding voting stock of a corporation, except with the consent of the director given with
19 respect to voting rights of preference stock during default of dividends; this paragraph does not
20 apply to stock of a wholly-owned subsidiary of the insurer or to controlling stock of an insurer
21 acquired under AS 21.21.170;

22 (3) an insurer, other than title insurer, shall invest and maintain invested funds
23 in an amount not less than the higher of

24 (A) the minimum basic capital for stock insurers or basic guarantee
25 surplus for mutual insurers and additional surplus for both stock and mutual insurers
26 required under AS 21.09.070; or

27 (B) 50 percent of the total capital and surplus shown on the most recent
28 statement of the insurer's financial condition as filed with the director under
29 AS 21.09.200 only in

30 (i) cash;

31 (ii) the fully insured portion of bank deposits when the insurance

1 is provided by a solvent agency of the United States government or by collateral
2 in the form of the securities provided for under AS 21.21.060 and 21.21.080; or

3 (iii) the securities provided for under AS 21.21.060 and 21.21.080;

4 (4) a life insurer shall invest and keep invested its funds in an amount not less
5 than the reserves under its life insurance policies and annuity contracts, other than variable
6 annuities, in force, in cash or the securities or investments provided for under this chapter;

7 (5) except with the director's written consent, an insurer may not have invested
8 at any one time more than 20 percent of its assets in the class of securities described in
9 AS 21.21.140, exclusive of obligations of public utilities;

10 (6) an insurer may invest and have invested at any one time in aggregate amount
11 not more than 10 percent of its assets in all stocks under AS 21.21.160, 21.21.170, and
12 21.21.200, except with the director's written consent; determination of the amount that an insurer
13 has invested in common stocks for the purposes of this paragraph is based on the cost of the
14 stocks to the insurer; this paragraph does not apply to stock of a controlled or subsidiary
15 insurance corporation or other corporation held under AS 21.21.170 and 21.21.180;

16 (7) except with the director's written consent, an insurer may not have invested
17 at any one time more than 10 percent of its assets in any one of the class of securities described
18 in AS 21.21.100, 21.21.150, 21.21.190, [OR] 21.21.250(c), or 21.21.260.

19 * Sec. 9. AS 21.90.900 is amended by adding a new paragraph to read:

20 (29) "evergreen clause" means a contract clause that provides that the contract is
21 automatically renewed unless notice to the contrary is given by one of the parties to the contract.

22 * Sec. 10. This Act takes effect immediately under AS 01.10.070(c).

**DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

P.O. Box Y, Juneau, Alaska 99811
(907) 465-3867 or 465-2450
FAX (907) 465-2029

Deliveries to: 240 Main Street
Court Plaza, Room 500
Mail Stop 3101

MEMORANDUM

April 22, 1991

SUBJECT: Insurance clean-up changes - (CSHB 279(L&C))
TO: Representative David Finklestein
FROM: Michael F. Ford *M F*
Legislative Counsel

The attached draft of CSHB 279(L&C) contains several changes recommended by the division of insurance. These changes are as follows:

1. The deletion of the term "general agent" in sec. 3. This change is consistent with the other changes in the CS.
2. Insertion of an oath requirement in Sec. 21.06.150, enacted in sec. 8, and the deletion of the requirement of a presumption of approval for certain examination reports.
3. In Sec. 21.27.340, amended in sec. 48, the deletion of the requirement that only in state licensee's have a license in each place of business.
4. In Sec. 21.28.020, enacted in sec. 57, the addition of "and" at the end of paragraph 3. This clearly requires the contract to include all provisions in this subsection.

Please contact me if you have any questions regarding the work draft.

MFF:pl
91-288.plm

Enclosure

To: House Labor and Commerce
Committee

From: Division of Insurance
David J. Walsh, Director

Date: April 8, 1991

Subject: 1991 Legislative Package

The Division of Insurance is requesting the introduction and passage of several bills during the 1991 legislative session. Most of these requests come directly from our need to meet the requirements for accreditation through the National Association of Insurance Commissioners.

The National Association of Insurance Commissioners (NAIC) has adopted a program of accreditation of state insurance departments to ensure an acceptable level of regulation in all of the 50 states. This program consists of a review of the statutes and operations of each state on a periodic basis by a team of examiners working for the NAIC. The team has been given a set of standards to use in evaluating the regulatory programs in each state and part of these standards include laws adopted by the NAIC as model laws that address the regulation of insurer solvency. The bills we have requested come entirely from these model laws and are necessary to our goal of becoming an accredited state under the NAIC program.

Managing General Agents Bill - This bill does two things: 1) amends the term "general agent" to the more correct term "managing general agent", and 2) adopts NAIC model law on Managing General Agents. The change in terms is being requested to convert the term currently used in the statute to the term that is used in industry and in the NAIC model law when referring to people with the responsibilities of managing some part of an insurer. In addition to changing the term used in the statute, the bill exempts the manager of a United States branch of an alien insurer from licensure as a managing general agent (MGA), allows the director to require bonds or errors and omissions insurance policies for licensed MGAs, requires a written contract between the MGA and the company for which he is given authority, sets out the ownership of claim files, sets out actions of the MGA which are prohibited, sets out requirements of the insurer when using MGAs, and defines the term MGA for licensing purposes.

Examination Bill - This bill adopts the requirements of the Model Law on Examinations as adopted by the NAIC. The model law is one of the accreditation standards and is necessary for our success in becoming an accredited state. The bill adopts rules on scheduling and identifying licensees for examination, requires that the state only accept examination reports prepared by accredited states after December 31, 1993, allows the director to examine any business or person that is necessary or material to completing an examination, requires that insurer accounts be kept according to the Accounting Practices and Procedures Manual of the NAIC, sets out procedures for calling an examination and assigning examiners, sets out procedures for filing an examination report with the office of the director of insurance, requires that the director and chief executive officer of the person being examined submit affidavits stating that the report has been received and reviewed, and gives relief to examiners from civil action for libel or slander in performing their duties when a suit is not substantially justified.

Reinsurance Intermediary Bill - This bill adopts the requirements of the Model Law on Reinsurance Intermediary Brokers and Managers as adopted by the NAIC. The model law is one of the accreditation standards and is necessary for our success in becoming an accredited state. The bill adopts rules for licensing of persons acting as reinsurance intermediaries, requires a written contract with specific information between a reinsurance intermediary broker and the insurer, requires the broker to keep records of each transaction for 10 years, gives requirements of an insurer using a reinsurance intermediary broker, requires a written contract with specific information between a reinsurance intermediary manager and the insurer, requires the manager to keep records of each transaction for 10 years, specifies what the manager is prohibited from doing, gives requirements of an insurer using a reinsurance intermediary manager, and defines reinsurance intermediary broker and manager for licensing purposes.

Miscellaneous Bill regarding reinsurance credit, reserves, securities and investments - This bill adopts several small changes that are required under the NAIC accreditation standards in order for the state of Alaska to meet the requirements. The bill requires that accredited reinsurers file statutory financial statements and audited financial statements annually with the director, changes the minimum amount to be held in trust by a group of individual unincorporated insurers who wish to be an authorized reinsurer in Alaska from \$50,000,000 to \$100,000,000, gives requirements for accreditation for reinsurers who are a group of incorporated insurers under common administration, requires that a letter of credit issued to guarantee reinsurance credit from a reinsurer must be automatically renewable and be in possession of the ceding company before the filing of the annual statement with the director, gives the director the authority to require increases in reserves by the insurer for incurred but not reported losses, gives rules for valuing mortgage securities on financial statements, requires real property to be valued at the lower of cost or market, and provides a limit on investments in mortgage loans of 10% of insurer's assets.

H B

2 8 0

CS FOR HOUSE BILL NO. 280 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR & COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to investments in subsidiaries and regulation of insurance holding
2 companies; and providing for an effective date."

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

4 * Section 1. AS 21.21.180 is repealed and reenacted to read:

5 Sec. 21.21.180. INVESTMENTS IN SUBSIDIARIES. (a) A domestic insurer, either
6 alone or in cooperation with one or more persons, may organize or acquire one or more
7 subsidiaries engaged in the following kinds of business:

- 8 (1) insurance business authorized by this title;
- 9 (2) acting as an insurance broker or as an insurance agent for the insurer's parent
10 or for any of the insurer's parent's insurer subsidiaries and controlled affiliates;
- 11 (3) investing, reinvesting, or trading in securities for the insurer's own account,
12 that of the insurer's parent, a subsidiary of the insurer's parent, an affiliate, or a subsidiary;
- 13 (4) management of an investment company subject to or registered under 15
14 U.S.C. 80 (Investment Company Act of 1940, as amended), including related sales and services;

1 (5) acting as a broker-dealer subject to or registered under 15 U.S.C. 77 - 78
2 (Securities Exchange Act of 1934, as amended);

3 (6) rendering investment advice to a government, government agency, corporation,
4 or other organization or group;

5 (7) rendering other services related to the operations of an insurance business
6 including actuarial, loss prevention, safety engineering, data processing, accounting, claims,
7 appraisal, and collection services;

8 (8) ownership and management of assets that the parent corporation could own
9 or manage;

10 (9) acting as administrative agent for a governmental instrumentality that is
11 performing an insurance function;

12 (10) financing insurance premiums, agents, and other forms of consumer
13 financing;

14 (11) any other business activity determined by the director in writing using the
15 standards set out in this section to be reasonably ancillary to an insurance business; or

16 (12) owning a corporation engaged or organized to engage exclusively in one or
17 more of the businesses specified in this section.

18 (b) A domestic insurer may also

19 (1) invest in securities described in AS 21.21.140 - 21.21.160 of one or more
20 subsidiaries in amounts that do not exceed the lesser of 10 percent of the insurer's assets or 50
21 percent of the insurer's surplus regarding policyholders, if, after the investment, the insurer's
22 surplus regarding policyholders will be reasonable in relation to the insurer's outstanding
23 liabilities and adequate to the insurer's financial needs; in calculating the amount of the
24 investment, investment in domestic or foreign insurance subsidiaries shall be excluded, but the
25 following must be included:

26 (A) total net moneys or other consideration expended and all obligations
27 assumed in the acquisition or formation of a subsidiary, including all organizational
28 expenses and contributions to capital and surplus of the subsidiary if represented or not
29 represented by the purchase of capital stock or issuance of other securities; and

30 (B) all amounts expended in acquiring additional securities described in
31 AS 21.21.140 - 21.21.160 and all contributions to the capital or surplus of a subsidiary

1 subsequent to the subsidiary's acquisition or formation;

2 (2) invest an amount in securities described in AS 21.21.140 - 21.21.160 of one
3 or more subsidiaries engaged or organized to engage exclusively in the ownership and
4 management of assets authorized as an investment for the insurer if that subsidiary agrees to limit
5 the subsidiary's investment in an asset in a way that the investment does not cause the amount
6 of the total investment of the insurer to exceed the investment limitations specified in (1) of this
7 subsection or AS 21.21.050; for the purpose of this paragraph, the total investment of the insurer
8 includes:

9 (A) a direct investment by the insurer in an asset; and

10 (B) the insurer's proportionate share of an investment in an asset by a
11 subsidiary of the insurer calculated by multiplying the amount of the subsidiary's
12 investment by the percentage of the ownership in the subsidiary; or

13 (3) with the approval of the director, invest a greater amount in those securities
14 described in AS 21.21.140 - 21.21.160 of one or more subsidiaries if after the investment the
15 insurer's surplus regarding policyholders is reasonable in relation to the insurer's outstanding
16 liabilities and adequate to the insurer's financial needs.

17 (c) A domestic insurer shall determine if an investment meets the applicable requirements
18 under (b) of this section before the investment is made by calculating the applicable investment
19 limitations as though the investment had already been made under AS 21.21.020(d) and by taking
20 into account the then outstanding principal balance on all previous investments under
21 AS 21.21.140 - 21.21.160, calculated at statement value, giving effect to a return of capital
22 invested and not giving effect to dividends.

23 (d) If an insurer ceases to control a subsidiary, it shall dispose of an investment in the
24 subsidiary made under this section within three years from the time of the cessation of control
25 or within a further time that the director prescribes unless, at any time after the investment has
26 been made, the investment meets the requirements for investment under another section of this
27 chapter and the insurer has notified the director regarding the application of another section of
28 this chapter to the investment.

29 * Sec. 2. AS 21.21.350(b) is amended to read:

30 (b) Before completing investment activities with or through affiliated or controlling
31 persons or completing a transaction of the type listed in AS 21.21.180, an insurer shall fully

1 disclose and document in writing to its board of directors, the committee or committees having
2 responsibility for reviewing the insurer's financial condition under AS 21.22.105(d) or (e),
3 and the committee authorized by the board and charged with the supervision or making of the
4 investment or loan involved, the material facts concerning the affiliation or circumstances of
5 control. An insurer may not complete an investment activity with or through affiliated or
6 controlling persons [,] unless the board of directors, by specific board action, authorizes the
7 transaction and concludes that the transaction complies with (c) and (d) of this section. The vote
8 of the board authorizing the transaction must be recorded in the minutes, on a
9 member-by-member basis, and must indicate each vote approving, disapproving, or abstaining
10 on the transaction.

11 * Sec. 3. AS 21.22.010 is amended by adding a new subsection to read:

12 (i) A transaction that requires approval by the director under (b) of this section is not
13 subject to the requirements of AS 21.22.065.

14 * Sec. 4. AS 21.22.060 is amended by adding new subsections to read:

15 (k) An insurer subject to registration under (a) of this section shall register annually by
16 April 1 of each year for the previous calendar year, unless for good cause shown, the director
17 extends the time for registration. The director may require an insurer authorized to do business
18 in the state, that is a member of a holding company system and that is not subject to registration
19 under (a) of this section, to furnish a copy of the registration statement, the summary specified
20 in (l) of this section, or other information filed by the insurer with the insurance regulatory
21 authority of the insurer's state of domicile.

22 (l) An annual registration statement filed under (k) of this section must contain a
23 summary outline of items in the current registration statement representing changes from the prior
24 registration statement.

25 * Sec. 5. AS 21.22 is amended by adding a new section to read:

26 Sec. 21.22.065. ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE
27 COVERED. (a) Unless exempted in (j) of this section, this section applies to any acquisition
28 in which there is a change in control of an insurer authorized to do business in this state.

29 (b) If an acquisition violates the standards established in (d) and (f) of this section, the
30 director may enter an order requiring an involved insurer to cease doing business in this state
31 with respect to the line or lines of insurance involved in the violation or denying the application

1 of an acquired or acquiring insurer for a license to do business in this state. Within 30 days of
2 the issuance of the order, the involved insurer may submit a plan to remedy the anticompetitive
3 effect of the acquisition within a reasonable time. Based upon a plan or other information
4 submitted, the director shall specify the conditions, if any, under a time period during which the
5 aspects of the acquisition causing a violation of the standards of this section would be remedied
6 and the order vacated or modified. The order is stayed by the insurer's submission of a plan and
7 shall be rescinded if the acquisition is not consummated.

8 (c) An acquisition subject to (a) of this section is subject to an order under (b) of this
9 section unless the acquiring person files a preacquisition notification and the waiting period has
10 expired. The person to be acquired may file a preacquisition notification. A preacquisition
11 notification by a person to be acquired may not be filed in place of a preacquisition filing by an
12 acquiring person. The preacquisition notification

13 (1) must be in a form and contain the information prescribed in regulations
14 adopted by the director relating to insurance markets that, under (j)(5) of this section, cause the
15 acquisition not to be exempt from the provisions of this section; the director may require
16 additional material and information the director considers necessary to determine whether the
17 proposed acquisition, if consummated, would violate the competitive standards of this section;

18 (2) may include an opinion of an economist regarding the competitive effect of
19 the acquisition in this state accompanied by a summary of the education and experience
20 indicating the economist's ability to render an informed opinion; and

21 (3) must be followed by a waiting period beginning on the date of receipt by the
22 director of a preacquisition notification and ending on the earlier of the 30th day after the date
23 of receipt or termination of the waiting period by the director unless, before the end of the
24 waiting period, the director requires the submission of additional information relevant to the
25 proposed acquisition, in which event the waiting period shall end on the 30th day after receipt
26 of the additional information by the director or termination of the waiting period by the director,
27 whichever is earlier.

28 (d) The director may enter an order under (b) of this section regarding an acquisition if

29 (1) the insurer fails to file adequate information in compliance with (c) of this
30 section;

31 (2) there is substantial evidence that the acquisition may substantially lessen

1 competition, create a monopoly in a line of insurance in this state or significantly increase an
2 insurer's market concentration; there is substantial evidence that there is a significant trend
3 toward increased concentration when

4 (A) the aggregate market share of any grouping of the largest insurers in
5 the market, from the two largest to the eighth largest, has increased by seven percent or
6 more of the market over a period of time extending from any base year five to 10 years
7 before the acquisition up to the time of the acquisition; or

8 (B) the following, if found, is considered prima facie evidence of violation
9 of this subsection:

10 (i) there is a significant trend toward increased concentration in the
11 market, as determined under (A) of this paragraph;

12 (ii) one of the insurers involved is one of the insurers in a
13 grouping of large insurers showing the requisite increase in the market share; and

14 (iii) another involved insurer's market is two percent or more;

15 (3) after considering an acquisition covered under (a) of this section involving two
16 or more insurers competing in the same market there is evidence of a violation of the competitive
17 standards contained in the following tables:

18 (A) if the market is highly concentrated, the involved insurers possess the
19 following shares of the market:

	Insurer A	Insurer B
20	4 percent	4 percent or more
21	10 percent	2 percent or more
22	15 percent	1 percent or more;

23
24 (B) if the market is not highly concentrated, the involved insurers possess
25 the following shares of the market:

	Insurer A	Insurer B
26	5 percent	5 percent or more
27	10 percent	4 percent or more
28	15 percent	3 percent or more
29	19 percent	1 percent or more.

30
31 (e) A percentage not shown in the tables contained in (d) of this section may be

1 interpolated proportionately to the percentage that is shown. The insurer with the largest share
2 of the market shall be considered Insurer A. If more than two insurers are involved, a market
3 share that exceeds the total of the two columns in the table by the insurers involved is prima
4 facie evidence of violation of the competitive standards contained in (d) of this section.

5 (f) Even though an acquisition is not prima facie violative of the competitive standard
6 under (d) of this section, the director may establish the requisite anticompetitive effect based
7 upon other substantial evidence. Even though an acquisition is prima facie violative of the
8 competitive standard under (d) of this section, a party may establish the absence of the requisite
9 anticompetitive effect based upon other substantial evidence. Relevant factors in making a
10 determination under (d) of this section include market shares, volatility of ranking of market
11 leaders, number of competitors, concentration, trend of concentration in the industry, and ease
12 of entry into and exit out of the market. The burden of showing prima facie evidence of a
13 violation of the competitive standards rests with the director.

14 (g) An order may not be entered under (b) of this section if

15 (1) the acquisition will yield substantial economy of scale or economy in resource
16 utilization that cannot be achieved in another way and the public benefits that would arise from
17 the economy exceed the public benefits that would arise from not lessening competition; or

18 (2) the acquisition will substantially increase the availability of insurance and the
19 public benefits of the increase exceed the public benefits that would arise from not lessening
20 competition.

21 (h) A person who violates a cease and desist order of the director under (b) of this
22 section may, after hearing and on order of the director, be subject to the suspension or revocation
23 of a license, a civil penalty not to exceed \$10,000 for each day of violation, or both.

24 (i) An insurer or other person who fails to make a filing required by (c) of this section
25 and who also fails to demonstrate a good faith effort to comply with filing requirements shall be
26 subject to a fine of not more than \$50,000.

27 (j) This section does not apply to

28 (1) an acquisition subject to approval or disapproval by the director under
29 AS 21.22.010;

30 (2) a purchase of securities solely for investment purposes if the securities are not
31 used by voting or otherwise to cause or attempt to cause the substantial lessening of competition

1 in an insurance market in this state; if a purchase of securities for investment purposes results
2 in a presumption of control under AS 21.22.200(2), it is not solely for investment purposes unless
3 the insurance supervisory official of the insurer's state of domicile accepts a disclaimer of control
4 or affirmatively finds that control does not exist and the disclaimer action or affirmative finding
5 is communicated by the domiciliary commissioner to the director;

6 (3) the acquisition of a person by another person when both persons are neither
7 directly nor through affiliates primarily engaged in the business of insurance if preacquisition
8 notification is filed with the director under (c) of this section 30 days before the proposed
9 effective date of the acquisition; however, the preacquisition notification is not required for
10 exclusion if the acquisition would otherwise be excluded under this section;

11 (4) the acquisition of an already affiliated person;

12 (5) an acquisition if, as an immediate result of the acquisition,

13 (A) the combined market share of the involved insurers would not exceed
14 five percent in a market;

15 (B) there would not be an increase in a market share of the larger writer;
16 or

17 (C) the combined market share of the involved insurers would not exceed
18 12 percent in a market and the market share of the larger writer would not increase by
19 more than two percent in a market;

20 (6) an acquisition for which a preacquisition notification would be required under
21 this section due solely to the resulting effect on the ocean marine insurance line of business; or

22 (7) an acquisition of an insurer whose domiciliary commissioner affirmatively
23 finds that the insurer is in a failing condition, there are no feasible alternatives to improving this
24 condition, the public benefits of improving the insurer's condition through the acquisition exceed
25 the public benefits that would arise from not lessening competition, and these findings are
26 communicated by the domiciliary commissioner to this state's director.

27 (k) AS 21.22.140 - 21.22.160 and 21.22.180 do not apply to acquisitions covered under
28 this section.

29 * Sec. 6. AS 21.22.080 is amended to read:

30 Sec. 21.22.080. TRANSACTIONS WITH AFFILIATES. Material transactions by
31 registered insurers with their affiliates are subject to the following standards:

- 1 (1) the terms shall be fair and reasonable;
- 2 (2) charges or fees for services performed shall be reasonable;
- 3 (3) expenses incurred and payment received shall be allocated to the insurer
- 4 in conformity with customary insurance accounting practices consistently applied;
- 5 (4) the books, accounts, and records of each party shall be maintained so as to
- 6 disclose clearly and accurately the precise nature and details of the transactions including
- 7 accounting information that is necessary to support the reasonableness of the charges or
- 8 fees to the respective parties; and
- 9 (5) [(3)] the insurer's surplus as regards policyholders following any dividends
- 10 or distributions to shareholder affiliates or performance under a material transaction with an
- 11 affiliate shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its
- 12 financial needs.

13 * Sec. 7. AS 21.22.090 is amended to read:

14 Sec. 21.22.090. ADEQUACY OF SURPLUS. For the purposes of this chapter, in

15 determining whether an insurer's surplus as regards policyholders is reasonable in relation to the

16 insurer's outstanding liabilities and adequate to its financial needs, the following factors, among

17 others, shall be considered:

- 18 (1) the size of the insurer as measured by its assets, capital and surplus, reserves,
- 19 premium writings, insurance in force, and other appropriate criteria;
- 20 (2) the extent to which the insurer's business is diversified among the several
- 21 lines of insurance;
- 22 (3) the number and size of risks insured in each line of business;
- 23 (4) the extent of the geographical dispersion of the insurer's insured risk;
- 24 (5) the nature and extent of the insurer's reinsurance program;
- 25 (6) the quality, diversification, and liquidity of the insurer's investment portfolio;
- 26 (7) the recent past and projected future trend in the size of the insurer's
- 27 investment portfolio [SURPLUS AS REGARDS POLICYHOLDERS];
- 28 (8) the surplus as regards policyholders maintained by other comparable insurers;
- 29 (9) the adequacy of the insurer's reserves; and
- 30 (10) the quality and liquidity of investments in affiliates [SUBSIDIARIES] made
- 31 under AS 21.21; the director may treat any such investment as a disallowed asset for purposes

1 of determining the adequacy of surplus as regards policyholders whenever the director determines
2 the investment warrants it.

3 * Sec. 8. AS 21.22.100(b) is amended to read:

4 (b) For purposes of this section, an extraordinary dividend or distribution includes a
5 [ANY] dividend or distribution of cash or other property, the fair market value of which together
6 with that of other dividends or distributions made within the preceding 12 months exceeds the
7 greater of (1) 10 percent of the insurer's surplus as regards policyholders as of December 31 of
8 the preceding year; or (2) the net gain from operations of the insurer, if the insurer is a life
9 insurer, or the net investment income, if the insurer is not a life insurer, for the 12-month period
10 ending December 31 of the preceding year; but does not include pro rata distributions of any
11 class of the insurer's own securities. In determining whether a dividend or distribution is
12 extraordinary, an insurer other than a life insurer may carry forward net income from the
13 previous two calendar years that has not already been paid out as dividends. The carry
14 forward provision shall be computed by taking the net income from the second and third
15 preceding calendar years, less dividends paid in the second and immediate preceding
16 calendar years.

17 * Sec. 9. AS 21.22 is amended by adding a new section to read:

18 Sec. 21.22.105. MANAGEMENT OF DOMESTIC INSURERS SUBJECT TO
19 REGISTRATION. (a) Notwithstanding the control of a domestic insurer by any person, the
20 officers and directors of the insurer may not be relieved of an obligation or liability to which the
21 officers and directors would otherwise be subject to by law, and the insurer shall be managed so
22 as to assure the insurer's separate operating identity consistent with this title.

23 (b) This section does not preclude a domestic insurer from having or sharing a common
24 management or cooperative or joint use of personnel, property, or services with one or more
25 other persons under arrangements meeting the standards of AS 21.22.080.

26 (c) Not less than one-third of the directors of a domestic insurer registered under
27 AS 21.22.060 and not less than one-third of the members of each committee of the board of
28 directors of a domestic insurer registered under AS 21.22.060 shall be persons who are not
29 officers or employees of the insurer or of an entity controlling, controlled by, or under common
30 control with the insurer and who are not beneficial owners of a controlling interest in the voting
31 stock of the insurer or an entity. At least one person who is not an officer, employee, or owner

1 of a controlling interest in stock of an insurer or controlling entity must be included in a quorum
2 for the transaction of business at a meeting of the board of directors or a committee of the board
3 of directors.

4 (d) The board of directors of a domestic insurer shall establish one or more committees
5 comprised solely of directors who are not officers or employees of the insurer or of an entity
6 controlling, controlled by, or under common control with the insurer and who are not beneficial
7 owners of a controlling interest in the voting stock of the insurer or an entity. The committee
8 or committees shall have responsibility for recommending the selection of independent certified
9 public accountants, reviewing the insurer's financial condition, the scope and results of the
10 independent audit, and an internal audit, nominating candidates for director for election by
11 shareholders or policyholders, evaluating the performance of officers that are principal officers
12 of the insurer, and recommending to the board of directors the selection and compensation of the
13 principal officers.

14 (e) The provisions of (c) and (d) of this section do not apply to a domestic insurer

15 (1) if the person controlling the insurer is an insurer having a board of directors
16 and committees that meet the requirements of (c) and (d) of this section; or

17 (2) holding a certificate of authority under this title on December 31, 1990.

18 * Sec. 10. AS 21.22.120 is amended to read:

19 Sec. 21.22.120. CONFIDENTIALITY. All information, documents, and copies of the
20 information and documents obtained by or disclosed to the director or any other person in the
21 course of an examination or investigation made under AS 21.22.110 and all information reported
22 under AS 21.22.060 and all preacquisition notification information received under
23 AS 21.22.065, shall be given confidential treatment and may not be made public by the director
24 or any other person, except to insurance departments of other states, without the prior written
25 consent of the insurer to which it pertains. However, if the director, after giving the insurer and
26 its affiliates who would be affected by publication of the information notice and opportunity to
27 be heard, determines that the interests of policyholders, shareholders, or the public will be served
28 by the publication of the information, the director may publish all or any part of the information
29 in the manner the director considers appropriate.

30 * Sec. 11. AS 21.22.200 is amended by adding new paragraphs to read:

31 (11) "acquisition" means an agreement, arrangement, or activity the consummation

1 of which results in a person acquiring directly or indirectly the control of another person, and
2 includes the acquisition of voting securities, assets, bulk reinsurance, and mergers;

3 (12) "highly concentrated" means a market in which the share of the four largest
4 insurers is 75 percent or more of the market;

5 (13) "insurer" has the meaning given in AS 21.90.900 and includes a company
6 or group of companies under common management, ownership, or control;

7 (14) "involved insurer" means an insurer that either acquires or is acquired, is
8 affiliated with an acquirer or acquired, or is the result of a merger;

9 (15) "market" or "insurance market" means direct written insurance premium in
10 this state for a line of business as contained in the annual statement required to be filed by
11 insurers licensed to do business in this state; in determining the relevant product and geographical
12 markets, the director may give due consideration to, among other things, the definitions or
13 guidelines adopted by the National Association of Insurance Commissioners and to information
14 submitted by parties to the acquisition; in the absence of sufficient information to the contrary,
15 the relevant product market is assumed to be the direct written insurance premium for a line of
16 business, the line being that used in the annual statement required to be filed by insurers doing
17 business in this state, and the relevant geographical market is assumed to be this state;

18 (16) "statement value" means the value that an insurer is instructed by the
19 securities valuation office of the National Association of Insurance Commissioners to carry on
20 the insurer's financial statement and that represents an investment.

21 * Sec. 12. AS 21.78 is amended by adding a new section to read:

22 Sec. 21.78.325. RECOVERY FROM AFFILIATES. (a) If an order for liquidation or
23 rehabilitation of a domestic insurer has been entered, the receiver appointed under the order has
24 a right to recover on behalf of the insurer (1) from a parent corporation or holding company or
25 person or affiliate who otherwise controlled the insurer, the amount of distributions, other than
26 a distribution of shares of the same class of stock, paid by the insurer on the insurer's capital
27 stock; or (2) a payment in the form of a bonus, termination settlement, or extraordinary lump sum
28 salary adjustment made by the insurer or the insurer's subsidiary to a director, officer, or
29 employee; if the distribution or payment is made during the 12 months preceding the petition for
30 liquidation, conservation, or rehabilitation, the distribution or payment is subject to the limitations
31 of (b) - (d) of this section.

1 (b) A distribution may not be recovered if the parent or affiliate shows that when paid
2 the distribution was lawful and reasonable and that the insurer did not know and could not
3 reasonably have known that the distribution might adversely affect the ability of the insurer to
4 fulfill its contractual obligations.

5 (c) A person who was a parent corporation or holding company or a person who
6 otherwise controlled the insurer or affiliate at the time the distribution was paid is liable up to
7 the amount of the distribution or payment that the person received. If two or more persons are
8 liable with respect to the same distribution, the persons are jointly and severally liable.

9 (d) The maximum amount recoverable under this section is the amount needed in excess
10 of all other available assets of the impaired or insolvent insurer to pay the contractual obligations
11 of the impaired or insolvent insurer and to reimburse any guaranty funds that expended funds or
12 incurred expenses or may expend funds or may incur expenses in connection with the impaired
13 or insolvent insurer.

14 (e) To the extent that a person liable under (c) of this section is insolvent or otherwise
15 fails to pay a claim due under (c) of this section, the person's parent corporation or holding
16 company or person who otherwise controlled the parent corporation or holding company at the
17 time the distribution was paid is jointly and severally liable for the resulting deficiency in the
18 amount recovered from the parent corporation or holding company or the person who otherwise
19 controlled the parent corporation or holding company.

20 * Sec. 13. This Act takes effect immediately under AS 01.10.070(c).

HB

281

CS FOR HOUSE BILL NO. 281 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR & COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to examination of insurers, agents, brokers, adjusters, and solicitors."

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

3 * Section 1. AS 21.06.120(a) is amended to read:

4 (a) The director may examine the affairs, transactions, accounts, records, and assets of
5 each authorized and formerly authorized insurer and each licensed and formerly licensed surplus
6 lines broker as often as the director considers advisable. The director shall [SO] examine each
7 domestic insurer at least once every three years. In scheduling and determining the nature,
8 scope, and frequency of examinations, the director may consider the results of financial
9 statement analysis and ratios, competency of management or change of ownership, actuarial
10 opinions, reports of independent certified public accountants, number and nature of
11 consumer complaints, results of prior examinations, frequency of prior violations of statute
12 and regulation, amount or type of risk being assumed, degree to which the activity is in the
13 public interest, and other criteria set out in the Examiners' Handbook most recently
14 approved by the National Association of Insurance Commissioners and in effect when the

1 director conducts an examination. Examination of an alien insurer may be limited to its
 2 insurance transactions and affairs in the United States. Examination of a reciprocal insurer may
 3 also include examination of its attorney-in-fact to the extent that the transactions of the
 4 attorney-in-fact relate to the insurer.

5 * Sec. 2. AS 21.06.120(c) is amended to read:

6 (c) In place of an examination by the director, the director may accept a full report of
 7 the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory
 8 official of another state, territory, commonwealth, or district of the United States until
 9 January 1, 1994; after December 31, 1993, reports, other than examination by the director,
 10 may only be accepted if

11 (1) the insurance regulatory agency was at the time of the examination
 12 accredited under the National Association of Insurance Commissioners' Financial
 13 Regulation Standards and Accreditation Program; or

14 (2) the examination is performed under the supervision of an accredited state
 15 insurance regulatory agency or with the participation of one or more examiners who are
 16 employed by an accredited state insurance regulatory agency and who after a review of the
 17 examination work papers and report state under oath that the examination was performed
 18 in a manner consistent with the standards and procedures required by their accredited state
 19 insurance regulatory agency.

20 * Sec. 3. AS 21.06.120 is amended by adding a new subsection to read:

21 (f) For purposes of completing an examination of a company under this title, the director
 22 may extend the examination or investigation as provided under AS 21.06.170.

23 * Sec. 4. AS 21.06.130(a) is amended to read:

24 (a) To determine compliance with this title, the director may as often as the director
 25 considers advisable examine or require a written report prepared under AS 21.06.150 of the
 26 accounts, records, documents, and transactions pertaining to or affecting the insurance affairs or
 27 proposed insurance affairs of

- 28 (1) an insurance agent, broker, solicitor, managing general agent, or adjuster;
- 29 (2) [A PERSON HAVING A CONTRACT UNDER WHICH THE PERSON
- 30 ENJOYS IN FACT THE EXCLUSIVE OR DOMINANT RIGHT TO MANAGE OR CONTROL
- 31 AN INSURER;

1 (3) A PERSON HOLDING THE SHARES OF VOTING STOCK OR
2 POLICYHOLDER PROXIES OF A DOMESTIC INSURER, FOR THE PURPOSE OF
3 CONTROLLING ITS MANAGEMENT, AS VOTING TRUSTEE OR OTHERWISE;

4 (4)] a person engaged in or proposing to be engaged in or assisting in the
5 promotion or formation of a domestic insurer or insurance holding corporation, or corporation
6 to finance a domestic insurer or the production of its business.

7 * Sec. 5. AS 21.06.140(c) is amended to read:

8 (c) If the director finds accounts to be inadequate or inadequately kept or posted or if
9 an insurer's accounts are not kept as required by the Accounting Practices and Procedures
10 Manual currently approved by the National Association of Insurance Commissioners after
11 the director has given the person notice of the inadequacy of the accounts and a reasonable
12 opportunity to complete or correct the accounting, the director may employ experts to rewrite,
13 post, or balance them at the expense of the person being examined.

14 * Sec. 6. AS 21.06.140(d) is repealed and reenacted to read:

15 (d) When making an examination under this section, the director may retain attorneys,
16 appraisers, independent actuaries, independent certified public accountants, or other professionals
17 and specialists as examiners, the cost of which shall be paid by the person being examined,
18 except for examinations under AS 21.06.130.

19 * Sec. 7. AS 21.06.140 is amended by adding new subsections to read:

20 (f) In conducting an examination under this section, the examiner shall observe those
21 guidelines and procedures set out in the Examiners' Handbook currently approved by the National
22 Association of Insurance Commissioners that are consistent with the scope of the examination
23 as given by the director or the director's designee. The director may also employ any other
24 guidelines or procedures that the director finds appropriate.

25 (g) An examiner may not be appointed by the director if the examiner, either directly or
26 indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary
27 interest in a person subject to examination under this title. This section may not be construed
28 to automatically preclude an examiner from being, in the ordinary course of business,

29 (1) a policyholder or claimant under an insurance policy;

30 (2) a grantor of a mortgage or similar instrument on the examiner's residence to
31 a regulated entity if obtained under customary terms;

1 (3) an investment owner in shares of regulated mutual fund companies; or
2 (4) a settlor or beneficiary of a "blind trust" into which otherwise impermissible
3 holdings have been placed.

4 (h) The director may terminate or suspend an examination in order to pursue other legal
5 or regulatory action under the insurance laws of this state.

6 (i) Findings of fact made in an examination report approved under AS 21.06.150(b)(1)
7 may be used as prima facie evidence in any legal or administrative proceeding.

8 * Sec. 8. AS 21.06.150 is repealed and reenacted to read:

9 Sec. 21.06.150. EXAMINATION REPORTS. (a) An examination report may only
10 consist of facts appearing upon the books, records, or other documents of the examined company,
11 the company's agents, or other persons examined, or facts determined from the testimony of
12 officers, agents, or other persons examined concerning the company's affairs, and the conclusions
13 and recommendations that the examiners find reasonably warranted from the facts.

14 (b) The examiner shall file with the division a proposed written report of an examination,
15 signed by the examiner under oath, not later than 60 days following the last day of examination
16 field work. The period for filing the proposed report may be extended for 60 additional days
17 upon approval of the director. Upon receipt of the proposed report, the division shall transmit
18 the report to the person being examined, together with a notice that gives the person being
19 examined a reasonable opportunity of not more than 30 days to make a written submission or
20 rebuttal with respect to matters contained in the proposed examination report. Within 30 days
21 of the end of the period allowed for the receipt of written submissions or rebuttals, the director
22 shall fully consider and review the report, together with any written submissions or rebuttals, and
23 any relevant portions of the examiner's work papers and enter an order

24 (1) approving the examination report as filed or approving the examination report
25 with modification or corrections;

26 (2) rejecting the examination report with directions to the examiners to reopen the
27 examination for the purpose of obtaining additional data, documentation, or information and
28 refiling the report under this subsection; or

29 (3) setting a hearing under AS 21.06.180 for purposes of obtaining additional
30 information.

31 (c) In the event the director determines that regulatory action is appropriate as a result

1 of an examination, the director may initiate proceedings as provided by law. The director may
2 use and, if appropriate, make public an examination report, work papers or other documents, the
3 testimony of the examiners, or other information discovered or developed during the course of
4 an examination in a legal or administrative proceeding, whether or not a written report of the
5 examination at the time has been made, transmitted, or approved by the director.

6 (d) The director may disclose the contents of an examination report or results, or any
7 matter relating to it, to the insurance division of this or another state or country. The director
8 may disclose the contents of a preliminary examination report or other matter of a preliminary
9 nature if the director by written order finds that there is imminent danger of serious harm to the
10 public and that the harm to the public can be avoided or mitigated by release of the preliminary
11 examination report or other matter of a preliminary nature. An order issued under this subsection
12 shall be served on the company being examined and is effective 48 hours after being issued.

13 (e) An order entered under this section must be accompanied by findings of fact resulting
14 from the director's consideration and review of the examination report, relevant examiner work
15 papers, and written submissions or rebuttals.

16 (f) Within 30 days of the receipt of the approved report, the person examined shall file
17 affidavits executed by each director and the chief executive officer or equivalent officer stating
18 under oath that they have received and reviewed a copy of the approved report and related orders.

19 * Sec. 9. AS 21.90.900 is amended by adding a new paragraph to read:

20 (29) "examiner" means an individual or firm who has been authorized by the
21 director to conduct an examination under AS 21.06.120 or 21.06.130.

22 * Sec. 10. AS 21.06.130(b) is repealed.

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Ford
5/1/91

CS FOR HOUSE BILL NO. 282 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to licensing, employing, and the authority of managing general agents;
2 and defining certain terms related to insurance."

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

4 * Section 1. AS 21.27.010(a) is amended to read:

5 (a) A person may not act as or represent to be an agent, managing general agent, broker,
6 solicitor, or adjuster unless licensed by the state. A person may not act as or represent to be
7 a managing general agent representing an insurer domiciled in this state regarding risks
8 located outside the state unless licensed by the state.

9 * Sec. 2. AS 21.27.010(b) is amended to read:

10 (b) An agent, managing general agent, solicitor, or broker may not solicit or take
11 applications for, procure, or place for others any kind of insurance for which the person is not
12 licensed.

13 * Sec. 3. AS 21.27.030(a) is amended to read:

14 (a) The director may not grant an agent, managing general agent, solicitor, or broker

1 license to a person if the director has reasonable cause to believe that the applicant for the license
2 would, during the 12-month period immediately following issuance of the license, receive an
3 aggregate amount in commissions represented by the controlled business that exceeds the
4 aggregate amount of commissions represented by all other insurance business that would be
5 procured by or through the applicant.

6 * Sec. 4. AS 21.27.030(d) is amended to read:

7 (d) The director may revoke an agent, managing general agent, solicitor, or broker
8 license if the director has reasonable cause to believe that during either of the two preceding
9 calendar years the aggregate amount of commissions represented by the controlled business
10 procured by or through the licensee exceeded the aggregate amount of commissions represented
11 by all other insurance business procured by or through the licensee.

12 * Sec. 5. AS 21.27.050 is amended to read:

13 Sec. 21.27.050. ONE FILING OF PERSONAL DATA SUFFICIENT. (a) The filing of
14 personal data by an individual in connection with one application for an agent or managing
15 general agent license is sufficient [,] regardless of the number of insurers to be represented or
16 the number of subsequent applications by the same applicant.

17 (b) The director may require a licensed agent, managing general agent, solicitor, broker,
18 or adjuster [,] to supply the information called for in an application for a license.

19 * Sec. 6. AS 21.27.060 is amended to read:

20 Sec. 21.27.060. EXAMINATION OF APPLICANTS. (a) An applicant for an individual
21 license as agent, managing general agent, broker, solicitor, or adjuster shall, before the issuance
22 of the license, personally take and pass, to the satisfaction of the director, an examination given
23 by the director as a test of the qualifications and competence of the applicant. This requirement
24 does not apply to

25 (1) applicants for limited licenses, as travel insurance agents only, under
26 AS 21.27.150, or, at the discretion of the director, to applicants for licenses as disability
27 insurance agents for the purpose of handling limited coverages pertaining to sports and recreation;

28 (2) applicants

29 (A) who, at any time within the two-year period immediately preceding
30 the date of application, have been licensed in this state under a license requiring
31 qualifications required by the license applied for;

1 (B) who are considered by the director to be fully qualified and competent;
2 and

3 (C) whose previous license was not revoked for any reason;

4 (3) applicants for a license who have fulfilled qualification requirements in their
5 state or province of residence and who are considered by the director to be fully qualified and
6 competent.

7 (b) The director may at any time require an individual licensed as an agent, managing
8 general agent, broker, solicitor, or adjuster to take and successfully pass an examination testing
9 competence and qualifications as a condition to the continuance of the license if the licensee has
10 been guilty of a violation of this title, or has conducted affairs under the license that cause the
11 director reasonably to desire further evidence of the qualifications of the licensee.

12 * Sec. 7. AS 21.27.070(c) is amended to read:

13 (c) The director shall prepare and make available to insurers, managing general agents,
14 brokers, agents, and applicants a printed manual specifying in general terms the subjects that
15 [WHICH] may be covered in an examination for a particular license.

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

17 (a) To qualify for an agent, managing general agent, broker, solicitor, or adjuster license,
18 an applicant shall comply with this title and

19 (1) be 19 years of age or older with a high school or General Education
20 Development diploma or equivalent;

21 (2) if for a resident license, be a bona fide resident before issuance of the license
22 and actually reside in the state;

23 (3) successfully pass any examination required under AS 21.27.060;

24 (4) be a trustworthy person;

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

27 (6) not have committed an act that is a ground for denial, suspension, or
28 revocation set out in AS 21.27.410;

29 (7) if the application is for an agent or managing general agent license, be
30 appointed as its agent or managing general agent by one or more authorized insurers, subject to
31 issuance of the license, except that an individual acting on behalf of a firm is not required to

1 have an appointment as an agent or managing general agent for that activity;

2 (8) if the application is for a managing general agent license, have a minimum
3 of three years active working experience in insurance administrative functions, including those
4 listed under the definition of "managing general agent" in AS 21.90.900, that, in the director's
5 discretion, exhibits the applicant's ability to competently perform the administrative functions for
6 all lines applied for;

7 (9) if the application is for a broker license, have a minimum of three years'
8 active working experience in all lines applied for either as an agent, solicitor, adjuster, managing
9 general agent, broker, or as an employee of insurers or representative of insurers, or special
10 education or training of sufficient duration and extent to satisfy the director that the applicant
11 possesses the competence necessary to fulfill the responsibilities of a broker;

12 (10) if the application is for a solicitor license, intend to and in fact make the
13 soliciting and handling of insurance business under the license the applicant's principal gainful
14 occupation and represent and be employed by only one licensed agent, managing general agent,
15 or broker;

16 (11) if the application is for an adjuster license, have at least six months'
17 experience, special education, or training in handling loss claims under insurance contracts, of
18 sufficient duration and extent to make the person reasonably competent to fulfill the
19 responsibilities of an adjuster.

20 * Sec. 9. AS 21.27.095 is amended to read:

21 Sec. 21.27.095. LICENSING OF MANAGING GENERAL AGENTS. (a) A managing
22 general agent has the authority, consistent with this title, that is conferred by the insurer. A
23 managing general agent, resident or nonresident, qualified and licensed under AS 21.27.090, may
24 exercise the powers conferred by this title upon agents licensed for the kinds of insurance that
25 the managing general agent is authorized to transact for the insurer appointing the agent.

26 (b) A person employed on salary by an insurer, including an officer or salaried employee
27 performing the same services as a managing general agent, is considered to be a service
28 representative and is not required to be licensed.

29 (c) For purposes of this section, a person that performs management services for an
30 insurer is not required to be licensed as a managing general agent if the person

31 (1) is a wholly-owned subsidiary of the insurer;

- 1 (2) wholly owns the insurer; [OR]
2 (3) is a wholly-owned subsidiary of the insurance holding company that owns or
3 controls the insurer; or
4 (4) is a manager of the United States branch of an alien insurer.

5 * Sec. 10. AS 21.27.095 is amended by adding a new subsection to read:

6 (d) The director may require a managing general agent to post a bond in an amount
7 acceptable to the director for the protection of the insurer and may require the managing general
8 agent to maintain an errors and omissions insurance policy.

9 * Sec. 11. AS 21.27.100(a) is amended to read:

10 (a) An insurer appointing an agent or managing general agent in the state shall file
11 written notice of the appointment with the director on forms prescribed and furnished by the
12 director. If the appointee is licensed and if the necessary licensing fee is paid, the director shall
13 provide to the insurer and to the appointee written notification of the effective date of the
14 appointment.

15 * Sec. 12. AS 21.27.100(b) is repealed and reenacted to read:

16 (b) An insurer may not accept business from a managing general agent unless there is
17 in effect a written contract between the parties that establishes the responsibilities of each party,
18 indicates where both parties share responsibility for a particular function, specifies the division
19 of the responsibilities, and that contains the following minimum provisions:

20 (1) the insurer may terminate the contract for cause upon written notice to the
21 managing general agent and may suspend the underwriting authority of the managing general
22 agent during a dispute regarding the cause for termination;

23 (2) the managing general agent shall render accounts to the insurer detailing all
24 transactions and remit all funds due under the contract to the insurer at least monthly;

25 (3) all funds collected for the account of an insurer shall be held by the managing
26 general agent in a fiduciary account as described under AS 21.27.360, and the managing general
27 agent shall comply with all applicable fiduciary account regulations; this account shall be used
28 for all payments on behalf of the insurer; the managing general agent may retain not more than
29 three months estimated claims payments and allocated loss adjustment expenses;

30 (4) separate records of business written by the managing general agent shall be
31 maintained; the insurer shall have access and the right to copy all accounts and records related

1 to the insurer's business in a form usable by the insurer; the director shall have access to all
2 books, bank accounts, and records of the managing general agent in a form usable to the director;
3 records shall be retained as required by AS 21.27.350;

4 (5) the contract may not be assigned in whole or part by the managing general
5 agent;

6 (6) if the contract permits the managing general agent to do underwriting, the
7 contract must include the following:

8 (A) the maximum annual premium volume;

9 (B) the basis of the rates to be charged;

10 (C) the types of risks that may be written;

11 (D) maximum limits of liability;

12 (E) applicable exclusions;

13 (F) territorial limitations;

14 (G) policy cancellation provisions; and

15 (H) the maximum policy period;

16 (7) the insurer shall have the right to cancel or not renew a policy of insurance
17 subject to applicable law;

18 (8) if the contract permits the managing general agent to settle claims on behalf
19 of the insurer,

20 (A) all claims shall be reported to the insurer in a timely manner; and

21 (B) a copy of the claim file shall be sent to the insurer upon request or
22 as soon as it becomes known that the claim

23 (i) has the potential to exceed an amount determined by the
24 director or exceeds the limit set by the company, whichever is less;

25 (ii) involves a coverage dispute;

26 (iii) may exceed the managing general agent's claims settlement
27 authority;

28 (iv) is open for more than six months; or

29 (v) is closed by a payment in excess of an amount set by the
30 director or an amount set by the company, whichever is less.

31 (c) All claim files shall be the property of both the insurer and managing general agent.

1 Upon an order of liquidation of the insurer, the files shall become the sole property of the insurer
2 or the insurer's estate; the managing general agent shall have reasonable access to and the right
3 to copy the files on a timely basis.

4 (d) The settlement authority granted to the managing general agent may be terminated
5 for cause upon the insurer's written notice to the managing general agent or upon the termination
6 of the contract. The insurer may suspend the settlement authority during a dispute regarding the
7 cause of termination.

8 (e) If electronic claims files are in existence, the contract must contain provisions for the
9 timely transmission of the electronic data.

10 (f) If the contract provides for a sharing of interim profits by the managing general agent
11 and the managing general agent has the authority to determine the amount of the interim profits
12 by establishing loss reserves, by controlling claim payments, or in any other manner, interim
13 profits may not be paid to the managing general agent until one year after they are earned for
14 property insurance business, five years after they are earned on casualty business, and not until
15 the profits have been verified under (h) of this section.

16 (g) The managing general agent may not

17 (1) bind reinsurance or retrocessions on behalf of the insurer, except that the
18 managing general agent may bind facultative reinsurance contracts under obligatory facultative
19 agreements if the contract with the insurer contains reinsurance underwriting guidelines including,
20 for both reinsurance assumed and ceded, a list of reinsurers with which the automatic agreements
21 are in effect, the coverages and amounts or percentages that may be reinsured, and commission
22 schedules;

23 (2) commit the insurer to participate in insurance or reinsurance syndicates;

24 (3) appoint an agent unless the agent is licensed to transact the type of insurance
25 for which the agent is appointed;

26 (4) pay or commit the insurer to pay a claim, net of reinsurance, the amount of
27 which exceeds one percent of the insurer's policyholder's surplus as of December 31 of the last
28 completed calendar year without prior approval of the insurer.

29 (5) collect any payment from a reinsurer or commit the insurer to any claim
30 settlement with a reinsurer without prior approval of the insurer, but if prior approval is given,
31 a report must be promptly forwarded to the insurer;

- 1 (6) permit a subagent or broker to serve on the insurer's board of directors;
2 (7) jointly employ an individual who is employed with the insurer; or
3 (8) delegate managing general agent authority to any other person.

4 (h) An insurer shall have on file an independent financial examination in a form
5 acceptable to the director for each managing general agent with which the insurer has done
6 business, and

7 (1) if a managing general agent establishes loss reserves, annually obtain the
8 opinion of an independent qualified actuary attesting to the adequacy of loss reserves established
9 for losses incurred and outstanding on business produced by the managing general agent in
10 addition to any other required loss reserve certification;

11 (2) at least semiannually conduct an on-site review of the underwriting and claims
12 processing operations of the managing general agent;

13 (3) provide written notification to the director within 30 days of the entry into or
14 termination of a contract with a managing general agent; the notice must include a statement of
15 duties to be performed by the applicant on behalf of the insurer, the lines of insurance for which
16 the applicant has authorization to act, and any other information required by the director; and

17 (4) review its books and records quarterly to determine if an agent or broker has
18 become a managing general agent; upon determination that an agent or broker has acted as a
19 managing general agent, the insurer shall promptly notify the agent or broker and the director of
20 the determination and the insurer and agent or broker must fully comply with the provisions of
21 this section within 30 days.

22 (i) An insurer may not appoint to its board of directors an officer, director, employee,
23 subagent, broker, or controlling shareholder of its managing general agent.

24 (j) The acts of the managing general agent are considered to be the acts of the insurer
25 upon whose behalf it is acting. A managing general agent may be examined as if it were the
26 insurer.

27 (k) A violation of this section is grounds for suspension or revocation, after hearing, of
28 a managing general agent's license or the insurer's certificate of authority, and for imposition of
29 civil penalties under AS 21.90.020.

30 * Sec. 13. AS 21.27.130 is amended to read:

31 Sec. 21.27.130. FORM AND CONTENT OF LICENSES. Agent, managing general

1 agent, adjuster, solicitor, and broker licenses shall [MUST] be in the form the director prescribes
2 [,] and must set out

3 (1) the name and address of the licensee [,] or, if the licensee is required to have
4 a place of business, the address of the place of business;

5 (2) if for a firm, the name of the principal or manager of the firm;

6 (3) the kind or kinds of insurance the licensee is licensed to handle;

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

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

10 (6) the date of issuance of the license.

11 * Sec. 14. AS 21.27.160(a) is amended to read:

12 (a) An agent, managing general agent, broker, solicitor, or adjuster is only required to
13 have one type of license inclusive of all kinds or combination of kinds of insurance the agent,
14 managing general agent, broker, adjuster, or solicitor is licensed to handle, regardless of the
15 number of represented insurers.

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

17 (a) An agent, managing general agent, or broker who employs a solicitor shall pay the
18 fee for issuance, or annual fee for continuation, of a solicitor license.

19 * Sec. 16. AS 21.27.250(a) is amended to read:

20 (a) A solicitor license may not cover insurance for which the agent, managing general
21 agent, or broker by whom the solicitor is employed is not licensed.

22 * Sec. 17. AS 21.27.250(c) is amended to read:

23 (c) An individual may not be licensed as an agent, managing general agent, or broker
24 while licensed as a solicitor.

25 * Sec. 18. AS 21.27.260 is amended to read:

26 Sec. 21.27.260. EMPLOYER'S RESPONSIBILITY FOR SOLICITOR. All business
27 transacted by a solicitor under license as a solicitor shall be in the name of the agent, managing
28 general agent, or broker by whom the solicitor is employed. The agent, managing general
29 agent, or broker is responsible for all acts or omissions of the solicitor within the scope of
30 employment as solicitor.

31 * Sec. 19. AS 21.27.270(a) is amended to read:

1 (a) The director may license as a nonresident insurance agent, managing general agent,
2 broker, or adjuster a person who otherwise qualifies under this title, but who is not a resident of
3 or domiciled in the state.

4 * Sec. 20. AS 21.27.280(a) is amended to read:

5 (a) A licensed nonresident agent, managing general agent, broker, or adjuster shall
6 appoint the director as attorney to receive service of legal process issued against the licensee in
7 this state upon causes of action arising in this state. Service upon the director as attorney
8 constitutes effective legal service upon the licensee.

9 * Sec. 21. AS 21.27.320(a) is amended to read:

10 (a) On behalf of and as authorized by an insurer for which the agent or managing
11 general agent is appointed, an agent or managing general agent may occasionally act as an
12 adjuster and investigate and report upon claims without being required to be licensed as an
13 adjuster.

14 * Sec. 22. AS 21.27.330 is amended to read:

15 Sec. 21.27.330. PLACE OF BUSINESS. A licensed agent, managing general agent,
16 broker, and adjuster, other than those licensed for life or disability insurances or annuities only,
17 shall have and maintain in this state, or if a nonresident agent or nonresident broker, in the state
18 of domicile, a place of business accessible to the public where the licensee principally conducts
19 transactions under the licenses. The address of the place of business must appear on all licenses
20 of the licensee, and the licensee must promptly notify the director of any change of address. If
21 the licensee maintains more than one place of business [IN THIS STATE], the licensee shall
22 obtain a license or licenses for each additional place [,] and shall pay an additional license fee
23 for each license.

24 * Sec. 23. AS 21.27.340 is amended to read:

25 Sec. 21.27.340. PUBLIC DISPLAY OF LICENSE. (a) The license or licenses of each
26 agent, managing general agent, broker, and adjuster, other than licenses as to life or disability
27 insurances or annuities only, shall be displayed in a conspicuous place in that part of the place
28 of business that is customarily open to the public.

29 (b) The license of a solicitor shall be displayed in each place of business of the agent,
30 managing general agent, or broker by whom the solicitor is employed.

31 * Sec. 24. AS 21.27.350(a) is amended to read:

1 (a) An agent, managing general agent, broker, or adjuster shall keep at the address
2 shown on the license a record of all transactions consummated under the license. This record
3 shall be in organized form and must include

4 (1) if an agent, managing general agent, or broker,

5 (A) a record of each insurance contract procured, issued, or countersigned,
6 together with the names of the insurers and insureds, the amount of premium paid or to
7 be paid, and a statement of the subject of the insurance;

8 (B) the names of any other licensees from whom business is accepted, and
9 of persons to whom commissions or allowances of any kind are promised or paid;

10 (2) if an adjuster, a record of each investigation or adjustment undertaken or
11 consummated, and a statement of the fee, commission, or other compensation received or to be
12 received by the adjuster on account of the investigation or adjustment;

13 (3) additional information that is customary [,] or that may reasonably be required
14 by the director.

15 * Sec. 25. AS 21.27.350(c) is amended to read:

16 (c) In addition to the record required under (a) of this section, each agent, managing
17 general agent, or broker shall have and maintain at the principal place of business current
18 accounting and financial records maintained under generally accepted accounting principles. The
19 director may request summary or detailed copies for examination by the division. Records
20 examined under this subsection are confidential when in the possession of the division, but may
21 be used by the director in a proceeding against the licensee. For purposes of this subsection, the
22 records of a firm are also the records of an individual licensee acting on behalf of the firm.

23 * Sec. 26. AS 21.27.360(f) is amended to read:

24 (f) In this section, "fiduciary account" means an account in which the licensee holds
25 money as a trustee for the insured, insurer, managing general agent, surplus lines broker, or
26 agent entitled to the money.

27 * Sec. 27. AS 21.27.370(a) is amended to read:

28 (a) An agent, managing general agent, solicitor, or broker may not compensate or offer
29 to compensate in any manner a person other than an agent, general agent, solicitor, or broker
30 licensed in this or any other state or province, for procuring or in any manner helping to procure
31 applications for or to place insurance in this state. Nothing in this subsection prohibits the

1 payment of compensation that [WHICH] is not contingent upon volume of business transacted
2 in the form of salaries to the regular employees of the agent, managing general agent, solicitor
3 or broker.

4 * Sec. 28. AS 21.27.380(a) is amended to read:

5 (a) A license continues in force, upon payment of

6 (1) an annual fee set under AS 21.06.250 for resident and nonresident agent,
7 managing general agent, solicitor, and adjuster licenses that must be received by the director on
8 or before the close of business on the 30th day of June;

9 (2) an annual fee set under AS 21.06.250 for resident and nonresident broker
10 licenses, that must be received by the director on or before the close of business on the 31st day
11 of December.

12 * Sec. 29. AS 21.27.380(b) is amended to read:

13 (b) An agent, managing general agent, or broker shall file the annual fee set under AS
14 21.06.250 on behalf of a solicitor employed by the agent, managing general agent, or broker.

15 * Sec. 30. AS 21.27.390(a) is amended to read:

16 (a) The director may issue a temporary license to

17 (1) the surviving spouse or next of kin or to the administrator or executor of a
18 deceased licensed agent, managing general agent, or broker;

19 (2) the spouse, next of kin, employee, or legal guardian of a licensed agent,
20 managing general agent, or broker who is disabled because of sickness, insanity, or injury;

21 (3) a surviving member, officer, or employee of a firm licensed as agent,
22 managing general agent, or broker, upon the death of the principal or manager of the firm
23 holding the same licenses as the firm; or

24 (4) the designee of a licensed agent who enters active service in the armed forces
25 of the United States.

26 * Sec. 31. AS 21.27.400(b) is amended to read:

27 (b) A person requesting a temporary agent or managing general agent license because
28 of the death or disability of an agent or managing general agent may not be appointed by an
29 insurer for which the agent or managing general agent was not appointed at the time of death
30 or commencement of disability.

31 * Sec. 32. AS 21.90.900(25) is amended to read:

1 (25) "solicitor" means an individual authorized by an agent or broker to solicit
2 applications for insurance as a representative of the agent, managing general agent, or broker
3 and to collect premiums in connection with the insurance;

4 * Sec. 33. AS 21.90.900 is amended by adding new paragraphs to read:

5 (29) "independent qualified actuary" means an actuary who is a member of the
6 American Academy of Actuaries and who is not affiliated with, an employee, principal, the direct
7 or indirect owner of, or in any way controlled by the insurer or broker;

8 (30) "interim profits" means the excess of income over expenses and claim
9 reserves determined before the expiration of all claim liabilities and contract obligations of the
10 insurer to the insured;

11 (31) "managing general agent" means a person, firm, or corporation that

12 (A) has authority to exercise general supervision over the business, or any
13 part of the business, of one or more authorized insurers in this state; and

14 (B) performs administrative functions normally performed by the insurer
15 including claims administration and payment, marketing administration, agent
16 appointment, premium accounting, premium billing, coverage verification, final
17 underwriting authority, and certificate issuance; "managing general agent" includes a
18 third-party administrator;

19 (32) "reinsurance" has the meaning given in AS 21.12.120;

20 (33) "subagent" means an agent reporting to another agent or general agent and
21 not directly to a company;

22 (34) "third party administrator" means a person who collects premiums and pays
23 claims on behalf of an insurance company and who would be required to be licensed as a
24 managing general agent under AS 21.27;

25 (35) "underwrite" means the authority to accept or reject risk on behalf of the
26 insurer

27 * Sec. 34. AS 21.90.900(13) is repealed.