

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7473 SENATE JUDICIARY

Alaska Marine Safety Education Association

Box 2592, Sitka, Alaska 99835

(907) 747-3287

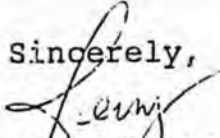
Oct. 30, 1991

Laura Fleming:

Enclosed is the whole 9 yards; Final Rule of the Commercial Fishing Vessel Safety Act, the USCG boarding officer's checklist, and a copy of N-VIC 12-91. The last page of 12-91 outlines the specific guidelines boarding officers will use to determine whether or not to terminate a F/V's voyage due to a potential or existing safety hazard.

Sorry I didn't include this with the original mailing. Please feel free to contact me if you have any other questions.

Sincerely,


Jerry Dzugan
Director

MEMBER ORGANIZATIONS

Alaska Department of Health & Social Services,
Emergency Medical Services Section
Alaska Department of Public Safety
Northstar Survival, Inc.
Southeast Alaska Regional Health Corporation

Southeast Regional Emergency Medical Services Council
United States Coast Guard
University of Alaska Marine Advisory Program
Alaska Department of Education
Alaska Vocational Technical School (AVTEC)



NOTE LAST PAGE

COMDTPUB P1670C.4
NVIC 12-91
13 SEP 1991

NAVIGATION AND VESSEL INSPECTION CIRCULAR NO. 12-91

Subj: Termination of Unsafe Operations Aboard Commercial Fishing Industry Vessels

1. PURPOSE. The purpose of this Circular is to provide guidance to commercial fishing industry vessel owners/operators and Coast Guard personnel on termination of unsafe operations on commercial fishing industry vessels.
2. BACKGROUND.
 - a. The Commercial Fishing Industry Vessel Safety Act of 1988, P.L. 101-424 (now codified as 46 U.S.C. Chapter 45), addresses safety of commercial fishing industry vessels in several ways. One of these ways is by addressing unsafe operations.
 - b. Title 46 U.S.C. Section 4505 states that a Coast Guard enforcement official "may direct the individual in charge to immediately take reasonable steps necessary for the safety of the individuals on board the vessel if the official observes the vessel being operated in an unsafe condition that the official believes (emphasis added) creates an especially hazardous condition."
 - c. Termination of unsafe operations may result in the master or individual in charge of a vessel being ordered to return the vessel to a mooring until the hazardous condition is corrected or to cease a specific operation until the especially hazardous condition is alleviated or corrected. It is emphasized that immediate return of a vessel to a mooring is only one of several options available to boarding officers. Other options include but are not limited to:

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NON-STANDARD DISTRIBUTION: (See Page 4.)

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2. c. (1) Immediate correction of the hazardous condition;
- (2) Filing of a Report of Violation against the owner, master, individual in charge of the vessel;
- (3) Referral to the Marine Safety Office or Marine Inspection Office for investigation and possible Suspension and Revocation action against Coast Guard issued licenses.

3. DISCUSSION.

- a. This Circular does not replace or modify existing statutes or regulations, but provides guidance and illustrations of conditions under which a commercial fishing industry vessel may be subject to termination action under 46 U.S.C. 4505.
- b. Boardings of commercial fishing industry vessels are routinely conducted by the Coast Guard. One part of the boarding officer's responsibility is to assess whether a vessel may present an especially hazardous condition warranting termination action. This Circular is intended to provide guidance to all interested parties on conditions which may be deemed especially hazardous and enforcement action which may be appropriate.
- c. In evaluating the safety of a vessel, there are many considerations that bear upon the decision that an especially hazardous condition exists. It is impossible to list all of the variables that should be considered in evaluating the safety of a particular vessel. However, enclosure (1) lists some of the areas that have proven to be problems in past casualties and should be considered in evaluating a vessel's safety. This list is not all inclusive; it attempts to illustrate the general gravity of conditions which may warrant enforcement action.
- d. Decisions to terminate operations of fishing industry vessels are made by boarding officers in accordance with district policies. Once the decision has been made to terminate operations, the boarding officer will decide whether to remove individuals and whether to escort or tow a fishing industry vessel to a mooring. This decision will be based on the judgement of the Coast Guard boarding officer considering the particular

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3. d. (cont'd) circumstances at the time of the boarding. Consideration will be given to existing/future weather, sea conditions, the extent of the unsafe condition, the ability of the vessel to effect adequate temporary repairs, etc.
 - e. It is recognized that termination of commercial operations may have a serious economic impact on owners/operators. In all cases, the basis for termination will be the potential for loss of life or injury resulting when an especially hazardous condition exists.
 - f. It is the obligation of the owner and master to ensure that each vessel is properly maintained, equipped, and operated at all times. While at sea, the master has the responsibility to operate the vessel within the limits of its design capabilities.
4. PENALTIES. The owner, charterer, managing operator, agent, master, and individual in charge of a fishing industry vessel, which is operated in violation of the regulations prescribed under 46 U.S.C. Chapter 45, may each be assessed a civil penalty of up to \$5,000. Any vessel which is assessed a penalty under 46 U.S.C. 4507 is liable in rem for the penalty. A person willfully violating this chapter is subject to a fine of up to \$5,000 and imprisonment for up to one year. These penalties are in addition to termination of the operation and Suspension and Revocation proceedings against Coast Guard issued licenses.
5. IMPLEMENTATION.
 - a. District commanders are encouraged to give this NVIC wide dissemination.
 - b. This Circular is effective immediately.
 - c. District Fishing Vessel Safety Coordinators shall work closely with District Operational Law Enforcement staff by providing technical assistance to ensure uniform enforcement.

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5. d. Owners and operators of commercial fishing industry vessels are encouraged to maintain and equip their vessels in a manner consistent with the regulations and good marine practice. Questions regarding this Circular should be addressed to the nearest Coast Guard District Office, Attn: Fishing Vessel Safety Coordinator.



D. H. WHITTEN
ACTING CHIEF, OFFICE OF MARINE SAFETY,
SECURITY AND ENVIRONMENTAL PROTECTION

Encl: (1) Termination of Unsafe Operations on Board Commercial Fishing Industry Vessels

Non-Standard Distribution:

C:e New Orleans (90); Baltimore (45); San Francisco (40); Philadelphia, Port Arthur, Honolulu, Puget Sound (35); Miami, Houston, Mobile, Los Angeles Long Beach, Morgan City (25); Hampton Roads, Jacksonville, Portland OR (20); Boston, Portland ME, Charleston, Anchorage (15); Cleveland (12); Louisville, Memphis, Paducah, Pittsburgh, St. Louis, Savannah, San Juan, Tampa, Galveston, Buffalo, Chicago, Detroit, Duluth, Milwaukee, San Diego, Juneau, Valdez (10); Providence, Huntington, Wilmington, Corpus Christi, Toledo, Guam (5).

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D:l CG Liaison Officer MILSEALIFTCOMD (Code N-7CG), CG Liaison Officer RSPA (DHM-22), CG Liaison Officer MARAD (MAR-720.2), CG Liaison Officer JUSMAGPHIL (1).

NOAA Fleet Inspection Officer (1).

ABS (220).

TERMINATION OF UNSAFE OPERATIONS
ON BOARD COMMERCIAL FISHING INDUSTRY VESSELS

The following practices are considered to be unsafe and may create especially hazardous conditions for individuals on board fishing industry vessels. A vessel found with one of these unsafe conditions, while operating (at sea), may be considered for termination by a Coast Guard boarding officer. Termination will result in ordering an individual in charge of a vessel to return the vessel to a mooring or dock until the hazardous condition is corrected, or ordering cessation of a specific operation until the especially hazardous condition is alleviated or corrected. This list does not exclude any other conditions which in the opinion of the boarding officer are especially hazardous.

These items are applicable to United States flag vessels that are commercial fishing, fish processing, or in a fish tendering operation. However, each item may not apply to all vessels. Certain regulations apply only to limited categories of vessels. In all cases, 46 CFR Subpart 28 should be referenced for specific applicability.

UNSAFE PRACTICES

1. Operation without sufficient lifesaving equipment on board. This may include:
 - a. No personal flotation devices (PFD's) or required immersion suits on board, insufficient quantity of PFD's or immersion suits, or PFD's and immersion suits which are unserviceable.
 - b. No survival craft on board, insufficient survival craft capacity for the number of persons on board, or a survival craft in an unserviceable condition.
2. Operation without either an operable Emergency Position Indicating Radio Beacon or radio communication equipment. Either or both may be required by the regulations. When both are required then one must be operable. The intent is that there be at least one means of communicating distress.
3. Operation without adequate firefighting equipment on board.

Enclosure (1) to Navigation and Vessel Inspection Circular No. 12-91

4. Excessive volatile fuel (gasoline or solvents) or volatile fuel vapors in bilges.
5. Instability resulting from overloading, improper loading or lack of freeboard.
6. Inoperable bilge system.
7. Intoxication of the operator, as defined in 33 CFR 95.020. Individuals operating vessels other than recreational vessels are considered to be intoxicated when they have an alcohol concentration of .04% by weight or more in their blood; or, the effect of the intoxicant(s) consumed by the individual on the person's manner, disposition, speech, muscular movement, general appearance or behavior is apparent by observation.
8. A total lack of operable navigation lights during periods of reduced visibility.
9. Watertight closures missing or inoperable.
10. Flooding or uncontrolled leakage.
11. Failure to have a currently endorsed Load Line Certificate, when required.

Wednesday
August 14 1991

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Part II

**Department of
Transportation**

Coast Guard

**46 CFR Part 28
Commercial Fishing Industry Vessel
Regulations; Final Rule**

request such designation in writing. As a minimum the organization must verify that it—

(a) Publishes standards for vessel design and construction which are as widely available as and which are of similar content to the standards published by the ABS;

(b) Performs periodic surveys in a wide range of localities during and after construction to ensure compliance with published standards, including drydock examinations, in a manner similar to the ABS;

(c) Issues certificates testifying to compliance with the published standards;

(d) Has as its primary concern the survey and classification of vessels;

(e) Has no interest in owning or operating fishing, fish processing, or fish tender vessels; and

(f) Maintains records of surveys and makes such records available to the Coast Guard upon request in a manner similar to the ABS.

§ 28.80 Report of casualty.

(a) Except for a casualty which is required to be reported to the Coast Guard on Form CG 2692 in accordance with part 4 of this chapter, the owner, agent, operator, master, or individual in charge of a vessel involved in a casualty must submit a report in accordance with paragraph (c) of this section, as soon as possible after the casualty, to the underwriter of primary insurance for the vessel or to an organization listed in paragraph (d) of this section whenever the casualty involves any of the following.

(1) Loss of life.

(2) An injury to an individual that causes that individual to remain incapacitated for a period in excess of 72 hours.

(3) Loss of a vessel.

(4) Damage to or by a vessel, its cargo, apparel or gear, except for fishing gear while not on board a vessel, or that impairs the seaworthiness of the vessel, or that is initially estimated at \$2,500.00 or more.

(b) Each underwriter of primary insurance for a commercial fishing industry vessel must submit a report of each casualty involving that vessel to an organization listed in paragraph (d) of this section within 90 days of receiving notice of the casualty and whenever it pays a claim resulting from the casualty. Initial reports must be in accordance with paragraph (c) of this section. Subsequent reports must contain sufficient information to identify the casualty and any new or corrected casualty data.

(c) Each report of casualty must include the following information:

(1) The name and address of the vessel owner and vessel operator, if different than the vessel owner;

(2) The name and address of the underwriter of primary insurance for the vessel;

(3) The name, registry number, call sign, gross tonnage, year of build, length, and hull material of the vessel;

(4) The date, location, primary cause, and nature of the casualty;

(5) The specific fishery, intended catch, and length of fishery opening when applicable;

(6) The date that the casualty was reported to the underwriter of primary insurance for the vessel, or to an organization acceptable to the Commandant;

(7) The activity of the vessel at the time of the casualty;

(8) The weather conditions at the time of the casualty, if the weather caused or contributed to the cause of the casualty;

(9) The damages to or by the vessel, its apparel, gear, or cargo;

(10) The monetary amounts paid for damages;

(11) The name, birth date, social security number, address, job title, length of disability, activity at the time of injury, type of injury, and medical treatment required for each individual incapacitated for more than 72 hours, or deceased as a result of the casualty;

(12) The name, registry number, and call sign of every other vessel involved in the casualty; and

(13) The monetary amount paid for an injury or a death.

(d) A casualty to a commercial fishing industry vessel must be reported to an organization that has knowledge and experience in the collection and processing of statistical insurance data and that has been accepted by the Commandant to receive and process casualty data under this part. The Commandant has accepted for this purpose:

(1) Marine Index Bureau, Inc., P.O. Box 1964, New York, NY 10156-0612.

(2) Reserved.

Note: The Coast Guard intends to treat information collected under this section from underwriters of primary insurance as exempt from disclosure under the Freedom of Information Act because it is commercial and financial information which, if disclosed, would be likely to cause substantial harm to the competitive position of the underwriter.

§ 28.90 Report of injury.

Each individual employed on a commercial fishing industry vessel must notify the master, individual in charge of

the vessel, or other agent of the employer of each illness, disability, or injury suffered while in service to the vessel not later than seven days after the date on which the illness, disability, or injury arose.

§ 28.95 Right of appeal.

Any person directly affected by a decision or action taken under this part, by or on behalf of the Coast Guard, may appeal therefrom in accordance with part 1, subpart 1.03 of this chapter.

Subpart B—Requirements For All Vessels

§ 28.100 Applicability.

Each commercial fishing industry vessel must meet the requirements of this subpart, in addition to the requirements of parts 24, 25, and 26 of this chapter.

§ 28.105 Lifesaving equipment—general requirements.

(a) In addition to the requirements of this subpart, each commercial fishing industry vessel must comply with the requirements of part 25 subpart 25.25 of this chapter.

(b) Except as provided in § 28.120(d), each item of lifesaving equipment carried on board a vessel to meet the requirements of this part must be approved by the Commandant. Equipment for personal use which is not required by this part need not be approved by the Commandant.

§ 28.110 Life preservers or other personal flotation devices.

(a) Except as provided by § 28.305 of this chapter, after November 15, 1991, each vessel must be equipped with at least one immersion suit, exposure suit, or wearable personal flotation device of the proper size for each individual on board as specified in table 28.110 and part 25, subpart 25.25 of this chapter. Notwithstanding the provisions of paragraphs (c) and (d) of § 25.25-1 of this chapter, each commercial fishing industry vessel propelled by sail or a manned barge employed in commercial fishing activities must meet the requirements of this paragraph.

(b) Each wearable personal flotation device must be stowed so that it is readily accessible to the individual for whom it is intended, from both the individual's normal work station and berthing area. If there is no location accessible to both the work station and the berthing area, an appropriate device must be stowed in both locations.

TABLE 28.110.—PERSONAL FLOTATION DEVICES AND IMMERSION SUITS

| Applicable waters | Vessel type | Devices required | Other regulations |
|---|--|---|---|
| Seaward of the Boundary Line and North of 32° N; or South of 32° S; or Great Lakes. | Documented vessels..... | Immersion suit or exposure suit ¹ | 28.135; 25.25-9(a); 25.25-13; 25.25-15. |
| Coastal waters or beyond cold waters (includes Great Lakes). | All vessels..... |do ¹ | Do. |
| All other waters..... | 40 feet (12.2 meters) or more in length... | Type I, Type V commercial hybrid, immersion suit, or exposure suit ² . | 28.135; 25.25-5(e); 25.25-5(f); 25.25-9(a); 25.25-13; 25.25-15. |
| Do..... | Less than 40 feet (12.2 meters) in length. | Type I, Type II, Type III, Type V commercial hybrid immersion suit, or exposure suit ³ . | Do. |

¹ Until September 1, 1995, individuals weighing less than 44 pounds (196 Newtons) may substitute an approved personal flotation device of the appropriate size for a required immersion suit or exposure suit.
² Certain Type V personal flotation devices are approved for substitution for Type I, II, or III personal flotation devices when used in accordance with the conditions stated in the Coast Guard approval label.

§ 28.115 Ring life buoys.

(a) Except as provided in paragraph (b) of this section and § 28.305, after November 15, 1991, each vessel must be equipped with a throwable flotation device or a ring life buoy as specified in table 28.115. If the vessel is equipped with a ring life buoy, at least one ring life buoy must be equipped with a line which is at least:

- (1) 60 feet (18.3 meters) in length for a vessel less than 65 feet (19.8 meters) in length; or
- (2) 90 feet (27.4 meters) in length for a vessel 65 feet (19.8 meters) or more in length.

(b) For each vessel less than 65 feet (19.8 meters) in length, an approved 20 inch (0.51 meters) or larger ring life buoy which is in serviceable condition and which was installed on board before September 15, 1991, may be used to meet the requirements of paragraph (a) of this section.

TABLE 28.115.—THROWABLE FLOTATION DEVICES

| Vessel length | Devices required |
|--|---|
| Less than 16 feet (4.9 meters). | None. |
| 16 feet (4.9 meters) or more, but less than 26 feet (7.9 meters). | 1 buoyant cushion, or ring life buoy (Type IV PFD) meters). |
| 26 feet (7.9 meters) or more, but less than 65 feet (19.8 meters). | 1 ring life buoy approval number starting with 160.009 or 160.050; orange; at least 24 inch (0.61 meters) size. |
| 65 feet (19.8 meters) or more. | 3 ring life buoys, approval number 160.50; orange; at least 24 inch (0.61 meters) size. |

Note: Certain Type V PFDs are approved for use in substitution for Type IV PFDs, when used in accordance with the conditions stated in the Coast Guard approval label.

§ 28.120 Survival craft.

(a) Except as provided in paragraphs (b) and (d) through (h) of this section, each vessel must carry the survival craft specified in table 28.120(a), table 28.120(b), or table 28.120(c), as appropriate for the vessel, in an aggregate capacity to accommodate the total number of individuals on board.

(b) The requirements of this section do not apply to a vessel with less than 4 individuals on board which operates within 12 miles of the coastline.

(c) Except as provided by § 28.305, compliance dates for the requirements for the number and type of survival craft in tables 28.120(a), 28.120(b), and 28.120(c) are

- (1) For a documented vessel that operates in the North Pacific Area, September 1, 1992;
- (2) For a documented vessel that operates in the Great Lakes or in the Atlantic Ocean north and east of a line drawn at a bearing 150° true from Watch Hill Light, Rhode Island, September 1, 1993;
- (3) For each other documented vessel, September 1, 1994; and
- (4) For each other vessel, September 1, 1995.

(d) Each survival craft installed on board a vessel before September 15, 1991, may continue to be used to meet the requirements of this section provided the survival craft is:

- (1) Of the same type as required in tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type; and
- (2) Maintained in good and serviceable condition.

(2) Maintained in good and serviceable condition.

(e) Each inflatable liferaft installed on board a vessel before September 15, 1991, may continue to be used to meet the requirements for an approved inflatable liferaft, provided the existing liferaft is maintained in good and serviceable condition as required by table 28.140, and it is equipped with the equipment pack required by tables 28.120(a), 28.120(b), or 28.120(c), as appropriate for the vessel type. Where no equipment pack is specified in tables 28.120(a), 28.120(b), or 28.120(c), a coastal service pack is required.

(f) An approved lifeboat may be substituted for any survival craft required by this section, provided it is arranged and equipped in accordance with part 94 of this chapter.

(g) The capacity of an auxiliary craft carried on board a vessel which is integral to and necessary for normal fishing operations will satisfy the requirements of this section for survival craft, except for an inflatable liferaft, provided the craft is readily accessible during an emergency and is capable of safely holding all individuals on board the vessel. If the auxiliary craft is equipped with a Coast Guard required capacity plate, the boat must not be loaded so as to exceed the rated capacity.

(h) A vessel less than 36 feet in length which meets the positive flotation provisions of 33 CFR part 183 is exempt from the requirement for survival craft in paragraph (a) of this section for operation on the following waters:

- (1) Within 12 miles of the coastline, any waters; and
- (2) Rivers

TABLE 28.120 (a).—SURVIVAL CRAFT FOR DOCUMENTED VESSELS

| Area | Vessel type | Survival craft required |
|--|-------------|--|
| Beyond 50 miles of coastline..... | All..... | Inflatable liferaft with SOLAS A pack. |
| Between 20-50 miles of coastline, cold waters..... | All..... | Inflatable liferaft with SOLAS B pack. |

TABLE 28.120 (a).—SURVIVAL CRAFT FOR DOCUMENTED VESSELS—Continued

| Area | Vessel type | Survival craft required |
|---|--|-------------------------------|
| Between 20-50 miles, of coastline, warm waters..... | All..... | Inflatable liferaft. |
| Beyond Boundary Line, within 20 miles of coastline, cold waters..... | All..... | Inflatable liferaft. |
| Beyond Boundary Line within 20 miles of coastline, warm waters..... | All..... | Life float. |
| Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters..... | 36 feet (11 meters) or more in length..... | Inflatable buoyant apparatus. |
| Do..... | Less than 36 feet (11 meters) in length..... | None. |
| Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters..... | All..... | None. |
| Great Lakes, cold waters..... | 36 feet (11 meters) or more in length..... | Inflatable buoyant apparatus. |
| Do..... | Less than 36 feet (11 meters) in length..... | Buoyant apparatus. |
| Great Lakes, beyond 3 miles of coastline, warm waters..... | All..... | Buoyant apparatus. |
| Great Lakes, within 3 miles of coastline, warm waters..... | All..... | None. |

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

TABLE 28.120(b).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH NOT MORE THAN 16 INDIVIDUALS ON BOARD

| Area | Vessel type | Survival craft required |
|---|--|-------------------------------|
| Beyond 20 miles of coastline..... | All..... | Inflatable buoyant apparatus. |
| Beyond Boundary Line, within 20 miles of coastline, cold waters..... | All..... | Inflatable buoyant apparatus. |
| Beyond Boundary Line, within 20 miles of coastline, warm waters..... | All..... | Life float. |
| Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters..... | 36 feet (11 meters) or more in length..... | Buoyant apparatus. |
| Do..... | Less than 36 feet (11 meters) in length..... | None. |
| Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters..... | All..... | None. |
| Great Lakes, cold waters..... | All..... | Buoyant apparatus. |
| Great Lakes, beyond 3 miles of coastline, warm waters..... | All..... | Buoyant apparatus. |
| Great Lakes, within 3 miles of coastline, warm waters..... | All..... | None. |

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

TABLE 28.120(c).—SURVIVAL CRAFT FOR UNDOCUMENTED VESSELS WITH MORE THAN 16 INDIVIDUALS ON BOARD

| Area | Vessel type | Survival craft required |
|---|--|--|
| Beyond 50 miles of coastline..... | All..... | Inflatable liferaft with SOLAS A pack. |
| Between 20-50 miles of coastline, cold waters..... | All..... | Inflatable liferaft with SOLAS B pack. |
| Between 20-50 miles of coastline, warm waters..... | All..... | Inflatable liferaft. |
| Beyond Boundary Line, within 20 miles of coastline, cold water..... | All..... | Inflatable liferaft. |
| Beyond Boundary Line within 20 miles of coastline, warm waters..... | All..... | Life float. |
| Inside Boundary Line, cold waters; or Lakes, bays, sounds, cold waters; or Rivers, cold waters..... | 36 feet 11 (meters) or more in length..... | Inflatable buoyant apparatus. |
| Do..... | Less than 36 feet (11 meters) in length..... | None. |
| Inside Boundary Line, warm waters; or Lakes, bays, sounds, warm waters; or Rivers, warm waters..... | All..... | None. |
| Great Lakes, cold waters..... | 36 feet (11 meters) or more in length..... | Inflatable buoyant apparatus. |
| Do..... | Less than 36 feet (11 meters) in length..... | Buoyant apparatus. |
| Great Lakes, beyond 3 miles of coastline, warm waters..... | All..... | Buoyant apparatus. |
| Great Lakes, within 3 miles of coastline, warm waters..... | All..... | None. |

Note: The hierarchy of survival craft in descending order is lifeboat, inflatable liferaft with SOLAS A pack, inflatable liferaft with SOLAS B pack, inflatable liferaft with coastal service pack, inflatable buoyant apparatus, life float, buoyant apparatus. A survival craft higher in the hierarchy may be substituted for any survival craft required in this table.

§ 28.125 Stowage of survival craft.

(a) Each inflatable liferaft required to be equipped with a SOLAS A or a SOLAS B equipment pack must be stowed so as to float free and automatically inflate in the event the vessel sinks.

(b) Each inflatable liferaft, inflatable buoyant apparatus, and any auxiliary craft used in their place, must be kept readily accessible for launching or be stowed so as to float free in the event the vessel sinks.

(c) Each hydrostatic release unit used in a float-free arrangement must be

approved under part 160, subpart 160.062 of this chapter.

(d) Each float-free link used with a buoyant apparatus or with a life float must be certified to meet part 160, subpart 160.073 of this chapter.

§ 28.130 Survival craft equipment.

(a) *General.* Each item of survival craft equipment must be of good quality, effective for the purpose it is intended to serve, and secured to the craft.

(b) *Inflatable liferafts.* Each inflatable liferaft must have one of the following equipment packs as shown by the markings on its container:

- (1) Coastal Service;
- (2) SOLAS B Pack (formerly "Limited Service"); or
- (3) SOLAS A Pack (formerly "Ocean Service").

(c) Each life float and buoyant apparatus must be fitted with a lifeline, pendants, a painter, and a floating electric water light approved under part 161 subpart 161.010 of this chapter.

(d) *Other survival craft.* A vessel must not carry survival craft other than inflatable liferafts, life floats, inflatable buoyant apparatus, or buoyant apparatus, such as lifeboats or rigid liferafts, unless the survival craft and launching equipment comply with the requirements for installation, arrangement, equipment, and maintenance contained in 46 CFR part 94.

§ 28.135 Lifesaving equipment markings.

(a) Except as provided in paragraph (d) of this section, after September 1, 1992, lifesaving equipment carried

aboard a vessel pursuant to the requirements of this subpart of part 25, subpart 25.25 of this chapter must be marked as specified in table 28.135.

(b) Lettering used in lifesaving equipment markings must be in block capital letters.

(c) Retroreflective markings required by this section must be with material approved under part 164, subpart 164.018 of this chapter. The arrangement of the retroreflective material must meet IMO Resolution A.658(16).

(d) A wearable personal flotation device must be marked with the name of either the vessel, the owner of the device, or the individual to whom it is assigned.

TABLE 28.135.—LIFESAVING EQUIPMENT MARKINGS

| Item | Markings required, name of vessel | Retroreflective material |
|--|-----------------------------------|--------------------------|
| Wearable personal flotation device (Type I, II, III, or wearable Type V); immersion suit or exposure suit. | See § 28.135(d)..... | Type I or Type II. |
| Ring life buoy..... | X..... | Type II. |
| Inflatable liferaft..... | See note..... | See note. |
| Inflatable buoyant apparatus..... | See note..... | See note. |
| Life float..... | X..... | Type II. |
| Buoyant apparatus..... | X..... | Type II. |
| Auxiliary craft..... | X..... | Type II. |
| EPIRB..... | X..... | Type II. |

Note: No marking other than that provided by the manufacturer and the servicing facility is required.

§ 26.140 Operational readiness, maintenance, and inspection of lifesaving equipment.

(a) The master or individual in charge of a vessel must ensure that each item of lifesaving equipment must be in good working order, ready for immediate use, and readily accessible before the vessel

leaves port and at all times when the vessel is operated.

(b) Except for an inflatable liferaft or an inflatable buoyant apparatus less than two years of age, each item of lifesaving equipment, including unapproved equipment, must be maintained and inspected in accordance with:

- (1) Table 28.140;

(2) The servicing procedure under the subpart of this chapter applicable to the item's approval; and

(3) The manufacturer's guidelines.

(c) An inflatable liferaft or inflatable buoyant apparatus must be serviced at a facility specifically approved by the Commandant.

(d) An escape route from a space where an individual may be employed or an accommodation space must not be obstructed.

TABLE 28.140.—SCHEDULED MAINTENANCE AND INSPECTION OF LIFESAVING EQUIPMENT

| Item | Interval | | Regulation |
|---|----------|---|-----------------|
| | Monthly | Annually | |
| Inflatable wearable personal flotation device (Type V commercial hybrid)..... | | Servicing..... | 28.140 |
| Personal flotation devices, exposure suits and immersion suits..... | | Inspect, clean and repair as necessary..... | 28.140 |
| Buoyant apparatus and life floats..... | | Inspect, clean and repair as necessary..... | 28.140 |
| Inflatable liferaft..... | | Servicing..... | 28.140 |
| Inflatable buoyant apparatus..... | | Servicing..... | 28.140 |
| Hydrostatic release..... | | Replace on or before expiration date..... | 28.140 |
| Disposable hydrostatic release..... | | Replace..... | 28.140 |
| Undated batteries..... | | Replace on or before expiration date..... | 25.26-5, 28.140 |
| Dated batteries ¹ and other items..... | | Test..... | 25.26-5 |

¹ Water activated batteries must be replaced whenever they are used.

§ 28.145 Distress signals.

Except as provided by 28.305, after November 15, 1991, each vessel must be equipped with the distress signals specified in table 28.145.

TABLE 28.145.—DISTRESS SIGNALS

| Area | Devices required |
|---|---|
| Ocean, more than 50 miles from coastline. | 3 parachute flares, approval series 46 CFR 160.138; plus 6 hand flares, approval series 46 CFR 160.121; plus 3 smoke signals, approval series 46 CFR 160.122. |
| Ocean, 3-50 miles from the coastline; or more than 3 miles from the coastline on the Great Lakes. | 3 parachute flares, approval series 46 CFR 160.138, or 160.036; plus 6 hand flares, approval series 46 CFR 160.121 or 160.021; plus 3 smoke signals, approval series 46 CFR 160.122, 160.022, or 160.037. |

TABLE 28.145.—DISTRESS SIGNALS—Continued

| Area | Devices required |
|---|---|
| Coastal waters, excluding the Great Lakes; or within 3 miles of the coastline on the Great Lakes. | Night visual distress signals consisting of one electric distress light, approval series 46 CFR 161.013 or 3 approved flares; plus Day visual distress signals consisting of one distress flag, approval series 46 CFR 160.072, or 3 approved flares, or 3 approved smoke signals. ¹ |

¹ If flares are carried, the same 3 flares may be counted toward meeting both the day and night requirement.

§ 28.150 Emergency position indicating radio beacons (EPIRBs).

Each vessel must be equipped with an emergency position indicating radio beacon (EPIRB) as required by 46 CFR part 25, subpart 25.26.

Note: Each vessel which uses radio communication equipment must have a Ship

Radio Station License issued by the Federal Communications Commission, as set forth in 47 CFR part 60.

§ 28.155 Excess fire detection and protection equipment.

Installation of fire detection and protection equipment in excess of that required by the regulations in this subchapter is permitted provided that the excess equipment does not endanger the vessel or individuals on board in any way. The excess equipment must, at a minimum, be listed and labeled by an independent, nationally recognized testing laboratory and be in accordance with an appropriate industry standard for design, installation, testing, and maintenance.

§ 28.160 Portable fire extinguishers.

(a) Each vessel must meet the requirements of part 25, subpart 25.30 of this chapter.

(b) Each vessel 65 feet (19.8 meters) or more in length must be equipped with the minimum number, location, and type of portable fire extinguishers specified in table 28.160.

TABLE 28.160.—PORTABLE FIRE EXTINGUISHERS FOR VESSELS 65 FEET (19.8 METERS) OR MORE IN LENGTH

| Space | Classification | Quantity and location |
|---|-------------------|--|
| Safety areas, communicating corridors..... | A-II..... | 1 in each main corridor not more than 150 feet (49.2 meters) apart. (May be located in stairways.) |
| Pilothouse..... | C-I..... | 2 in vicinity of exit. |
| Service spaces, galleys..... | B-II or C-II..... | 1 for each 2,500 square feet (269.1 sq. meters) or fraction thereof suitable for hazards involved. |
| Paint lockers..... | B-II..... | 1 outside space in vicinity of exit. |
| Accessible baggage and storerooms..... | A-II..... | 1 for each 2,500 square feet (269.1 sq. meters) or fraction thereof located in the vicinity of exits, either inside or outside the spaces. |
| Work shops and similar spaces..... | A-II..... | 1 outside the space in vicinity of exit. |
| Machinery spaces; internal combustion propelling machinery..... | B-II..... | 1 for each 1,000 brake horsepower or fraction thereof but not less than 2 nor more than 6. |
| Electric propulsion motors or generator unit of open type..... | C-II..... | 1 for each propulsion motor generator unit. |
| Auxiliary spaces..... | B-II..... | 1 outside the space in the vicinity of exit. |
| Internal combustion machinery..... | B-II..... | 1 outside the space in the vicinity of exit. |
| Electric emergency motors or generators..... | C-II..... | 1 outside the space in the vicinity of exit. |

§ 28.165 Injury placard.

Each vessel must have posted in a highly visible location accessible to the crew a placard measuring at least 5 inches by 7 inches (127 millimeters by 178 millimeters) which reads:

Notice

Report All Injuries

United States law, 40 United States Code 10603, requires each seaman on a fishing vessel, fish processing vessel, or fish tender vessel to notify the master or individual in charge of the vessel or other agent of the employer regarding any illness, disability, or injury suffered by the seaman when in service to the vessel not later than seven days after the date on which the illness, disability, or injury arose,

Subpart C—Requirements for Documented Vessels That Operate Beyond the Boundary Lines or With More Than 16 Individuals On Board

§ 28.200 Applicability.

Each documented commercial fishing industry vessel that operates beyond the Boundary Lines or that operates with more than 16 individuals on board must meet the requirements of this subpart in addition to the requirements of subparts A and B of this part.

§ 28.205 Fireman's outfits and self-contained breathing apparatus.

(a) Each vessel that operates with more than 49 individuals on board must be equipped with at least two fireman's

outfits stowed in widely separated locations.

(b) Each vessel that uses ammonia as a refrigerant must be equipped with at least two self-contained breathing apparatuses.

(c) A fireman's outfit must consist of one self-contained breathing apparatus with lifeline attached, one flashlight, a rigid helmet, boots, gloves, protective clothing, and one fire axe.

(d) At least one spare air bottle must be provided for each self-contained breathing apparatus.

(e) Each self-contained breathing apparatus must be approved by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health

(NIOSH), have as a minimum a 30 minute air supply, and a full facepiece.

§ 28.210 First aid equipment and training.

(a) Each vessel must have on board a complete first aid manual and medicine chest of a size suitable for the number of individuals on board in a readily accessible location.

(b) *First aid and cardiopulmonary resuscitation (CPR) course certification.* Certification in first aid and CPR must be as described in this paragraph.

(1) First aid—a certificate indicating completion of a first aid course from:

(i) The American National Red Cross "Standard first Aid and Emergency Care" or "Multi-media Standard First Aid" course; or

(ii) A course approved by the Coast Guard under § 10.205(h)(1)(ii) of this chapter.

(2) CPR—A certificate indicating completion of course from:

(i) The American National Red Cross;

(ii) The American Heart Association; or

(iii) A course approved by the Coast guard under § 10.205(h)(2)(iii) of this chapter.

(c) After September 1, 1993, each vessel that operates with more than 2 individuals on board must have at least 1 individual certified in first aid and at least 1 individual certified in CPR. An individual certified in both first aid and CPR will satisfy both of these requirements.

(d) After September 1, 1993, each vessel that operates with more than 10 individuals on board must have at least 2 individuals certified in first aid and at least 2 individuals certified in CPR. An individual certified in both first aid and CPR may be counted against both requirements.

(e) After September 1, 1993, each vessel that operates with more than 49 individuals on board must have at least 4 individuals certified in first aid and at least 4 individuals certified in CPR. An individual certified in both first aid and CPR may be counted against both requirements.

§ 28.215 Guards for exposed hazards.

(a) Each space on board a vessel must meet the requirements of this section.

(b) Suitable hand covers, guards, or railing must be installed in way of machinery which can cause injury to personnel, such as gearing, chain or belt drives, and rotating shafting. This is not meant to restrict necessary access to fishing equipment such as winches, drums, or gurdies.

(c) Each exhaust pipe from an internal combustion engine which is within

reach of personnel must be insulated or otherwise guarded to prevent burns.

§ 28.225 Navigational Information.

(a) Each vessel must have at least the following navigational information on board:

(1) Marine charts of the area to be transited, published by the National Ocean Service, Defense Mapping Agency Hydrographic/Topographic Center, U.S. Army Corps of Engineers, or a river authority that—

(i) Are of a large enough scale and have enough detail to make safe navigation of the area possible; and

(ii) Are currently corrected.

(2) For the area to be transited, a currently corrected copy of, or applicable currently corrected extract from, each of the following publications:

(i) U.S. Coast Pilot; and

(ii) Coast Guard Light List.

(3) For the area to be transited, the current edition of, or applicable current extract from, each of the following publications:

(i) Tide tables published by the National Ocean Service; and

(ii) Tidal current tables published by the National Ocean Service, or river current publication issued by the U.S. Army Corps of Engineers or a river authority.

(b) Each vessel of 39.4 feet (12 meters) or more in length that operates shoreward of the COLREG Demarcation Lines, as set forth in 33 CFR part 80, must carry on board and maintain for ready reference a copy of the Inland Navigation Rules, as set forth in 33 CFR chapter 1, subchapter E.

§ 28.230 Compasses.

Each vessel must be equipped with an operable magnetic steering compass with a compass deviation table at the operating station.

§ 28.235 Anchors and radar reflectors.

(a) Each vessel must be fitted with an anchor(s) and chain(s), cable, or rope appropriate for the vessel and the waters of the intended voyage.

(b) Except for a vessel rigged with gear that provides a radar signature from a distance of 6 miles, each nonmetallic hull vessel must have a radar reflector.

§ 28.240 General alarm system.

(a) Except as provided in paragraph (f) of this section, after September 1, 1992, each vessel with an accommodation space or a work space which is not adjacent to the operating station, must have an audible general alarm system with a contact-maker at the operating station suitable for

notifying individuals on board in the event of an emergency.

(b) The general alarm system must be capable of notifying an individual in any accommodation space or work space where they may normally be employed.

(c) In a work space where background noise makes a general alarm system difficult to hear, a flashing red light must also be installed.

(d) Each general alarm bell and flashing red light must be identified with red lettering at least 1/8 inch (13 millimeters) high as follows:

Attention

General Alarm—When Alarm Sounds Go to Your Station.

(e) A general alarm system must be tested prior to operation of the vessel and at least once each week thereafter.

(f) A public address system or other means of alerting all individuals on board may be used in lieu of a general alarm system provided it complies with paragraphs (b), (c), and (e) of this section and can be activated from the operating station.

§ 28.245 Communication equipment.

(a) Except as provided in paragraphs (b) through (e) of this section, each vessel must be equipped as follows.

(1) Each vessel must be equipped with a VHF radiotelephone capable of transmitting and receiving on the frequency or frequencies within the 156–162 MHz band necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel is operating.

(2) Each vessel that operates more than 20 miles from the coastline, in addition to the VHF radiotelephone required by paragraph (a)(1) of this section, must be equipped with a radiotelephone transceiver capable of transmitting and receiving on frequencies in the 2–4 MHz band necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel is operating.

(3) Each vessel that operates more than 100 miles from the coastline, in addition to the communication equipment required by paragraph (a)(1) of this section must be equipped with a radiotelephone transceiver capable of transmitting and receiving on frequencies in the 2–27.5 MHz band necessary to communicate with a public coast station or U.S. Coast Guard station serving the area in which the vessel is operating.

(4) Each vessel that operates in waters contiguous to Alaska where no public coast station or U.S. Coast Guard

station is within communications range of a VHF radio transceiver operating on the 150-102 MHz band or the 2-4 MHz band, in addition to the VHF radio communication equipment required by paragraph (a)(1) of this section, must be equipped with a radiotelephone transceiver capable of transmitting and receiving on frequencies in the 2-27.5 MHz band necessary to communicate with a public coast station or a U.S. Coast Guard station serving the area in which the vessel is operating.

(b) A single radio transceiver capable of meeting the requirements of paragraphs (a)(2) and (3), or paragraphs (a)(2), (J), and (4) of this section, is acceptable.

(c) Satellite communication capability with the station servicing the area in which the vessel is operating is acceptable as an alternative to the requirements of paragraphs (a)(2), (a)(3), or (a)(4) of this section.

(d) A cellular telephone capable of communicating with a public coast station or a U.S. Coast Guard station serving the area in which the vessel is operating is acceptable as an alternative to the requirements of paragraphs (a)(2), (a)(3), or (a)(4) of this section.

(e) A radiotelephone transceiver installed on board a vessel before September 15, 1991, capable of transmitting and receiving on frequencies on the 4-20 MHz band may continue to be used to satisfy the requirements of paragraphs (a)(3) and (a)(4) of this section.

(f) The principle operating position of the communication equipment must be at the operating station.

(g) Communication equipment must be installed to ensure safe operation of the equipment and to facilitate repair. It must be protected against vibration, moisture, temperature, and excessive currents and voltages. It must be located so as to minimize the possibility of water intrusion from windows broken by heavy seas.

(h) Communication equipment must comply with the technical standards and operating requirements issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

Note: Each vessel which uses radio equipment to meet the communication requirements of this section must have a Ship Radio Station License issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

(i) All communication equipment must be provided with an emergency source of power that complies with § 23.375.

§ 28.250 High water alarms.

On a vessel 36 feet (11.8 meters) or more in length, a visual and audible

alarm must be provided at the operating station to indicate high water level in each of the following normally unattended spaces:

(a) A space with a through-hull fitting below the deepest load waterline, such as the lazarette;

(b) A machinery space bilge, bilge well, shaft alley bilge, or other space subject to flooding from sea water piping within the space; and

(c) A space with a non-watertight closure, such as a space with a non-watertight hatch on the main deck.

§ 28.255 Bilge pumps, bilge piping, and dewatering systems.

(a) Each vessel must be equipped with a bilge pump and bilge piping capable of draining any watertight compartment, other than tanks and small buoyancy compartments, under all service conditions. Large spaces, such as engine rooms must be fitted with more than one suction line.

(b) In addition to the requirements of paragraph (a) of this section, a space used in the sorting or processing of fish in which water is used must be fitted with dewatering system capable of dewatering the space under normal conditions of list and trim at the same rate as water is introduced. Pumps used as part of the processing of fish do not count for meeting this requirement. The dewatering system must be interlocked with the pump(s) supplying water to the space, so that in the event of failure of the dewatering system, the water supply is inactivated.

(c) Except as provided by paragraph (f) of this section, each vessel 79 feet (24 meters) or more in length must be equipped with a fixed, self-priming, powered, bilge pump connected to a bilge manifold.

(d) If a bilge pump required by paragraph (a) of this section is portable, it must be provided with a suitable suction hose of adequate length to reach the bilges of each watertight compartment it must serve and with a discharge hose of adequate length to ensure overboard discharge. A portable pump must be capable of dewatering each space it serves at a rate of at least 2 inches (51 millimeters) of water depth per minute.

(e) Except for a fire pump required by § 28.315, a bilge pump may be used for other purposes.

(f) Except where an individual pump is provided for a separate space or for a portable pump, each individual bilge suction line must be led to a manifold. Each bilge suction line must be provided with a stop valve at the manifold and a check valve at some accessible point in

the bilge line to prevent unintended flooding of a space.

(g) Each bilge suction line and dewatering system suction must be fitted with a suitable strainer to prevent clogging of the suction line. Strainers must have an open area of not less than three times the open area of the suction line.

(h) Each vessel must comply with the oil pollution prevention requirements of 33 CFR parts 151 and 155.

§ 28.260 Electronic position fixing devices.

Each vessel 79 feet (24 meters) or more in length must be equipped with an electronic position fixing device capable of providing accurate fixes for the area in which the vessel operates.

§ 28.265 Emergency instruction.

(a) Except as provided in paragraphs (b) and (c) of this section, each vessel must have emergency instructions posted in conspicuous locations accessible to the crew.

(b) The instructions identified in paragraphs (d)(6), (d)(7), (d)(8), and (d)(9) of this section, may be kept readily available as an alternative to posting.

(c) On a vessel which operates with less than 4 individuals on board, the emergency instructions may be kept readily available as an alternative to posting.

(d) The emergency instructions required by this section must identify at least the following information, as appropriate for the vessel:

(1) The survival craft embarkation stations aboard the vessel and the survival craft to which each individual is assigned;

(2) The fire and emergency signal and the abandon ship signal;

(3) If immersion suits are provided, the location of the suits and illustrated instructions on the method for donning the suits;

(4) Procedures for making a distress call, such as:

(i) Make sure your communication equipment is on.

(ii) Select 156.8 MHz (VHF channel 16), 2182 kHz, or other distress frequency used in your area of operation. Note: VHF channel 16 and 2182 kHz on SSB are for emergency and calling purposes only.

(iii) Press microphone button and speaking slowly—clearly—calmly say: "Mayday—Mayday—Mayday"

(iv) Say: "This is the M/V (Insert name of your vessel), (Insert name of your vessel). (Insert name of your vessel), Over."

Commercial Fishing Vessel Safety Act

THE FINAL RULE: A SUMMARY OF THE COMMERCIAL FISHING VESSEL SAFETY ACT

NOTE: The following is a partial summary, for Alaska waters, of the regulations and is not all inclusive. Effective date is September 15, 1991 unless otherwise noted. We strongly recommend fishermen to review the regulations and the checklist themselves. In Alaska call the USCG F/V Safety Coordinator at 1-800-478-7369 and leave your name and address for a free copy of the regulations and boarding officer checklist.

REQUIREMENTS FOR ALL FISHING VESSELS

1. Immersion suit accessible and of an appropriate size for each person onboard. If beyond the Boundary Line retro-tape, PFD light and name (vessel, owner of device, or person assigned) must be on suit (after 9/1/92)
2. Ring Life Buoys (RLB) {orange, 24" diameter, with retro-tape and vessel name}
 - a. Vessels 16' to < 26': Bouyant cushion or RLB plus 60' line minimum.
 - b. Vessel 26' to < 65': RLB plus 60' line minimum.
 - c. Vessel \geq 65': Minimum 3 RLBs one with a 90' line.
3. Survival craft required on documented vessels after 9/1/92 or on state registered vessels after 9/1/95 except those with less than 4 people within 12 miles of shore. Liferrafts with appropriate equipment packs and installed onboard before 9/15/91 are "grandfathered". Under limited conditions "auxiliary craft" may be substituted. F/V less than 36 ft. that have positive flotation and operate within 12 miles of shore are exempt. This section may be subject to future revision.
4. Distress flares if more than 3 miles from shore: 3 parachute flares; 6 handheld flares; 3 smoke flares. Lesser requirements if within 3 miles.
5. Injury placard posted.
6. 406 EPIRB if operating beyond 3 mile Territorial Sea Line. After 9/1/92 must be marked with vessel name.

REQUIREMENTS FOR DOCUMENTED VESSELS WITH MORE THAN 16 PEOPLE ON BOARD OR OPERATING BEYOND THE BOUNDARY LINE

1. Fire extinguisher(s).

2. Two fireman's outfits if more than 49 people on board.
3. Two SCBAs required with spare 30 minute bottles if ammonia refrigeration system on board.
4. First Aid book & equipment. First Aid training required by 9/1/93.
5. Guards for exposed hazards.
6. Unobstructed escape routes.
7. Relevant, up-to-date charts, Coast Pilot, light list, tide & current tables. Maintain charts using Local Notice to Mariners.
8. Compass, anchor, and radar reflector (for nonmetallic hull not providing a signature from 6 miles).
9. General alarm (after 9/1/92).
10. VHF Communication equipment to contact Coast Guard (SSB past 20 nautical miles). See Final Rule.
11. High water alarms if vessel 36 ft. or more, bilge pumps, piping & dewatering systems regardless of length.
12. F/V over 79 ft must have electronic position fixing device.
13. Monthly emergency instruction, drills & orientation.
14. Training in drill instruction. (effective 9/1/94).

REQUIREMENTS FOR F/V WITH KEELS LAID OR CONVERTED AFTER 9/15/91

This section sets standards for the areas of liferaft launching, fire fighting systems, galley hoods, fuel systems, ventilation, electrical standards, radar and depth sounding equipment, deck rails, life lines, and grab rails. See *Final Rule* for details.

REQUIREMENTS FOR STABILITY

Applies to F/Vs more than 79 ft. that has had keel laid or altered after 9/15/91. Sets standards and tests for these vessels. Future rule making will affect this section and smaller F/Vs. See *Final Rule* for details.

continued next page

Continued...

continued from page 5

TRAINING REQUIREMENTS

Applies only to documented F/Vs beyond the boundary line or with more than 16 people onboard (POB).

1. First Aid & CPR (After September 1, 1993) Acceptable certification follows:

- First Aid:
1. American Red Cross
 2. OSHA
 3. USCG approved

- CPR:
1. American Red Cross
 2. American Heart Association
 3. USCG approved

- a. F/V with more than 2 POB must have one person trained in First Aid and CPR (can be same person).
- b. F/V with more than 16 POB needs two trained in First Aid/CPR.
- c. F/V with more than 49 POB needs 4 trained in First Aid/CPR.

2. Instruction, Drills and Safety Orientation:

Master will conduct drills and instruction once a month in the following:

- a. abandoning vessel.
- b. fighting a fire in different locations.
- c. recovering an individual in the water.
- d. minimizing the effects of flooding.
- e. launching survival craft.
- f. donning immersion suits and PFDs.
- g. donning fire clothing and SCBA (if so equipped).
- h. radio distress calls and visual distress signals.
- i. activating the general alarm.
- j. reporting inoperative alarm systems.

3. Drill Instruction. After Sept. 1, 1994 no person may conduct the drills or provide instruction without that person having been trained in the proper procedures for conducting the activity.

4. Safety Orientation. The master must insure that a safety orientation is given to each individual onboard that has not received the instruction or participated in the drill.

5. Emergency Instructions. Instructions must be posted or be kept readily available (F/V with less than 4 people) covering:

- a. survival craft embarkation stations.
- b. fire, emergency and abandon ship signal.
- c. location of immersion suits & illustration of donning procedure.
- d. procedures for making a distress call.
- e. essential action to be taken in an emergency.
- f. procedures for rough weather or conditions.
- g. procedures for anchoring.
- h. persons overboard procedures.
- i. fire fighting procedures.

6. Master must insure that lifesaving equipment is in good condition and readily available for immediate use.

SPECIAL NOTES

Vessels whose liferafts qualify to be grandfathered should keep a copy of receipt with date of purchase onboard. *See Final Rule for details.*

Grandfathered liferafts must still follow the yearly repacking schedule and be repacked by a certified repacker (repacker must be certified by manufacturer of raft).

Be sure to do the following and record in your log book:

1. Monthly Drills.
2. Monthly EPIRB test.
3. Inspect all other survival gear regularly.

Refer to the Final Rule to clarify questions or call your local USCG Fishing Safety Coordinator. In Alaska call 1-800-478-7369.

.....



UNITED FISHERMEN OF ALASKA

211 4th Street, Suit 112
Juneau, AK 99801
907-586-2820
Fax# 907-463-2545

February 4, 1992

MEMBER ASSOCIATIONS

Alaska Crab Coalition
Alaska Independent Fishermen's
Marketing Association
Alaska Longline Fisherman's
Association
Alaska Trollers Association
Bering Sea Fishermen's Association
Bristol Bay Driftnetters Association
Concerned Area 'M' Fishermen
Cook Inlet Aquaculture Association
Copper River Fishermen's Cooperative
Cordova District Fishermen United
Kona Peninsula Fishermen's Association
North Pacific Fisheries Association
Northern Southeast Regional
Aquaculture Association
Peninsula Marketing Association
Petersburg Vessel Owners Association
Prince William Sound
Aquaculture Association
Prince William Sound Seiners Association
Seafood Producers Cooperative
Southeast Alaska Seiners
Southern Southeast Regional
Aquaculture Association
United Cook Inlet Drift Association
United Southeast Alaska Gillnetters
Western Alaska Cooperative
Marketing Association

The Honorable Dick Eliason
Alaska State Senate
Post Office Box V
Juneau, Alaska 99811

RE: Senate Bill 358

Dear Senator Eliason:

On behalf of the United Fishermen of Alaska, I would like to support the proposed amended language to AS 11.46.130(a) which would elevate the theft of certain safety and survival equipment from a commercial fishing vessel to theft in the second degree, as well as other proposed language under SB 358.

It has come to my attention, over the past several years, that theft of safety and survival equipment has become an increasing problem. Fortunately, at least in one instance of which I am aware, the theft of survival suits was discovered prior to an emergency situation. This equipment, for purposes of accessibility in time of distress, is often stored outside of a locked cabin or storage locker. This, unfortunately, also makes this equipment more readily accessible to theft. Also, life rafts and emergency locator beacons are installed in such a manner that they cannot be secured from theft.

Our organization wholeheartedly supports your sponsorship and efforts on behalf of this worthwhile legislation. It is our sincere hope that the proposed statutory change will act as a deterrent to those unscrupulous individuals who would thoughtlessly remove survival equipment from a commercial fishing vessel and jeopardize fishermen's lives.

Very truly yours,

Greg Seider
Executive Director

GS:ph1

✓ cc: Senator Rick Halford
Senator Fred Zharoff

PUBLIC OPINION MESSAGE

DEAR: SENATOR ELIASON

NAME: GRANT H. TRASK
TITLE: DIRECTOR, SEAFOOD PRODUCER'S CO-OP
ADDRESS: BOX 400 SECOND STREET
CITY: PETERSBURG ZIP: 99833
PHONE: 772-3775

BILL NO: SB 358

SUBJECT: THEFT OF BOAT SAFETY/SURVIVAL EQUIP
MESSAGE: THANK YOU FOR YOUR BILL INTRODUCING PENALTIES FOR THE THEFT SURVIVAL AND SAFETY EQUIPMENT. THE 350 MEMBERS OF SEAFOOD PRODUCER'S CO-OPERATIVE SUPPORT YOU. OUR LIVELIHOOD AND PROFESSIONALISM DEPENDS ON KEEPING ALL ASPECTS OF OUR BUSINESSES INTACT AND THIS BILL SHOULD SERVE AS DETERRANT TO ANYONE INCLINED TO JEOPARDIZE THIS.

FOMID: 15103124
DATE: 92/02/03
TIME: 10:31:24
LIONAME: PETERSBURG LIO

COPIES: REPRESENTATIVE SENATORS

TAYLOR

HALFORD
ZHAROFF

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3 6 5

FISCAL NOTI

No. 1
 Bill Version: SB 365
 (\$ Publish Date: 2-18-92)

STATE OF ALASKA
 1992 LEGISLATIVE SESSION

Revision Date: _____ Dept. Affected Health & Social Services
 Title: Living wills and do not resuscitate orders BRU: State Health Services
 Component: Public Health Administration
 Sponsor: Craft
 Requestor: HES COMPONENT SERIAL NO 0-60-40602-292

Expenditures/Revenues (Thousands of Dollars)

| OPERATING | FY93 | FY94 | FY95 | FY96 | FY97 | FY98 |
|------------------------|-------------|------------|------------|------------|------------|------------|
| PERSONAL SERVICES | | | | | | |
| TRAVEL | 1.0 | | | | | |
| CONTRACTUAL | 9.3 | | | | | |
| SUPPLIES | | | | | | |
| EQUIPMENT | | | | | | |
| LAND & STRUCTURES | | | | | | |
| GRANTS, CLAIMS | | | | | | |
| MISCELLANEOUS | | | | | | |
| TOTAL OPERATING | 10.3 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|---------|--|--|--|--|--|--|
| CAPITAL | | | | | | |
|---------|--|--|--|--|--|--|

| | | | | | | |
|---------|--|--|--|--|--|--|
| REVENUE | | | | | | |
|---------|--|--|--|--|--|--|

FUNDING: (Thousands of Dollars)

| | | | | | | |
|---------------|-------------|------------|------------|------------|------------|------------|
| GENERAL FUND | 10.3 | | | | | |
| FEDERAL FUNDS | | | | | | |
| OTHER | | | | | | |
| TOTAL | 10.3 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

POSITIONS:

| | | | | | | |
|-----------|--|--|--|--|--|--|
| FULL-TIME | | | | | | |
| PART-TIME | | | | | | |
| TEMPORARY | | | | | | |

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary)

The department would need to contract out the writing of the regulations which are mandated by SB 365. A contract for 3 months of writing and walking the regulations through the adoption procedure would cost \$6.0. Additional costs associated with the adoption procedure are as follows:
 Printing - \$0.5, Mailings - \$0.3, Advertising \$1.5, 2 Teleconferences @ \$7.0

Prepared by: Peter M. Nakamura, MD, MPH *P.M.N.*
 Division: Public Health

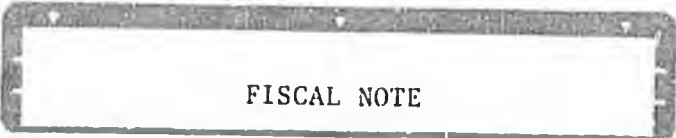
Phone: 465-3090
 Date: 1/29/92

Approved by Commissioner: Theodore A. Mala, MD, MPH *T.A. Mala*
 Agency: Department of Health and Social Services

Date: 30 Jan 1992

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

Changes in CS SB 365 (HES)
 have no fiscal impact. This
 fiscal note is appropriate.
14 Feb 92 *M. Malone*
 date Comte Aide (initial)



ALASKA STATE LEGISLATURE

119 North Cushman, #201
Fairbanks, Alaska 99701
(907) 452-4882
Fax: 452-3254



Room 125, State Capitol
Juneau, Alaska 99801-1182
(907) 465-3834
Fax: 586-6246

Shirley Craft
Alaska State Senator

To: Senator Rick Halford, Chair
The Senate Judiciary Committee

From: Senator Shirley Craft *Shirley*

Date: February 12, 1992

Re: CS SB 365
"An Act relating to living wills and do not resuscitate orders; and providing for an effective date."

BACKGROUND

Do not resuscitate (DNR) orders are a request by an individual to not be resuscitated upon cardiopulmonary failure. A DNR order can be obtained through an oral request to your doctor or by filling out a DNR order form. If an individual has an incurable or painful illness, he or she may not want to be resuscitated.

Physicians, emergency response personnel and home care nurses all use different guidelines when responding to DNR orders. SB 365 would streamline DNR procedures for all health care professionals and provide protection from liability when an individual's DNR request is carried out.

SB 365 PROVIDES FOR THE FOLLOWING:

SB 365 reinforces an individual's wish to not be resuscitated by requesting the Department of Health and Social Services to develop: (1) DNR identification such as bracelets, necklaces, forms and wallet size cards; and (2) regulations for standard DNR procedures.

DNR identification will help alert medical personnel who may not be familiar with the individual, or his or her wish to not be resuscitated. For instance, in the case of a motor vehicle accident or an emergency situation occurring at home when the individual's doctor or next of kin are not available.

A health care provider, other than a physician, is required to comply with DNR protocol, when they are presented with DNR identification.

SPONSOR STATEMENT

DNR Orders
February 12, 1992
Page .2

Physicians or medical personnel who act in accordance with a DNR order, will not be subject to civil or criminal liability, or be found guilty of unprofessional conduct.

Physicians or medical personnel who do not feel comfortable complying with a DNR order, must transfer the individual to a facility that will comply or to the individual's home.

Physicians or medical personnel who are aware of the individual's DNR order, but do not honor the request, can only be penalized for up to \$1,000.00 and the actual costs associated with their failure to comply. (These requirements are the same stipulations required by state law for living wills, in section 5, of AS 18.12.070.)

The Alaska statutes address living wills, but do not enforce an individual's choice to not be resuscitated. I urge your early scheduling and favorable consideration of this measure. I would be happy to answer any questions you may have and provide further information upon request.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101


240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

April 10, 1992

SUBJECT: Sectional Summary of CSSB 365(HES)

TO: Senator Rick Halford
ATTN: Jeff

FROM: Terri Lauterbach 
Legislative Counsel

You have asked for a sectional analysis of CSSB 365(HES). In the absence of specific questions, this memorandum contains a general summary of the bill. If you have legal questions not addressed by this memorandum, please let me know and I will try to be of assistance.

Section 1. Adds a section about do not resuscitate orders (DNR's) to the chapter of statutes that currently addresses living wills. DNR orders are already issued by physicians. This new section gives them statutory recognition so that state-approved DNR identification can be used by persons for whom a DNR order has been issued and so that the liability of persons who withhold CPR from someone wearing DNR identification can be limited by statute. (These issues are addressed later in the bill.)

Sec. 2. Provides that a person for whom a DNR order has been issued still has the right to make decisions regarding the use of CPR as long as the patient is able to do so.

Sec. 3. Provides that a health care facility that is unwilling to comply with a DNR order or unwilling to honor the intent of DNR identification must try to get a DNR patient to the patient's home or to a health facility that will honor the DNR order or identification.

Sec. 4. Provides limited liability for persons who implement DNR orders or DNR identification that is similar to the limited liability already existing in statute for persons who implement living wills.

Sec. 5. Provides that a person need not honor DNR identification if the patient has previously requested the person to apply CPR or other life sustaining procedures.

SECTIONAL

Senator Rick Halford

April 10, 1992

Page 2

Sec. 6. Subsection (a) provides a penalty against a physician who fails to comply with a DNR order similar to the penalty currently applicable to a physician who fails to comply with a living will. Subsection (b) establishes civil liability for a person who wilfully conceals, cancels, defaces, obliterates, or damages DNR identification similar to the liability currently existing with respect to damage to a living will.

Secs. 7 - 11. These five sections amend various subsections of AS 18.12.080 so that DNR orders and DNR identification are considered to be the same under Alaska law as living wills with respect to suicide, homicide, life insurance, the receipt of health care services, presumptions about persons who do not have DNR identification, and the right to make decisions about medical treatment while still able to do so.

Sec. 12. Provides that DNR orders and DNR identification from other jurisdictions will be honored in this state.

Sec. 13. Definitions.

Secs. 14 - 15. Direct DHSS to begin work on the regulations establishing a DNR protocol and the DNR identification so that the rest of the bill can be implemented in a timely manner.

Sec. 16. Delays the effective date of most of the bill until the regulations about DNR orders and DNR identification are in effect.

TML:pl
92-260.plm

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERRAL

gmc

DATE: 1/22/92

FURTHER: Judiciary

Date of 5-Day Notice: 06 Feb 92
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: 14 Feb 92

HES Committee considered SB 365

"An Act relating to living wills and do not resuscitate orders; and providing for an effective date."

and a majority of the committee recommends it be replaced with

and recommends:

replace with CS SB365 (HES)

- same title
- new title
- technical title change (HB only)

attaches amendment(s) and do pass

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

FBI

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes DHSS 30 Jan 92

SB & CS

PREVIOUS FISCAL NOTES: Dept/Date

Governor's bill with fiscal notes:

zero fiscal notes _____

fiscal notes _____

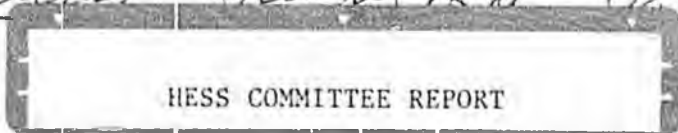
appropriation--no fiscal note

DO PASS:

Sam Costello
[Signature]

OTHER RECOMMENDATIONS:

[Signature]



7-LS1644J ✓
Lauterbach
2/26/92

CS FOR SENATE BILL NO. 365 ()
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATOR CRAFT

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to living wills and do not resuscitate orders; and providing for an
2 effective date."

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

4 * Section 1. AS 18.12 is amended by adding new sections to read:

5 Sec. 18.12.035. DO NOT RESUSCITATE ORDERS AND PROTOCOLS. (a) An
6 attending physician may issue a do not resuscitate order for a patient of the physician. The
7 physician shall document the grounds for issuing the order in the patient's medical file.

8 (b) The Department of Health and Social Services shall, by regulation, adopt a do not
9 resuscitate protocol that sets out a standardized method of procedure for the withholding of
10 cardiopulmonary resuscitation by physicians and other health care providers. The regulations
11 must include standardized procedures for implementing a do not resuscitate order issued in a
12 jurisdiction outside of this state. The regulations may not be adopted unless they have been
13 approved by the State Medical Board.

14 (c) A health care provider other than a physician shall comply with the do not resuscitate

1 protocol adopted under (b) of this section when presented with any of the following: DNR
2 identification, an oral do not resuscitate order issued directly by a physician, or a written do not
3 resuscitate order entered on a form prescribed by the Department of Health and Social Services.

4 Sec. 18.12.037. LIVING WILL AND DNR IDENTIFICATION. The Department of
5 Health and Social Services shall develop standardized designs for DNR identification cards,
6 forms, necklaces, and bracelets that signify, when carried or worn, that the possessor has
7 executed a declaration under this chapter or is a patient for whom a physician has issued a do
8 not resuscitate order.

9 * Sec. 2. AS 18.12.040(a) is amended to read:

10 (a) A qualified patient or a patient for whom a physician has issued a do not
11 resuscitate order has the right to make decisions regarding use of cardiopulmonary
12 resuscitation and other life-sustaining procedures as long as the patient is able to do so. If a
13 qualified patient or patient for whom a physician has issued a do not resuscitate order is not
14 able to make these decisions, the declaration or do not resuscitate protocol governs decisions
15 regarding use of cardiopulmonary resuscitation and other life-sustaining procedures.

16 * Sec. 3. AS 18.12.050(b) is amended to read:

17 (b) If the policies of a health care facility preclude compliance with the declaration of
18 a qualified patient under this chapter or a do not resuscitate order issued by an attending
19 physician, or the facility is unwilling to accept DNR identification as evidence of the
20 existence of a declaration or do not resuscitate order, that facility shall take all reasonable
21 steps to notify the patient or, if the patient is not able to make treatment decisions, the patient's
22 guardian, of the facility's policy and shall take all reasonable steps to effect the transfer of the
23 patient to the patient's home or to a facility where the provisions of this chapter can be carried
24 out.

25 * Sec. 4. AS 18.12.060(a) is amended to read:

26 (a) In the absence of actual notice of the revocation of a declaration or do not
27 resuscitate order, as applicable, the following, while acting in accordance with the do not
28 resuscitate protocol adopted under AS 18.12.035 or with the other requirements of this
29 chapter, are not subject to civil or criminal liability or guilty of unprofessional conduct:

30 (1) a physician who causes the withholding or withdrawal of life-sustaining
31 procedures from a qualified patient or the withholding or withdrawal of cardiopulmonary

1 resuscitation from a patient for whom a do not resuscitate order has been issued or who
2 possesses DNR identification;

3 (2) a person who participates in the withholding or withdrawal of
4 cardiopulmonary resuscitation or other life-sustaining procedures under the direction or with
5 the authorization of a physician or upon discovery of DNR identification upon a person;

6 (3) the health care facility in which the withholding or withdrawal occurs.

7 * Sec. 5. AS 18.12.060 is amended by adding a new subsection to read:

8 (c) A person who causes or participates in the providing of cardiopulmonary resuscitation
9 or other life-sustaining procedures after an oral or written request to do so communicated to the
10 person by another who possesses DNR identification is not subject to civil or criminal liability
11 for failing to honor the intent of the DNR identification nor is the person guilty of unprofessional
12 conduct for that action. The health care facility in which actions described in this subsection are
13 undertaken is also not subject to civil or criminal liability for the failure to honor the intent of
14 DNR identification.

15 * Sec. 6. AS 18.12.070 is amended to read:

16 Sec. 18.12.070. PENALTIES. (a) An attending physician who fails to comply with a
17 do not resuscitate order or the declaration of a qualified patient or to make the necessary
18 arrangements to effect a transfer under AS 18.12.050 has no right to compensation for medical
19 services provided to a [QUALIFIED] patient after withholding or withdrawal should have been
20 effective or after transfer should have occurred and may be liable to the [QUALIFIED] patient
21 and to the heirs of the [QUALIFIED] patient for a civil penalty not to exceed \$1,000.00 plus the
22 actual costs associated with the failure to comply with the order or declaration, and this shall
23 be the exclusive remedy at law for damages.

24 (b) A person who wilfully conceals, cancels, defaces, obliterates, or damages the DNR
25 identification or declaration of another person without the other's [DECLARANT'S] consent
26 or who falsifies or forges a revocation of the DNR identification or declaration of another
27 person may be civilly liable to the other person [QUALIFIED PATIENT] and to the heirs of
28 the other person [QUALIFIED PATIENT].

29 * Sec. 7. AS 18.12.080(a) is amended to read:

30 (a) Death resulting from the withholding or withdrawal of cardiopulmonary
31 resuscitation or other life-sustaining procedures under a do not resuscitate order or protocol,

1 under a declaration, or upon discovery of DNR identification on a person and in accordance
2 with this chapter does not, for any purpose, constitute a suicide or homicide.

3 * Sec. 8. AS 18.12.080(b) is amended to read:

4 (b) The issuing of a do not resuscitate order, the possession of DNR identification,
5 or the making of a declaration under AS 18.12.010 does not affect in any manner the sale,
6 procurement, or issuance of a policy of life insurance, nor does it modify the terms of an existing
7 policy of life insurance. A policy of life insurance is not legally impaired or invalidated in any
8 manner by the withholding or withdrawal of life-sustaining procedures from an insured qualified
9 patient or the withholding or withdrawal of cardiopulmonary resuscitation from an insured
10 patient who possesses DNR identification or for whom a do not resuscitate order has been
11 issued, notwithstanding any term of the policy to the contrary.

12 * Sec. 9. AS 18.12.080(c) is amended to read:

13 (c) A physician, health care facility, or other health care provider, and a health care
14 service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or
15 nonprofit hospital plan, may not require a person to execute a declaration, obtain a do not
16 resuscitate order from a physician, or possess DNR identification as a condition for being
17 insured for, or receiving, health care services.

18 * Sec. 10. AS 18.12.080(d) is amended to read:

19 (d) This chapter creates no presumption concerning the intention or intended treatment
20 of an individual who does not have DNR identification, has not executed a declaration, or for
21 whom a do not resuscitate order has not been issued with respect to the use, withholding, or
22 withdrawal of cardiopulmonary resuscitation or the use, withholding, or withdrawal of other
23 life-sustaining procedures in the event of a terminal condition.

24 * Sec. 11. AS 18.12.080(e) is amended to read:

25 (e) Nothing in this chapter increases or decreases the right of a patient to make decisions
26 regarding use of cardiopulmonary resuscitation or other life-sustaining procedures as long as
27 the patient is able to do so, or impairs or supersedes any right or responsibility that a person has
28 to effect the withholding or withdrawal of medical care in a lawful manner. In that respect, the
29 provisions of this chapter are cumulative.

30 * Sec. 12. AS 18.12.090 is amended to read:

31 Sec. 18.12.090. RECOGNITION OF DECLARATIONS AND ORDERS EXECUTED

1 OR ISSUED IN OTHER STATES. A declaration, do not resuscitate order, or DNR
2 identification executed, issued, or authorized in another state or a territory or possession of the
3 United States in compliance with the law of that jurisdiction is effective for purposes of this
4 chapter.

5 * Sec. 13. AS 18.12.100 is amended by adding new paragraphs to read:

6 (8) "cardiopulmonary resuscitation" means cardiopulmonary resuscitation or a
7 component of cardiopulmonary resuscitation;

8 (9) "DNR identification" means identification substantially similar to that
9 approved under AS 18.12.037;

10 (10) "do not resuscitate order" means a directive from a licensed physician that
11 emergency cardiopulmonary resuscitation should not be administered to a particular person;

12 (11) "do not resuscitate protocol" means the protocol developed under
13 AS 18.12.035(b).

14 * Sec. 14. The commissioner of health and social services shall promptly begin the procedure to
15 adopt regulations implementing AS 18.12.035 and 18.12.037, enacted by sec. 1 of this Act, so that the
16 regulations can take effect as soon as practicable.

17 * Sec. 15. AS 18.12.035(b) and 18.12.037, enacted by sec. 1 of this Act, and sec. 14 of this Act take
18 effect immediately under AS 01.10.070(c).

19 * Sec. 16. Except as provided in sec. 15 of this Act, this Act takes effect on the effective date of the
20 regulations adopted under AS 18.12.035 or 18.12.037, enacted by sec. 1 of this Act, whichever is later.
21 The commissioner of health and social services shall notify the revisor of statutes and the lieutenant
22 governor of that date.

POSITION PAPER

SENATE BILL NO. 365

A Bill for an Act entitled: "An Act relating to living wills and do not resuscitate orders; and providing for an effective date."

ANALYSIS

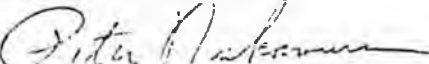
SB 365 complements current statutes on the rights of the terminally ill by adding specific recognition of do not resuscitate (DNR) orders to the existing legislation on the rights of the terminally ill to make a declaration relating to the use of life-sustaining procedures. A new section (18.12.035), allows attending physicians to issue do not resuscitate orders, requires the Department of Health and Social Services, with the approval of the State Medical Board, to issue regulations adopting a standardized protocol governing the withholding of cardiopulmonary resuscitation by physicians and other health care providers, and establishes the requirements under which health care providers other than physicians must comply with do not resuscitate orders. Section 18.12.037 requires the Department of Health and Social Services to develop standardized designs for DNR identification cards, forms, necklaces, and bracelets to indicate that the possessor has executed a living will or that a DNR order has been issued by a physician. Other provisions of the Bill amend existing statutory provisions by including DNRs along with living wills in areas such as immunities for health care providers acting under the provisions of living wills and DNR orders, penalties, etc.

Do not resuscitate orders are issued only in the case of terminal illness. Existing statutes on living wills appear to apply only to physicians, persons participating in the withholding or withdrawal of life-sustaining procedures from a qualified patient under the direction of with the authorization of a physician, and health care facilities in which the withholding or withdrawal occurs. Under existing practice, emergency response providers (EMT's and paramedics) are required to institute cardiopulmonary resuscitation on site even if the sick person has a living will. A properly executed DNR order and procedural protocol recognized by all concerned parties would help to avoid futile and unwanted interventions. Similarly, within health care institutions, DNR orders are necessary in the absence of a living will when attempts at resuscitation serve only to prolong the process of dying.


POSITION

The Department of Health and Social Services supports enactment of: SB 365.

Recommended:


Peter M. Nakamura, MD, MPH
Director
Division of Public Health

Approved:

 1/30/92
Theodore A. Mala, MD, MPH
Commissioner
Health and Social Services

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 24, 1992

REPLY TO:

- 1031 W 4th AVENUE SUITE 200
ANCHORAGE, ALASKA 99501-1994
PHONE: (907) 276-3550
FAX: (907) 276-3697
- 1st NATIONAL CENTER
100 CUSHMAN ST. SUITE 400
FAIRBANKS, ALASKA 99701-4679
PHONE: (907) 452-1568
FAX: (907) 456-1317
- P.O. BOX K—STATE CAPITOL
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 463-5295

465-3603

Barbara Bitney
Aide to Senator Shirley Craft
P.O. Box V
Juneau, AK 99811

Re: CSSB 365(HES) An Act relating to living wills and do not resuscitate orders; and providing for an effective date.

Dear Ms. Bitney:

You have asked several questions regarding the CSSB 365, an Act relating to living wills and do not resuscitate orders. Initially, you ask if section 5 of the bill means that a person who provides resuscitative measures after learning that a do not resuscitate order has been revoked, may be liable criminally or civilly for the provision of resuscitative services. Section 5 provides:

AS 18.20.060 is amended by adding a new subsection to read:

(c) A person who causes or participates in the providing of cardiopulmonary resuscitation or other life-sustaining procedures after an oral or written request to do so communicated to the person by another who possesses DNR identification is not subject to civil or criminal liability for failing to honor the intent of the DNR identification nor is the person guilty of unprofessional conduct for that action. The health care facility in which actions described in this subsection are undertaken is also not subject to civil or criminal liability for the failure to honor the intent of DNR identification.

Ms. Barbara Bitney
Aide to Senator Shirley Craft
Re: CSSB 365

February 24, 1992
Page 2

A person who provides resuscitation is not subject to civil or criminal liability if he or she fails to honor the do not resuscitate identification when the patient has revoked his or her DNR request. Section 11 provides:

AS 18.12.080(e) is amended to read:

(e) Nothing in this chapter increases or decreases the right of a patient to make decisions regarding use of cardiopulmonary resuscitation or other life-sustaining procedures as long as the patient is able to do so, or impairs or supersedes any right or responsibility that a person has to effect the withholding or withdrawal of medical care in a lawful manner. In that respect, the provisions of this chapter are cumulative.

A person may revoke his or her do not resuscitate request as long as he or she is able to do so.

Next you ask if a do not resuscitate order may be a way for a health care professional to assist a patient commit suicide. Section 7 provides:

AS 18.12.080(a) is amended to read:

(a) Death resulting from the withholding or withdrawal of cardiopulmonary resuscitation or other life-sustaining procedures under a do not resuscitate order or protocol, under a declaration, or upon discovery of DNR identification on a person and in accordance with this chapter does not, for any purpose, constitute a suicide or homicide.

Perhaps a hypothetical fact situation would be helpful in responding to your question. A young man is brought to the emergency room of a hospital after taking a potentially lethal overdose of "pain killer." He has a history of depressive episodes. Without treatment he will probably die from the overdose. He has DNR identification. In this situation, the patient's condition would not be considered "terminal" as the term is used in the living will statutes. AS 18.12.100(7) provides:

(7) "terminal condition" means a progressive incurable or irreversible condition that, without the administration of life-sustaining procedures, will, in the opinion of two physicians, when available, who have personally examined the patient, one of who must be the attending

Ms. Barbara Bitney
Aide to Senator Shirley Craft
Re: CSSB 365

February 24, 1992
Page 3

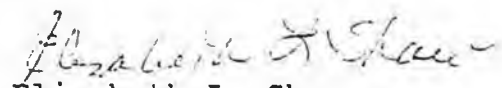
physician, result in death within a relatively short time.

The young man's condition is reversible. A doctor could not certify that the young man has a terminal condition. The provisions of AS 18.12 concerning a living will or the proposed additions regarding DNR orders do not apply. But a change in the facts may change these conclusions. Add the fact that the young man has cancer and he is in the terminal stages of the disease. The condition created by the overdose of pain killer is reversible, the underlying cancer is not. Perhaps now a physician would certify that the young man has a terminal condition. In this situation the protocol embodied in the Department of Health and Social Services regulations may shed light on what is the appropriate action to take.

The bill provides that DNR procedures are to be developed by the Department of Health and Social Services and approved by the Alaska State Medical Board prior to being adopted as regulations. The protocol developed will have to comport with reasonable medical practices and medical ethics. In the process of developing the standards, I am certain that there will be discussion of the medical ethics involved in these matters including the recent cases regarding physician assisted suicide.

Sincerely,

CHARLES E. COLE
ATTORNEY GENERAL

By: 
Elizabeth L. Shaw
Assistant Attorney General

ELS/bap

cc: Deborah E. Behr
Paul Fuhs



ALASKA STATE MEDICAL ASSOCIATION

4107 Laurel Street • Anchorage, Alaska 99508-5334 • (907) 562-2662

March 6, 1992

Senator Shirley Craft
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Dear Senator Craft:

Thank you very much for your letter of February 20. The Legislative Affairs Committee is strongly supportive of the committee substitute for Senate Bill 365. We appreciate your working with us on the beneficial amendments. This bill has our strong support and is nicely complemented by Senator Eliason's Bill 431.

If I can be of further assistance regarding this bill, do not hesitate to contact me.

Sincerely yours,

Donald R. Lehmann, M.D., A.B.F.P.
Chairman, Legislative Affairs Committee

DRL:bj

SUPPORTING LETTERS



Kachemak Bay Medical Clinic

Professional Corporation
PAUL D. RAYMOND, M.D.
4285 Hone St, Suite 2
Homer, Alaska 99603
(907) 235-4050

February 28, 1992

Shirley Craft, Alaska State Senate
119 North Cushman, #201
Fairbanks, Alaska 997021

Dear Shirley:

I would like to thank you for the time and effort you spent on SB 365. It is very much appreciated that you took the time to seek out opinions on this bill prior to going forward.

You have done an excellent job in cleaning up much of the ambiguities in the present law. I commend you for your efforts.

Sincerely,

Paul D. Raymond, M. D.

PDR:NMC



INTERIOR REGION EMERGENCY MEDICAL SERVICES COUNCIL, INC.

1881 MARIKA ST. • FAIRBANKS, ALASKA 99709

PHONE (907) 456-3978



March 11, 1992

The Honorable Shirley Craft
P.O. Box V
Juneau, Alaska 99811-1182

Dear Senator Craft:

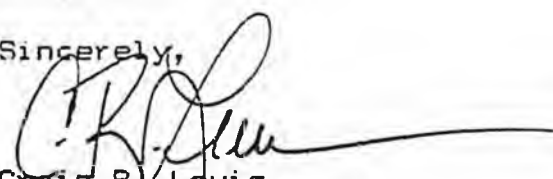
Thank you for your memorandum of March 2, 1992.

Needless to say, Interior Region Emergency Medical Services Council, Inc. is very supportive of your efforts to improve the "do not resuscitate" components of Alaska statutes. As the main trainer of EMT's and paramedics in Interior Alaska, we have toiled with questions regarding resuscitation for some time, and are pleased that the rules are beginning to catch up with reality.

I am looking forward to discussing the issue of "cessation of resuscitation" when I am in Juneau next week.

It was 43 above zero today in Fairbanks. A beautiful day in interior.

Sincerely,



Craig R. Lewis
Executive Director

CRL/crl

to Eleanor Anne
Fairbanks, AB 99001

Jan 25, 1992

Dear Sen. Shirley Craft

I enclosed find a letter
Mr. Starr wrote & gave me to
give to ambulance's medic.

The other is a copy
the News Miner had in
their paper.

I hope Bill 365 is passed.
I miss Jack but also know
the pain he had, and would
not want him or anyone else
to go thru it needlessly.

Sincerely yours,
Marjorie Coager.

Patience Coast



Fairbanks
Memorial Hospital

1650 Cowles Street
Fairbanks, Alaska 99701
907-452-8181

December 12, 1988

Mr. William Shechter
656-7th Avenue
Fairbanks, AK 99701

Dear Mr. Shechter:

As Mr. Jack Conger's personal physician, I am writing this letter to request your cooperation regarding future medical care that Mr. Conger may receive from our emergency medical technicians and ambulance attendants. I was given your name by Mr. Don Callahan and I hope that this letter of explanation will suffice.

Mr. Conger, unfortunately, suffers from severe, end stage congestive cardiomyopathy and chronic obstructive lung disease. It has been his request that no heroic measures be provided in the case of cardiopulmonary arrest. As such, he is not to be intubated or receive CPR or receive advanced cardiac life support. It will be inevitable that he will suffer a respiratory or cardiac arrest; as such, we would appreciate very much that Mr. Conger be made as comfortable as possible. This should include being given oxygen, intravenous Morphine, and transport to the Emergency Room, if necessary.

This issue has been discussed multiple times both with Mr. Conger and his wife, Marjorie. Mr. Conger's address is 6-Eleanor Street in Fairbanks.

If you have any other questions, please let me know. I appreciate your help in his matter.

Sincerely,
J. Starr, MD
Jonathan R. Starr, M.D.

Jack Conger *Marjorie Conger*
Jack Conger Marjorie Conger

JRS/ljb
L099649

I have read this letter.
12-16-88 @ 0710 Z. Anderson, RN
T. Anderson, R.N.

S B

3 7 6

SENATE COMMITTEE REPORT

DATE: 3/23/92

FURTHER:

DATE TURNED INTO OFFICE: 4/2/92

Judiciary Committee considered SENATE BILL NO. 376

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

and recommends:

- replace with _____ CS _____ ()
 - or adopt previous _____ CS _____ ()
 - attaches amendment(s)
- same title
 new title
 technical title change (HB only)

adopts _____ Letter of Intent

further referral to the _____

do pass

do not pass

no recommendation

individual recommendations

NEW FISCAL NOTES: Dept/Date

zero fiscal notes _____

fiscal notes _____

appropriation--no fiscal note

DO PASS

Mark Adams

PREVIOUS FISCAL NOTES: Dept/Date

zero fiscal notes DCED

Coma 1/28/92

fiscal notes _____

OTHER RECOMMENDATIONS:

Rich Halford do pass

Chair: Signature and Recommendation

DIVISION OF LEGAL SERVICES

**LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA**

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

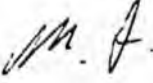
240 Main Street, Suite 500
Juneau, Alaska 99801-2101

MEMORANDUM

March 17, 1992

SUBJECT: Insurance reform act - (CSSB 376(L&C))

TO: Senator Drue Pearce
Attn: Bill Miles

FROM: Michael F. Ford 
Legislative Counsel

The attached work draft contains a new title as you requested and also deletes section 133 of the prior draft. At the request of the Division of Insurance, the 3/12/92 work draft was also changed as follows:

1. Page 80, line 31 - delete "settle", and insert "administer";
2. Page 81, line 24, - change "insurer" to "insurer's";
3. Page 85, line 19 - before "reinsurance" insert "licensed";
4. Page 101, line 17 - delete "interest" insert "business".

Please contact me if you have further questions.

MFF.pl
92-182.plm

CS FOR SENATE BILL NO. 376 (L&C)
IN THE LEGISLATURE OF THE STATE OF ALASKA
SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Offered:
Referred:

Sponsor(s): **SENATE LABOR AND COMMERCE COMMITTEE**

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the licensing, accreditation, examination, regulation, and solvency of
2 persons engaged in the insurance business, including insurers and nonadmitted insurers;
3 relating to the management of and the filing of reports by persons licensed or otherwise
4 doing business under the insurance code; and providing for an effective date."

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

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

7 (a) The director may examine the affairs, transactions, accounts, records, and assets of
8 each authorized and formerly authorized insurer and each licensed and formerly licensed
9 managing general agent, reinsurance intermediary broker, reinsurance intermediary
10 manager, surplus lines broker, and surplus lines association as often as the director considers
11 advisable. In scheduling and determining the nature, scope, and frequency of examinations,
12 the director may consider the results of financial statement analysis and ratios, competency
13 of management or change of ownership, actuarial opinions, reports of independent certified
14 public accountants, number and nature of consumer complaints, results of prior

1 examinations, frequency of prior violations of statute and regulation, criteria set out in the
2 Examiners' Handbook most recently approved by the National Association of Insurance
3 Commissioners and in effect when the director conducts an examination, and other material
4 authorized by this title that the director determines is appropriate [THE DIRECTOR SHALL
5 SO EXAMINE EACH DOMESTIC INSURER AT LEAST ONCE EVERY THREE YEARS].
6 Examination of an alien insurer may be limited to its insurance transactions and affairs in the
7 United States. Examination of a reciprocal insurer may also include examination of its
8 attorney-in-fact to the extent that the transactions of the attorney-in-fact relate to the insurer.

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

10 (c) In place of an examination by the director, the director may accept a full report of
11 the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory
12 official of another state, territory, commonwealth, or district of the United States if

13 (1) the insurance regulatory agency conducting the examination was at the
14 time of the examination accredited by the National Association of Insurance Commissioners;

15 (2) the examination is performed under the supervision of an insurance
16 regulatory agency accredited by the National Association of Insurance Commissioners; and
17 the supervising examiner after a review of the examination work papers states under oath
18 that the examination and report complies with the standards and procedures required by
19 their accredited state insurance regulatory agency; or

20 (3) the examiner conducting the examination was employed by an insurance
21 regulatory agency accredited at the time of the examination by the National Association of
22 Insurance Commissioners and the examiner, after review of the examination work papers,
23 states under oath that the examination and report complies with the standards and
24 procedures required by the accredited insurance regulatory agency.

25 * Sec. 3. AS 21.06.120(e) is amended to read:

26 (e) The director may use a contract examiner to carry out the functions of this section.
27 The selection of a contract examiner and the award of a contract is not subject to AS 36.30
28 (State Procurement Code).

29 * Sec. 4. AS 21.06.120 is amended by adding new subsections to read:

30 (f) For the purpose of completing an examination of a person under this title, the director
31 may extend the examination or investigation as provided under AS 21.06.170.

1 (g) The director shall examine a domestic insurer at least once every three years. Unless
2 the director determines that there is a clear and present danger of the imminent wasting of the
3 insurer's assets, when the director intends to conduct an interim examination of a domestic
4 insurer covering the same subjects as included in the scope of the last examination report, the
5 director shall give at least 10 days prior written notice stating the scope and purpose of the
6 examination, and the interim examination shall be limited to the scope and purpose stated in the
7 notice. In this subsection, "interim examination" means an examination of a domestic insurer that
8 occurs within three years after the start of the domestic insurer's last examination.

9 * Sec. 5. AS 21.06.130(a) is amended to read:

10 (a) To determine compliance with this title, the director may as often as the director
11 considers advisable examine or require a written report from a person of the accounts, records,
12 documents, and transactions pertaining to or affecting the insurance affairs or proposed insurance
13 affairs of

14 (1) an insurance producer [AGENT, BROKER, SOLICITOR, GENERAL
15 AGENT,] or independent adjuster; or

16 (2) [A PERSON HAVING A CONTRACT UNDER WHICH THE PERSON
17 ENJOYS IN FACT THE EXCLUSIVE OR DOMINANT RIGHT TO MANAGE OR CONTROL
18 AN INSURER;

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

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

25 * Sec. 6. AS 21.06.140(b) is amended to read:

26 (b) Every person being examined and its officers, employees, agents, and representatives
27 shall produce and make freely available to the director the accounts, records, documents, files,
28 information, assets, and matters in their possession or control relating to the subject of the
29 examination, and shall facilitate and aid the examination as far as reasonably possible, including
30 providing to the director, at the expense of the person being examined, a copy of any document
31 requested during the examination. The director may suspend, revoke, or refuse to issue or

1 renew a license or authority of a person engaging in the business of insurance or other
2 business under the jurisdiction of the director if the person or an officer, director,
3 employee, or agent of the person refuses to submit to examination or to comply with a
4 reasonable written request of an examiner. This subsection does not apply to material
5 subject to the insurer's attorney-client privilege.

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

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

14 * Sec. 8. AS 21.06.140(d) is repealed and reenacted to read:

15 (d) When conducting 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 reasonable cost of which shall be paid by the person being
18 examined under AS 21.06.160(a). The director may adopt regulations limiting the scope of
19 examination work performed by specialists and limiting the amount charged by specialists to the
20 person being examined.

21 * Sec. 9. AS 21.06.140 is amended by adding new subsections to read:

22 (f) In conducting an examination under this section, the examiner shall observe those
23 guidelines and procedures set out in the Examiners' Handbook currently approved by the National
24 Association of Insurance Commissioners that are consistent with the scope of the examination
25 as authorized by this title. The director may adopt by regulation other guidelines or procedures
26 consistent with this title.

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

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

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

3 (3) an investment owner in shares of regulated mutual fund companies; or

4 (4) a settlor or beneficiary of a blind trust into which otherwise impermissible
5 holdings have been placed.

6 (h) The director may terminate or suspend an examination in order to pursue other legal
7 or regulatory action under this title.

8 (i) In a judicial or administrative proceeding a finding of fact made in an examination
9 report approved under AS 21.06.150(b)(1) is prima facie evidence of the fact.

10 * Sec. 10. AS 21.06.150 is repealed and reenacted to read:

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

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

27 (1) approving the examination report as filed or approving the examination report
28 with modification or corrections;

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

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

3 (c) In the event the director determines that regulatory action is appropriate as a result
4 of an examination, the director may initiate proceedings as provided by law. The director may
5 use an examination report, work papers or other documents, the testimony of the examiners, or
6 other information discovered or developed during the course of an examination in a judicial or
7 administrative proceeding, whether or not a written report of the examination at the time has been
8 made, transmitted, or approved by the director.

9 (d) The director may disclose the content of an examination report, preliminary
10 examination report or results, or a matter relating to it to the insurance division of this or another
11 state or country. Except as allowed by this subsection or other provision of law, the director may
12 not disclose the contents of a preliminary examination report before the report is filed in the
13 office of the director under AS 21.06.060.

14 (e) An order entered under (b)(1) of this section must be accompanied by findings of fact
15 and conclusions of law resulting from the director's consideration and review of the examination
16 report, relevant examiner work papers, and written submissions or rebuttals.

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

20 (g) The director may withhold a document, information, account, record, examination,
21 or report from the public inspection for as long as the director finds the withholding is necessary
22 to protect a person against unwarranted injury or is in the public interest.

23 * Sec. 11. AS 21.06.160(b) is amended to read:

24 (b) The director shall pay into the general fund of the state all money received under (a)
25 of this section. Instead of charging and collecting the costs and expenses of the examination
26 under (a) of this section [MAKING A DEPOSIT INTO THE GENERAL FUND], the director
27 may give written authorization for [ORDER] the person examined to make direct payment to
28 the contract examiner for all or part of the contract examiner's compensation or expenses. The
29 contract between the state and a contract examiner who will receive direct payment under this
30 subsection must require that the examiner provide the director with a copy of each billing for the
31 examination.

1 * Sec. 12. AS 21.06.165 is amended by adding a new subsection to read:

2 (d) Except as provided in this section, a person may not bring a civil action if the civil
3 action arises out of the act of communicating or delivering information to the director, a
4 representative of the director, or an examiner who is performing an examination under this title.

5 * Sec. 13. AS 21.06.180 is amended by adding a new subsection to read:

6 (d) If the parties agree, the director may conduct a hearing under this section by
7 teleconference.

8 * Sec. 14. AS 21.09.090(a) is amended to read:

9 (a) This section applies to all insurers [OTHER THAN TITLE INSURERS].

10 * Sec. 15. AS 21.09 is amended by adding a new section to read:

11 Sec. 21.09.175. DETERMINATION OF HAZARDOUS CONDITION. The director may
12 adopt regulations establishing the procedures for determining when the continued operation of
13 an insurer transacting business in this state is hazardous to the public or its policyholders and
14 procedures for the regulatory oversight of an insurer in a hazardous condition. Continued
15 operation of an insurer shall be considered hazardous only if the insurer is impaired or in
16 imminent danger of becoming impaired. The director may order an insurer determined to be in
17 a hazardous condition to limit or change the insurer's business practices, increase the insurer's
18 capital and surplus, or file additional reports with the director. If an insurer is aggrieved by an
19 order under this section, the insurer may request a hearing under AS 21.06.170 - 21.06.230.

20 * Sec. 16. AS 21.09.210(a) is amended to read:

21 (a) Each authorized insurer, and each formerly authorized insurer with respect to
22 premiums received while an authorized insurer in this state, shall file with the director, on or
23 before March 1 [MARCH 2] in each year, a report of all insurance business written or contracted
24 in the state, [(] with proper proportionate allocation of premium for the property, subjects, or
25 risks in the state insured under policies or contracts covering property, subjects, or risks located
26 or resident in more than one state, [)] during the preceding year ending December 31. The report
27 must show

28 (1) the amounts paid policyholders on losses;

29 (2) the total direct premium income including policy membership and other fees,
30 premiums paid by application of dividends, refunds, savings coupon, and similar returns or credits
31 to payment of premiums for new or additional or extended or renewed insurance, charges for

1 payment of premium in installments, and all other consideration for insurance from all kinds and
2 classes of insurance whether designated a premium or otherwise;

3 (3) the amounts paid policyholders as returned premiums;

4 (4) the amounts paid policyholders as dividends.

5 * Sec. 17. AS 21.09.210(b) is amended to read:

6 (b) Each insurer, and each formerly authorized insurer with respect to premiums received
7 while an authorized insurer in this state, shall pay a tax on the total direct premium income
8 received during the year ending on the preceding December 31 and paid for the insurance of
9 property or risks resident or located in the state other than wet marine and transportation
10 insurance, after deducting from the total direct premium income the applicable cancellations,
11 returned premiums, the unabsorbed portion of any deposit premium, all policy dividends,
12 unabsorbed premiums refunded to policyholders, refunds, savings, savings coupons, and other
13 similar returns paid or credited to policyholders with respect to their policies. No deductions may
14 be made of cash surrender value of policies. Considerations received on annuity contracts are
15 not included in the direct premium income and are not subject to tax. The tax shall be paid to
16 the director annually on or before March 1 [APRIL 1], and is computed at the rate of

17 (1) for domestic and foreign insurers, except hospital and medical service
18 corporations, 2.7 percent;

19 (2) for hospital and medical service corporations, six percent of their gross
20 premiums less claims paid.

21 * Sec. 18. AS 21.09.210(d) is amended to read:

22 (d) An authorized insurer shall, with respect to all wet marine and transportation contracts
23 written in this state during the preceding calendar year, on or before March 1 [APRIL 1] of each
24 year, pay to the director a tax of three-quarters of one percent on its gross underwriting profit.
25 The gross underwriting profit is computed by deducting from the net premiums [(I.E., GROSS
26 PREMIUMS LESS ALL RETURN PREMIUMS AND PREMIUMS FOR REINSURANCE),] on
27 wet marine and transportation insurance contracts, the net losses paid [(I.E., GROSS LOSSES
28 PAID, LESS SALVAGE AND RECOVERIES ON REINSURANCE CEDED)] during the
29 calendar year under the contracts. In the case of an insurer issuing participating contracts, the
30 gross underwriting profit may [SHALL] not include, for computation of the tax prescribed by
31 this section, the amounts refunded or paid as participation dividends by the insurers to the holders

1 of the contracts. In this subsection,

2 (1) "net losses" means gross losses less salvage and recoveries on reinsurance
3 ceded:

4 (2) "net premiums" means gross premiums less all return premiums and
5 premiums for reinsurance.

6 * Sec. 19. AS 21.12.020(a) is amended to read:

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

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

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

14 (A) files evidence of submission [SUBMITS] to this state's jurisdiction,
15 submits to this state's authority to examine its books and records under AS 21.06.120,
16 and is licensed to transact insurance or reinsurance in at least one state, or in the case
17 of a United States branch of an alien admitted insurer, is entered through and
18 licensed to transact insurance or reinsurance in at least one state; [OR]

19 (B) [IN THE CASE OF A UNITED STATES BRANCH OF AN ALIEN
20 ASSUMING INSURER, IS ENTERED THROUGH, AND LICENSED TO TRANSACT
21 INSURANCE OR REINSURANCE IN, AT LEAST ONE STATE, FILES ANNUALLY
22 WITH THE DIRECTOR A COPY OF ITS ANNUAL FINANCIAL STATEMENT THAT
23 IS FILED WITH THE INSURANCE REGULATORY AGENCY OF ITS STATE OF
24 DOMICILE, AND] maintains at least \$20,000,000 in policyholder surplus and whose
25 accreditation has not been denied by the director within 90 days of application to the
26 director, or maintains less than \$20,000,000 in policyholder surplus and whose
27 application for accreditation has been approved by the director; and

28 (C) files annually with the director a copy of the reinsurer's annual
29 financial statement filed with the insurance department of the reinsurer's state of
30 domicile [; THE SURPLUS REQUIREMENTS IN THIS SUBPARAGRAPH DO NOT
31 APPLY TO REINSURANCE CEDED AND ASSUMED UNDER A POOLING

1 ARRANGEMENT AMONG INSURERS IN THE SAME HOLDING COMPANY
2 SYSTEM];

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

10 (4) assuming alien insurer that

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

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

22 (ii) on or before March 1 of each year the trustees shall report in
23 writing to the director on the balance of the trust and list the trust's investments
24 at the end of the preceding year, and shall certify the date of termination of the
25 trust, if so planned, or certify that the trust does not expire before the following
26 December 31;

27 (iii) in the case of a single assuming insurer, the trust shall consist
28 of trust money representing the assuming insurer's liabilities attributable to
29 business written in the United States and, in addition, include a trust surplus of not
30 less than \$20,000,000; the single assuming insurer shall make available to the
31 director an annual certification of the insurer's solvency by the insurer's

1 domiciliary regulator and by an independent public accountant;

2 (iv) in the case of a group of individual unincorporated insurers,
3 the trust shall consist of trust money representing the group's liabilities attributable
4 to business written in the United States and, in addition, include a trust surplus not
5 less than \$100,000,000 [~~\$50,000,000~~]; the group shall make available to the
6 director an annual certification of the solvency of each of the individual
7 unincorporated insurers by the group's domiciliary regulator and by an
8 independent certified public accountant, or for a Canadian or British insurer,
9 an independent Canadian or British chartered accountant;

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

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

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

4 * Sec. 20. AS 21.12.020(a) is repealed and reenacted 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, is licensed to transact insurance or reinsurance in at least
14 one state, that is accredited by the National Association of Insurance Commissioners, and
15 files annually with the director a copy of the reinsurer's annual statement filed with the
16 insurance department of the reinsurer's state of domicile and a copy of the reinsurer's
17 most recent audited financial statement; or

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

26 (3) assuming insurer that is domiciled in a state, or in the case of a United States
27 branch of an alien assuming insurer, is entered through a state accredited by the National
28 Association of Insurance Commissioners that employs standards regarding credit for reinsurance
29 ceded substantially similar to those applicable under (1) and (2) of this subsection, the assuming
30 insurer maintains a policyholder surplus of at least \$20,000,000, and the assuming insurer submits
31 to the authority of this state to examine its books and records; the surplus requirements in this

1 paragraph do not apply to reinsurance ceded and assumed under a pooling arrangement among
2 insurers in the same holding company system;

3 (4) assuming alien insurer that

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

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

15 (ii) on or before March 1 of each year the trustees shall report in
16 writing to the director on the balance of the trust and list the trust's investments
17 at the end of the preceding year, and shall certify the date of termination of the
18 trust, if so planned, or certify that the trust does not expire before the following
19 December 31;

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

26 (iv) in the case of a group of individual unincorporated insurers,
27 the trust shall consist of trust money representing the group's liabilities attributable
28 to business written in the United States and, in addition, include a trust surplus not
29 less than \$100,000,000; the group shall make available to the director an annual
30 certification of the solvency of each of the individual unincorporated insurers by
31 the group's domiciliary regulator and by an independent certified public

1 accountant;

2 (v) in the case of a group of incorporated insurers under common
3 administration that complies with the reporting requirements contained in (ii) of
4 this subparagraph, that has continuously transacted an insurance business outside
5 the United States for at least three years immediately before making application
6 for accreditation, that submits to this state's authority to examine its books and
7 records and bears the expense of the examination, and that has aggregate
8 policyholders' surplus of \$10,000,000,000, the trust shall be in an amount equal
9 to the group's several liabilities attributable to business ceded by United States
10 ceding insurers to a member of the group under reinsurance contracts issued in the
11 name of the group, and the group shall maintain a joint trustee surplus, of which
12 \$100,000,000 shall be held jointly for the benefit of United States ceding insurers
13 of a member of the group as additional security for the group's liabilities, and
14 each member of the group shall make available to the director an annual
15 certification of the member's solvency by the member's domiciliary regulator and
16 the member's independent certified public accountant; and

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

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

24 * Sec. 21. AS 21.12.020(c) is amended to read:

25 (c) A reduction from liability, for reinsurance ceded to an assuming insurer not meeting
26 the requirements of (a) of this section, shall be allowed in an amount not exceeding the liabilities
27 carried by the ceding insurer. The reduction shall be equal to the amount of money held by or
28 on behalf of the ceding insurer, including money held in trust for the ceding insurer, under a
29 reinsurance contract with the assuming insurer as security for the payment of obligations under
30 it, if the security is held in the United States subject to withdrawal solely by, and under the
31 exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States

1 financial institution. The security must be in the form of

2 (1) cash;

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

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

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

14 * Sec. 22. AS 21.12.020 is amended by adding new subsections to read:

15 (h) A life insurer may receive credit for reinsurance transactions if the reinsurance
16 agreement meets all applicable requirements established by the director. The director may
17 establish requirements for life reinsurance agreements by regulation.

18 (i) A domestic ceding insurer may not be allowed credit if the assuming insurer's
19 accreditation has been revoked by the director.

20 * Sec. 23. AS 21.18.100 is amended to read:

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

26 * Sec. 24. AS 21.18.110 is amended by adding new subsections to read:

27 (m) A life insurance company doing business in the state shall annually submit to the
28 director an opinion of a qualified actuary as to whether the reserves and related actuarial items
29 held in support of a policy or contract specified by regulation are computed appropriately, are
30 based on assumptions that satisfy contractual provisions, are consistent with prior reported
31 amounts, and comply with the applicable laws of this state. The director may adopt regulations

1 to define the specific form, substance, and standards of the actuarial opinion.

2 (n) The actuarial opinion must

3 (1) be submitted with the annual statement reflecting the valuation of the reserve
4 liabilities;

5 (2) apply to all business in force, including individual and group health insurance
6 plans;

7 (3) be based on standards adopted by the Actuarial Standards Board; and

8 (4) include an assessment as to whether the reserves and related actuarial items
9 held in support of the policies and contracts, when considered in light of the assets held by a
10 company with respect to the reserves and related actuarial items, including investment earnings
11 on the assets and considerations anticipated to be received and retained under policies and
12 contracts, make adequate provision for a company's obligations under a policy or contract
13 including the benefits under and expenses associated with a policy or contract.

14 (o) In the case of an actuarial opinion submitted by a foreign or alien company, the
15 director shall accept an opinion filed by the company with the insurance supervisory official of
16 another state if the director determines that the opinion meets the requirements applicable to a
17 company domiciled in this state.

18 (p) The director may adopt regulations to provide a transition period for establishing
19 higher reserves that a qualified actuary may consider necessary in order to render the opinion
20 required under (n) of this section.

21 (q) A qualified actuary who submits an opinion under (m) of this section

22 (1) is not liable for damages to a person, other than the insurance company and
23 the director, for an act, error, omission, decision, or conduct with respect to the actuary's opinion
24 except in a case of fraud or wilful misconduct;

25 (2) may be subject to disciplinary action by the director; and

26 (3) shall include a memorandum, in form and substance acceptable to the director,
27 to support the actuarial opinion.

28 (r) If the insurance company fails to provide a supporting memorandum required by
29 (q)(3) of this section within a period specified by regulation or the director determines that the
30 supporting memorandum fails to meet the standards adopted by regulation or is otherwise
31 unacceptable to the director, the director may engage a qualified actuary, at the expense of the

1 insurance company, to review the opinion and the basis for the opinion and to prepare a
2 supporting memorandum as required under (q) of this section.

3 (s) A memorandum in support of an actuarial opinion and other supporting material
4 provided by an insurance company to the director is confidential and may not be made public
5 by the director or another person and is not subject to a civil subpoena, except for the purpose
6 of defending an action seeking damages from a person by reason of an action required by this
7 section. The memorandum or other material may be released by the director with the written
8 consent of the company or to the American Academy of Actuaries upon a request stating that the
9 memorandum or other material is required for the purpose of a disciplinary proceeding and
10 setting out procedures satisfactory to the director for preserving the confidentiality of the
11 memorandum or other material. Once a portion of the memorandum or other material is cited
12 by the company in its marketing, is cited before a governmental agency other than a state
13 insurance department, or is released by the company to the news media, the remainder of the
14 confidential memorandum or other material is no longer confidential.

15 (t) An insurer's aggregate reserves for

16 (1) all life insurance policies, excluding disability and accidental death benefits,
17 issued on or after the effective date of this act, may not be less than the aggregate reserves
18 calculated under (b)(2), (5), (8), and (l) of this section, and the mortality table and rates of
19 interest used in calculating nonforfeiture benefits for the policies; and

20 (2) all policies, contracts, and benefits may not be less than the aggregate reserves
21 determined by a qualified actuary to be necessary to render the opinion required under (m) of this
22 section.

23 * Sec. 25. AS 21.18.110(o) is repealed and reenacted to read:

24 (o) In the case of an actuarial opinion submitted by a foreign or alien company, the
25 director shall accept an opinion filed by the company with the insurance supervisory official of
26 another state that is accredited by the National Association of Insurance Commissioners if the
27 director determines that the opinion meets the requirements applicable to a company domiciled
28 in this state.

29 * Sec. 26. AS 21.18.130 is amended to read:

30 Sec. 21.18.130. VALUATION OF OTHER SECURITIES. (a) Securities, other than
31 those referred to in AS 21.18.120 or AS 21.21.260, held by an insurer shall be valued, in the

1 discretion of the director, at [THEIR MARKET VALUE, OR AT] their appraised value as
2 determined by a competent appraisal acceptable to the director, or at prices determined by
3 the director as representing their fair market value, all consistent with the current method for the
4 valuation of a security formulated or approved by the National Association of Insurance
5 Commissioners.

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

9 * Sec. 27. AS 21.18.130 is amended by adding a new subsection to read:

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

13 (1) 100 percent of the market value of the real property or leasehold securing the
14 same as determined by a competent appraisal acceptable to the director or at values determined
15 by the director as representing fair market value of the real property or leasehold;

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

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

21 * Sec. 28. AS 21.18.140(b) is amended to read:

22 (b) Other real property held by an insurer shall [MAY NOT] be valued at the lower of
23 cost or [AN AMOUNT IN EXCESS OF] fair market value as determined by recent appraisal.

24 If valuation is based on an appraisal more than three years old, the director may call for and
25 require a new appraisal in order to determine fair market value. The reasonable cost of the
26 appraisal shall be borne by the insurer, if the director has a reasonable belief that the new
27 appraised value will be sufficiently lower than the reported value and will materially reduce
28 policvholder's surplus.

29 * Sec. 29. AS 21.21.050 is amended to read:

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

1 (1) an insurer may not, except with the consent of the director, have a
 2 combination of investments in or loans upon the security of the obligations, property, or securities
 3 of any one person, or insurer, aggregating an amount exceeding five percent of the insurer's
 4 assets; for purposes of this paragraph, the value of the investment or loan shall be the cost
 5 of the investment or loan to the insurer; this restriction does not apply to

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

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

9 (C) policy loans made under AS 21.21.210;

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

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

17 [(A)] the minimum basic capital for stock insurers or basic guarantee
 18 surplus for mutual insurers and additional surplus for both stock and mutual insurers
 19 required under AS 21.09.070, [;] or

20 [(B)] 50 percent of the total capital and surplus shown on the most recent
 21 statement of the insurer's financial condition as filed with the director under
 22 AS 21.09.200, but the insurer may not invest or maintain funds except in [ONLY IN]

23 (A) [(i)] cash;

24 (B) [(ii)] the fully insured portion of bank deposits when the insurance is
 25 provided by a solvent agency of the United States government or by collateral in the form
 26 of the securities provided for under AS 21.21.060 and 21.21.080; [OR]

27 (C) [(iii)] the securities provided for under AS 21.21.060 and 21.21.080;

28 or

29 (D) the securities provided for under AS 21.21.090 issued by this state
 30 or a political subdivision of this state, but only if rated Class 1 by the securities
 31 valuation office for the period during which the securities are held for the purposes

1 of this section, and only if the insurer invests and maintains not more than 15
2 percent of its total capital and surplus in the securities as shown on the most recent
3 statement of the insurer's financial condition filed with the director under
4 AS 21.09.200;

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

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

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

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

20 * Sec. 30. AS 21.21.170(b) is amended to read:

21 (b) With the director's consent an insurer may acquire and hold the controlling interest
22 in the outstanding voting stock of another stock insurer formed under the laws of this or another
23 state. All stocks under this subsection shall be subject to the limitations on acquisition
24 [LIMITATION AS TO AMOUNT] as provided in AS 21.21.180.

25 * Sec. 31. AS 21.21.180 is repealed and reenacted to read:

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

29 (1) insurance business authorized by this title;

30 (2) acting as an insurance producer or as an insurance agent for the insurer's
31 parent or for any of the insurer's parent's insurer subsidiaries and controlled affiliates;

1 (3) investing, reinvesting, or trading in securities for the insurer's own account,
2 that of the insurer's parent, a subsidiary of the insurer's parent, an affiliate, or a subsidiary;

3 (4) management of an investment company subject to or registered under 15
4 U.S.C. 80 (Investment Company Act of 1940, as amended), including related sales and services;

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

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

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

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

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

16 (10) financing insurance premiums, agents, and other forms of consumer
17 financing;

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

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

22 (b) A domestic insurer may also

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

30 (A) total net moneys or other consideration expended and all obligations
31 assumed in the acquisition or formation of a subsidiary, including all organizational

1 expenses and contributions to capital and surplus of the subsidiary if represented or not
2 represented by the purchase of capital stock or issuance of other securities; and

3 (B) all amounts expended in acquiring additional securities described in
4 AS 21.21.140 - 21.21.160 and all contributions to the capital or surplus of a subsidiary
5 subsequent to the subsidiary's acquisition or formation;

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

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

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

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

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

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

1 this chapter to the investment.

2 * Sec. 32. AS 21.21.255 is amended to read:

3 Sec. 21.21.255. REGULATION OF SECURITIES HELD BY INSURERS. As provided
4 under 15 U.S.C. 77r-1(b) and (c) (Secondary Mortgage Market Enhancement Act of 1984),
5 securities that are purchased, held, or invested in by an insurer shall be regulated under
6 AS 21.18.150, AS 21.21.050, 21.21.260, 21.21.270, [AS 21.66.030,] and other applicable
7 provisions of this title.

8 * Sec. 33. AS 21.21.350(b) is amended to read:

9 (b) Before completing investment activities with or through affiliated or controlling
10 persons or completing a transaction of the type listed in AS 21.21.180, an insurer shall fully
11 disclose and document in writing to its board of directors, the committee or committees having
12 responsibility for reviewing the insurer's financial condition under AS 21.22.105(d) or (e),
13 and the committee authorized by the board and charged with the supervision or making of the
14 investment or loan involved, the material facts concerning the affiliation or circumstances of
15 control. An insurer may not complete an investment activity with or through affiliated or
16 controlling persons [,] unless the board of directors, by specific board action, authorizes the
17 transaction and concludes that the transaction complies with (c) and (d) of this section. The vote
18 of the board authorizing the transaction must be recorded in the minutes, on a
19 member-by-member basis, and must indicate each vote approving, disapproving, or abstaining
20 on the transaction.

21 * Sec. 34. AS 21.21 is amended by adding new sections to read:

22 Sec. 21.21.370. INVESTMENTS IN MEDIUM GRADE AND LOWER GRADE
23 OBLIGATIONS. (a) A domestic insurer may not acquire, directly or indirectly, a medium grade
24 or lower grade obligation of an institution if, after giving effect to the acquisition,

25 (1) the aggregate amount of all medium grade and lower grade obligations held
26 by the domestic insurer exceeds 20 percent of its admitted assets if not more than

27 (A) 10 percent of its admitted assets consist of obligations rated four, five,
28 or six by the securities valuation office;

29 (B) three percent of its admitted assets consist of obligations rated five or
30 six by the securities valuation office; and

31 (C) one percent of its admitted assets consist of obligations rated six by

1 the securities valuation office; or

2 (2) the aggregate amount of all medium grade or lower grade obligations held by
3 the domestic insurer exceeds 30 percent of its policyholders' surplus account as shown by the
4 insurer's most recent report filed under AS 21.06.150, AS 21.09.200, or 21.09.205.

5 (b) Attaining or exceeding the limit of one category does not preclude an insurer from
6 acquiring an obligation in another category subject to the specific or multi-category limits.

7 (c) A domestic insurer may not invest in medium grade and lower grade obligations
8 issued, guaranteed, or insured by a single institution in an aggregate amount greater than

9 (1) one percent of its admitted assets in medium grade obligations;

10 (2) one-half of one percent of its admitted assets in lower grade obligations; and

11 (3) one percent of its admitted assets in a combination of medium grade or lower
12 grade obligations.

13 (d) The investment limitations in this section apply in addition to the limits on
14 investments under AS 21.21.050 and 21.21.250.

15 (e) The investment limitations in this section and AS 21.21.380(b) shall be calculated
16 after including, as though they were already owned, the medium grade and lower grade
17 obligations that the domestic insurer is committed to acquire at the time of the calculation.

18 Sec. 21.21.380. EXCEPTIONS TO LIMITATIONS ON INVESTMENTS IN MEDIUM
19 GRADE AND LOWER GRADE OBLIGATIONS. (a) AS 21.21.370 does not prohibit a
20 domestic insurer from acquiring an obligation that it has committed to acquire if the insurer
21 would have been permitted to acquire that obligation under AS 21.21.370 on the date on which
22 the insurer committed to purchase that obligation.

23 (b) Notwithstanding AS 21.21.370, a domestic insurer may acquire an obligation of an
24 institution in which the insurer already has an obligation if the obligation is acquired in order to
25 protect an investment previously made in the obligations of the institution, if all the acquired
26 obligations do not exceed one-half of one percent of the insurer's admitted assets.

27 (c) AS 21.21.370 does not prohibit a domestic insurer from acquiring an obligation
28 created by a restructuring of a medium grade or lower grade obligation that is already held.

29 (d) AS 21.21.370 does not require a domestic insurer to sell or otherwise dispose of an
30 obligation legally acquired before July 1, 1992.

31 Sec. 21.21.390. WRITTEN PLAN REQUIREMENT FOR INVESTMENT IN MEDIUM

1 **GRADE AND LOWER GRADE OBLIGATIONS.** (a) The board of directors of a domestic
2 insurer that acquires or invests, directly or indirectly, more than two percent of its admitted assets
3 in medium grade and lower grade obligations, shall adopt a written plan for making these
4 investments.

5 (b) The written plan adopted under (a) of this section must contain

6 (1) guidelines for the quality of the issues in which investments are to be made;
7 and

8 (2) diversification standards including standards for issuer, industry, duration,
9 liquidity, and geographic locations.

10 **Sec. 21.21.400. DISPOSITION OR WRITE-DOWN OF LOWER GRADE**
11 **OBLIGATIONS.** If the limitation in AS 21.21.370(a)(2) is exceeded and the director determines
12 that the continued holding of the insurer's medium grade and lower grade obligations would be
13 detrimental to the interests of policyholders, the director may issue an order under AS 21.06.100
14 requiring one or more of the following:

15 (1) the disposition of lower grade obligations;

16 (2) the write-down of lower grade obligations to current market value as
17 determined by the securities valuation office or other person upon whom the director may rely;
18 or

19 (3) action under AS 21.09.150.

20 * **Sec. 35.** AS 21.21.600 is amended by adding new paragraphs to read:

21 (17) "admitted asset" has the meaning given in AS 21.18.900;

22 (18) "aggregate amount" means the aggregate statutory statement value of medium
23 grade and lower grade obligations;

24 (19) "institution" means a corporation, joint stock company, association, trust,
25 business partnership, business joint venture, or similar entity;

26 (20) "lower grade obligation" means an obligation that is rated four, five, or six
27 by the securities valuation office or its successor;

28 (21) "medium grade obligation" means an obligation that is rated three by the
29 securities valuation office or its successor;

30 (22) "securities valuation office" means the organization designated by the
31 National Association of Insurance Commissioners to determine the carrying or admitted asset

1 value of obligations owned by the insurer.

2 * **Sec. 36.** AS 21.22.030 is amended by adding a new subsection to read:

3 (c) When evaluating the effect of a merger or other acquisition under (a)(2) of this
4 section, the director may consider relevant factors including market shares, volatility of ranking
5 market leaders, number of competitors, concentration, trend of concentration in the industry, and
6 ease of entry into and exit out of the market, but may not consider the standards under
7 AS 21.22.065(d) or (e).

8 * **Sec. 37.** AS 21.22.060 is amended by adding new subsections to read:

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

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

19 * **Sec. 38.** AS 21.22 is amended by adding a new section to read:

20 **Sec. 21.22.065. ACQUISITIONS INVOLVING CHANGE OF CONTROL.** (a) Unless
21 exempted in (j) of this section, this section applies to any acquisition in which there is a change
22 in control of an insurer authorized to do business in this state.

23 (b) If an acquisition violates the standards established in (d) and (f) of this section, the
24 director may enter an order requiring an involved insurer to cease doing business in this state
25 with respect to the line or lines of insurance involved in the violation or denying the application
26 of an acquired or acquiring insurer for a license to do business in this state. Within 30 days of
27 the issuance of the order, the involved insurer may submit a plan to remedy the anticompetitive
28 effect of the acquisition within a reasonable time. Based upon a plan or other information
29 submitted, the director shall specify the conditions, if any, under a time period during which the
30 aspects of the acquisition causing a violation of the standards of this section would be remedied
31 and the order vacated or modified. The order is stayed by the insurer's submission of a plan and

1 shall be rescinded if the acquisition is not consummated.

2 (c) An acquisition that meets the requirements under (a) of this section is subject to an
3 order under (b) of this section unless the acquiring person files a preacquisition notification and
4 the waiting period has expired. The person to be acquired may file a preacquisition notification.
5 A preacquisition notification by a person to be acquired may not be filed in place of a
6 preacquisition filing by an acquiring person. The preacquisition notification

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

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

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

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

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

25 (2) there is substantial evidence that the acquisition may substantially lessen
26 competition, create a monopoly in a line of insurance in this state or significantly increase an
27 insurer's market concentration; there is substantial evidence when the aggregate market share of
28 any grouping of the largest insurers in the market, from the two largest to the eighth largest, has
29 increased by seven percent or more of the market over a period of time extending from any base
30 year five to 10 years before the acquisition up to the time of the acquisition;

31 (3) after considering an acquisition covered under (a) of this section involving two

1 or more insurers competing in the same market there is evidence of a violation of the competitive
2 standards contained in the following tables:

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

| | Insurer A | Insurer B |
|---|------------|--------------------|
| 5 | | |
| 6 | 4 percent | 4 percent or more |
| 7 | 10 percent | 2 percent or more |
| 8 | 15 percent | 1 percent or more; |

9 (B) if the market is not highly concentrated, the involved insurers possess
10 the following shares of the market:

| | Insurer A | Insurer B |
|----|------------|--------------------|
| 11 | | |
| 12 | 5 percent | 5 percent or more |
| 13 | 10 percent | 4 percent or more |
| 14 | 15 percent | 3 percent or more |
| 15 | 19 percent | 1 percent or more. |

16 (e) A percentage not shown in the tables contained in (d) of this section may be
17 interpolated proportionately to the percentage that is shown. The insurer with the largest share
18 of the market shall be considered Insurer A. If more than two insurers are involved, a market
19 share that exceeds the total of the two columns in the table by the insurers involved is prima
20 facie evidence of a violation of the competitive standards contained in (d) of this section.

21 (f) Even though an acquisition does not violate the competitive standard under (d) of this
22 section, the director may establish the requisite anticompetitive effect based upon other
23 substantial evidence. Even though an acquisition does violate the competitive standard under (d)
24 of this section, a party may establish the absence of the requisite anticompetitive effect based
25 upon other substantial evidence. Relevant factors in making a determination under (d) of this
26 section include market shares, volatility of ranking of market leaders, number of competitors,
27 concentration, trend of concentration in the industry, and ease of entry into and exit out of the
28 market. The burden of showing substantial evidence of a violation of the competitive standards
29 rests with the director.

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

31 (1) the acquisition will yield substantial economy of scale or economy in resource

1 utilization that cannot be achieved in another way and the public benefits that would arise from
2 the economy exceed the public benefits that would arise from not lessening competition; or

3 (2) the acquisition will substantially increase the availability of insurance and the
4 public benefits of the increase exceed the public benefits that would arise from not lessening
5 competition.

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

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

12 (j) This section does not apply to

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

15 (2) a purchase of securities solely for investment purposes if the securities are not
16 used by voting or otherwise to cause or attempt to cause the substantial lessening of competition
17 in an insurance market in this state; if a purchase of securities for investment purposes results
18 in a presumption of control under AS 21.22.200(2), it is not solely for investment purposes unless
19 the insurance supervisory official of the insurer's state of domicile accepts a disclaimer of control
20 or affirmatively finds that control does not exist and the disclaimer action or affirmative finding
21 is communicated by the domiciliary commissioner to the director;

22 (3) the acquisition of a person by another person resulting in a change of control
23 of an insurer when both persons are neither directly nor through affiliates primarily engaged in
24 the business of insurance if preacquisition notification is filed with the director under (c) of this
25 section 30 days before the proposed effective date of the acquisition; however, the preacquisition
26 notification is not required for exclusion if the acquisition would otherwise be excluded under
27 this subsection;

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

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

30 (A) the combined market share of the involved insurers would not exceed
31 five percent of a market;

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

3 (C) the combined market share of the involved insurers would not exceed
4 12 percent of a market and the market share of the larger writer would not increase by
5 more than two percent of a market;

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

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

13 (k) AS 21.22.150 - 21.22.160 and 21.22.180 do not apply to acquisitions covered under
14 this section.

15 * Sec. 39. AS 21.22.080 is amended to read:

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

18 (1) the terms shall be fair and reasonable;

19 (2) charges or fees for services performed shall be reasonable;

20 (3) expenses incurred and payment received shall be allocated to the insurer
21 in conformity with customary insurance accounting practices consistently applied;

22 (4) the books, accounts, and records of each party shall be maintained so as to
23 disclose clearly and accurately the precise nature and details of the transactions including
24 accounting information that is necessary to support the reasonableness of the charges or
25 fees to the respective parties; and

26 (5) [(3)] the insurer's surplus as regards policyholders following any dividends
27 or distributions to shareholder affiliates or performance under a material transaction with an
28 affiliate shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its
29 financial needs.

30 * Sec. 40. AS 21.22 is amended by adding a new section to read:

31 Sec. 21.22.085. TRANSACTIONS INVOLVING A DOMESTIC INSURER REQUIRING

1 DIRECTOR REVIEW. (a) The following transactions involving a domestic insurer and a person
2 in its holding company system may not be entered into unless the insurer has notified the director
3 in writing of the insurer's intention to enter into the transaction at least 30 days before the
4 transaction, or a shorter period if allowed by the director, and the director has not disapproved
5 the transaction within the required notice period:

6 (1) a sale, purchase, exchange, loan or extension of credit, guarantee, or
7 investment, provided the transaction is equal to or exceeds

8 (A) with respect to insurers other than life insurers, the lesser of three
9 percent of the insurer's admitted assets or 25 percent of surplus that pertains to
10 policyholder surplus, each calculated under AS 21.21.020(d); or

11 (B) with respect to life insurers, three percent of the insurer's admitted
12 assets calculated under AS 21.21.020(d);

13 (2) a loan or extension of credit to a person who is not an affiliate, where the
14 insurer makes loans or extensions of credit with the agreement or understanding that the proceeds
15 of the transaction, in whole or in substantial part, are to be used to make a loan or extension of
16 credit to, purchase an asset of, or make an investment in an affiliate of the insurer making the
17 loan or extension of credit provided the transaction is equal to or exceeds

18 (A) with respect to insurers other than life insurers, the lesser of three
19 percent of the insurer's admitted assets or 25 percent of surplus that pertains to
20 policyholder surplus, each calculated under AS 21.21.020(d); or

21 (B) with respect to life insurers, three percent of the insurer's admitted
22 assets calculated under AS 21.21.020(d);

23 (3) a reinsurance agreement or modification in which the reinsurance premium
24 or change in the insurer's liabilities equals or exceeds five percent of the insurer's surplus that
25 pertains to policyholder surplus, calculated under AS 21.21.020(d), including an agreement that
26 may require as consideration the transfer of assets from an insurer to a nonaffiliated if an
27 agreement or understanding exists between the insurer and nonaffiliated that a portion of the
28 assets will be transferred to an affiliate of the insurer;

29 (4) a management agreement, service contract, or cost-sharing arrangement; and

30 (5) a material transaction specified by regulation that the director determines may
31 adversely affect the interests of the insurer's policyholders.

1 (b) Nothing in (a) of this section authorizes or permits a transaction that, in the case of
2 an insurer not a member of the same holding company system, would violate a provision of law.

3 (c) A domestic insurer may not enter into a transaction that is part of a plan or series of
4 similar transactions with persons within the holding company system if the purpose of the
5 separate transaction is to avoid the statutory threshold amount and avoid review that would
6 otherwise occur. If the director determines that this separate transaction is entered into over a
7 12-month period for this purpose, the director may impose penalties under AS 21.22.065(i),
8 21.22.170, AS 21.36.320, and 21.36.360(a).

9 (d) The director, in reviewing a transaction under this section, shall consider whether the
10 transaction complies with the standards provided in AS 21.22.080 and whether the transaction
11 may adversely affect the interests of policyholders.

12 (e) A domestic insurer shall notify the director within 30 days of an investment of a
13 domestic insurer in a corporation if, after the investment, the total investment by the insurance
14 holding company system in a corporation exceeds 10 percent of the corporation's voting
15 securities.

16 * Sec. 41. AS 21.22.090 is amended to read:

17 Sec. 21.22.090. ADEQUACY OF SURPLUS. For the purposes of this chapter, in
18 determining whether an insurer's surplus as regards policyholders is reasonable in relation to the
19 insurer's outstanding liabilities and adequate to its financial needs, the following factors, among
20 others, shall be considered:

21 (1) the size of the insurer as measured by its assets, capital and surplus, reserves,
22 premium writings, insurance in force, and other appropriate criteria;

23 (2) the extent to which the insurer's business is diversified among the several
24 lines of insurance;

25 (3) the number and size of risks insured in each line of business;

26 (4) the extent of the geographical dispersion of the insurer's insured risk;

27 (5) the nature and extent of the insurer's reinsurance program;

28 (6) the quality, diversification, and liquidity of the insurer's investment portfolio;

29 (7) the recent past and projected future trend in the size of the insurer's

30 investment portfolio [SURPLUS AS REGARDS POLICYHOLDERS];

31 (8) the surplus as regards policyholders maintained by other comparable insurers;

1 (9) the adequacy of the insurer's reserves; and

2 (10) the quality and liquidity of investments in affiliates [SUBSIDIARIES] made
3 under AS 21.21; the director may treat any such investment as a disallowed asset for purposes
4 of determining the adequacy of surplus as regards policyholders whenever the director determines
5 the investment warrants it.

6 * Sec. 42. AS 21.22.100(a) is amended to read:

7 (a) A domestic insurer [SUBJECT TO REGISTRATION UNDER AS 21.22.060] may
8 not pay any extraordinary dividend or make any other extraordinary distribution to its
9 shareholders until

10 (1) 30 days after the director has received notice of the declaration of the dividend
11 or distribution and has not within that period disapproved its payment; or

12 (2) the director has approved its payment within the 30-day period.

13 * Sec. 43. AS 21.22.100(b) is amended to read:

14 (b) For purposes of this section, an extraordinary dividend or distribution includes a
15 [ANY] dividend or distribution of cash or other property, the fair market value of which together
16 with that of other dividends or distributions made within the preceding 12 months exceeds the
17 lesser [GREATER] of (1) 10 percent of the insurer's surplus as regards policyholders as of
18 December 31 of the preceding year; or (2) the net gain from operations of the insurer, if the
19 insurer is a life insurer, or the net investment income, if the insurer is not a life insurer, for the
20 12-month period ending December 31 of the preceding year; but does not include pro rata
21 distributions of any class of the insurer's own securities. In determining whether a dividend
22 or distribution is extraordinary, an insurer other than a life insurer may carry forward net
23 income from the previous two calendar years that has not already been paid out as
24 dividends. The carry forward provision shall be computed by taking the net income from
25 the second and third preceding calendar years, not including realized capital gains, less
26 dividends paid in the second and immediate preceding calendar years.

27 * Sec. 44. AS 21.22 is amended by adding a new section to read:

28 Sec. 21.22.105. MANAGEMENT OF DOMESTIC INSURERS SUBJECT TO
29 REGISTRATION. (a) Notwithstanding the control of a domestic insurer by any person, the
30 officers and directors of the insurer may not be relieved of an obligation or liability to which the
31 officers and directors would otherwise be subject to by law, and the insurer shall be managed so

1 as to assure the insurer's separate operating identity consistent with this title.

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

5 (c) Not less than one-third of the directors of a domestic insurer registered under
6 AS 21.22.060 and not less than one-third of the members of each committee of the board of
7 directors of a domestic insurer registered under AS 21.22.060 shall be persons who are not
8 officers or employees of the insurer or of an entity controlling, controlled by, or under common
9 control with the insurer and who are not beneficial owners of a controlling interest in the voting
10 stock of the insurer or an entity. At least one person who is not an officer, employee, or owner
11 of a controlling interest in stock of an insurer or controlling entity must be included in a quorum
12 for the transaction of business at a meeting of the board of directors or a committee of the board
13 of directors.

14 (d) The board of directors of a domestic insurer shall establish one or more committees
15 comprised solely of directors who are not officers or employees of the insurer or of an entity
16 controlling, controlled by, or under common control with the insurer and who are not beneficial
17 owners of a controlling interest in the voting stock of the insurer or an entity. The committee
18 or committees shall have responsibility for recommending the selection of independent certified
19 public accountants, reviewing the insurer's financial condition, the scope and results of the
20 independent audit, and an internal audit, nominating candidates for director for election by
21 shareholders or policyholders, evaluating the performance of officers that are principal officers
22 of the insurer, and recommending to the board of directors the selection and compensation of the
23 principal officers.

24 (e) The provisions of (c) and (d) of this section do not apply to a domestic insurer if the
25 person controlling the insurer is an insurer having a board of directors and committees that meet
26 the requirements of (c) and (d) of this section, or to a domestic insurer that holds a certificate
27 of authority under this title on December 31, 1991.

28 * Sec. 45. AS 21.22.120 is amended to read:

29 Sec. 21.22.120. CONFIDENTIALITY. All information, documents, and copies of the
30 information and documents obtained by or disclosed to the director or any other person in the
31 course of an examination or investigation made under AS 21.22.110 and all information reported

1 under AS 21.22.060 and all preacquisition notification information received under
2 AS 21.22.065, shall be given confidential treatment and may not be made public by the director
3 or any other person, except to insurance departments of other states, without the prior written
4 consent of the insurer to which it pertains. However, if the director, after giving the insurer and
5 its affiliates who would be affected by publication of the information notice and opportunity to
6 be heard, determines that the interests of policyholders, shareholders, or the public will be served
7 by the publication of the information, the director may publish all or part of the information in
8 the manner the director considers appropriate.

9 * Sec. 46. AS 21.22.150 is amended by adding a new subsection to read:

10 (c) This section does not apply to a security that constitutes an acquisition covered by
11 AS 21.22.065.

12 * Sec. 47. AS 21.22.160 is amended by adding a new subsection to read:

13 (b) This section does not apply to a security that constitutes an acquisition covered by
14 AS 21.22.065.

15 * Sec. 48. AS 21.22.180 is amended by adding a new subsection to read:

16 (b) This section does not apply to a violation involving a security that constitutes an
17 acquisition covered by AS 21.22.065.

18 * Sec. 49. AS 21.22.200 is amended by adding new paragraphs to read:

19 (11) "acquisition" means an agreement, arrangement, or activity the consummation
20 of which results in a person acquiring directly or indirectly the control of another person, and
21 includes the acquisition of voting securities, assets, bulk reinsurance, and mergers;

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

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

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

28 (15) "market" or "insurance market" means direct written insurance premium in
29 this state for a line of business as contained in the annual statement required to be filed by
30 insurers licensees to do business in this state; in determining the relevant product and geographical
31 markets, the director shall give due consideration to, among other things, the definitions or

1 guidelines adopted by the National Association of Insurance Commissioners and to information
2 submitted by parties to the acquisition; in the absence of sufficient information to the contrary,
3 the relevant product market is assumed to be the direct written insurance premium for a line of
4 business, the line being that used in the annual statement required to be filed by insurers doing
5 business in this state, and the relevant geographical market is assumed to be this state;

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

9 * **Sec. 50.** AS 21.27.010 is repealed and reenacted to read:

10 Sec. 21.27.010. LICENSE REQUIRED. (a) A person may not act as or represent to be
11 an insurance producer, managing general agent, reinsurance intermediary broker, reinsurance
12 intermediary manager, surplus lines broker, or independent adjuster in this state or relative to a
13 subject resident, located, or to be performed in this state unless licensed under this chapter. A
14 person may not act as or represent to be a managing general agent, reinsurance intermediary
15 broker, or reinsurance intermediary manager representing an insurer domiciled in this state
16 regarding a risk located outside this state unless licensed by this state.

17 (b) An insurance producer, a managing general agent, a reinsurance intermediary broker,
18 a reinsurance intermediary manager, or a surplus lines broker may not solicit or take applications
19 for, procure, place for others, or otherwise transact business for a kind or class of insurance for
20 which the person is not licensed.

21 (c) A person who for a resident of this state, or for a resident of another jurisdiction from
22 a place of business in this state, performs administrative functions, including claims
23 administration and payment, marketing administrative functions, premium accounting, premium
24 billing, coverage verification, underwriting authority, or certificate issuance only in regard to life
25 insurance, disability insurance, or annuities is not required to be licensed as a managing general
26 agent if the person

27 (1) is registered under this chapter as a third-party administrator; or

28 (2) only investigates and adjusts claims and is licensed under this chapter as an
29 independent adjuster.

30 (d) A licensee may not use a fictitious name or alias unless the licensee's legal name and
31 fictitious name or alias are on the license.

1 (e) A person who is an employee of an admitted insurer, who acts within the course and
2 scope of that employment, and within the scope of the insurer's certificate of authority is not
3 required to be additionally licensed under this section.

4 (f) A person who performs management services under a written contract for an admitted
5 insurer is not required to be licensed as a managing general agent, if

6 (1) either

7 (A) the person is a United States manager of the United States branch of
8 an alien admitted insurer; or

9 (B) the person's compensation is not based on the volume of premium
10 written; and

11 (2) the person

12 (A) is a wholly-owned subsidiary of the admitted insurer;

13 (B) wholly owns the admitted insurer;

14 (C) is a wholly-owned subsidiary of the insurance holding company
15 subject to AS 21.22 that owns or controls the admitted insurer.

16 (g) A person who performs management services for an admitted reinsurer is not required
17 to be licensed as a reinsurance intermediary manager if

18 (1) the person's compensation is not based on the volume of premium written and
19 the person

20 (A) is a wholly-owned subsidiary of the admitted insurer;

21 (B) wholly owns the admitted insurer; or

22 (C) is a wholly-owned subsidiary of an insurance holding company subject
23 to AS 21.22 that owns or controls the admitted insurer;

24 (2) the person is a United States manager of the United States branch of an alien
25 admitted insurer; or

26 (3) the person is the manager of a group, association, pool, or organization of
27 insurers that does joint underwriting and that is subject to examination by its resident insurance
28 regulator in a state that

29 (A) the director has determined has enacted provisions substantially similar
30 to those contained in this chapter; and

31 (B) is accredited by the National Association of Insurance Commissioners.

1 (h) This chapter does not apply to a person licensed to practice as an attorney at law
2 while the person is acting as an attorney at law.

3 (i) A person licensed under AS 21.75 as an attorney-in-fact is not required to be
4 additionally licensed under this chapter while acting on behalf of subscribers and within the scope
5 and authority of a subscribers agreement of a reciprocal insurer or exchange licensed under
6 AS 21.75.

7 (j) This section does not apply to a person who

8 (1) is employed on salary or hourly wage by a person licensed under this section
9 solely for the performance of accounting, clerical, stenographic, and similar office duties;

10 (2) only secures and forwards information required for the purposes of group
11 insurance covering the unpaid balance, or remaining payments proposed to be made, in
12 connection with the purchase of merchandise or services, if the person receives no compensation,
13 directly or indirectly, arising out of or in any way relating to the insurance transactions; or

14 (3) is employed on salary by a licensee at the licensee's place of business, is
15 supervised by and reports directly to a licensee in the firm, and who, after explaining that the
16 matter must be reviewed by a licensee, may

17 (A) furnish premium estimates from published or printed lists of standard
18 rates if the person does not advise, counsel, or suggest what coverage may be needed, or
19 otherwise solicit insurance coverage;

20 (B) arrange appointments for a licensee if the person does not solicit
21 insurance coverage;

22 (C) record information from an applicant or policyholder and complete for
23 the licensee's personal review and signature, a certificate of insurance that is not a
24 contract of insurance; the licensee's signature may be by facsimile;

25 (D) inform a policyholder of the type of coverage shown in the licensee's
26 policy record if the person does not advise that an event or hypothetical event is or is not
27 covered; or

28 (E) in the physical presence of the licensee, record information from an
29 applicant or policyholder and complete for a licensee's personal review and personal
30 signature, applications, binders, endorsements, or identification cards if the person
31 discloses to the applicant or policyholder that the applicant or policyholder may review