

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**7475 SENATE JUDICIARY**

1 (d) In addition to an order issued under (c) of this section, the director may, after a  
2 hearing, order restitution, assess [ALSO ORDER] a penalty of not more than \$1,000 for each  
3 violation [ACT] or \$10,000 for engaging in a general business practice in violation of this  
4 chapter.

5 \* Sec. 149. AS 21.36.320(e) is amended to read:

6 (e) If the director determines after a hearing that the person charged knew or should  
7 have known that the person was in violation of this chapter, in addition to the [A] penalty [IN  
8 ADDITION TO THAT] prescribed in (d) of this section, a suspension or revocation of the  
9 person's license and a penalty of not more than \$25,000 [\$1,000] for each violation [ACT] or  
10 \$250,000 [\$25,000] for engaging in the general business practice in violation of this chapter [,  
11 OR SUSPENSION OR REVOCATION OF THE PERSON'S LICENSE, OR BOTH,] may also  
12 be ordered by the director.

13 \* Sec. 150. AS 21.36.320(f) is amended to read:

14 (f) If the director believes that a person has violated a cease and desist [STOP] order  
15 issued under (c) of this section, the director may certify the relevant facts to the superior court  
16 in the appropriate district, for proceedings under AS 44.62.590. In addition to the penalties and  
17 remedies provided for in AS 44.62.590, the superior court, upon finding that the cease and desist  
18 [STOP] order has been violated, may order the violator to comply with the order, pay an  
19 additional [A] penalty of not more than \$1,000,000 [\$10,000] for each violation, [AND] may  
20 revoke or suspend the violator's license, and may bar the violator from transacting the  
21 business of insurance in the future [OR BOTH].

22 \* Sec. 151. AS 21.36.320 is amended by adding a new section to read:

23 (g) In determining the penalty imposed under (d) and (e) of this section, the director shall  
24 consider the amount of loss caused by the violation and the amount of benefit derived by the  
25 person by reason of the violation.

26 \* Sec. 152. AS 21.36.350 is amended to read:

27 Sec. 21.36.350. ENFORCEMENT. The director may [OF INSURANCE SHALL] adopt  
28 regulations to implement, define, and enforce this chapter [AS 21.36.125].

29 \* Sec. 153. AS 21.36.370 is amended to read:

30 Sec. 21.36.370. EXCEPTIONS. For the purpose of AS 21.36.360, [THE FOLLOWING  
31 ACTIONS ARE NOT CONSIDERED A PREMIUM OR CHARGE FOR INSURANCE:

1 (1)] the charging and collection by surplus line brokers licensed under AS 21.27  
2 [AS 21.33] of the amount of applicable state and federal taxes and filing fees under AS 21.34  
3 is not considered a premium or charge for insurance [AS 21.34.180 - 21.34.190;

4 (2) THE CHARGING AND COLLECTION BY A LIFE INSURER OF  
5 AMOUNTS ACTUALLY TO BE EXPENDED FOR MEDICAL EXAMINATION OF AN  
6 APPLICANT FOR LIFE INSURANCE OR FOR REINSTATEMENT OF A LIFE INSURANCE  
7 POLICY].

8 \* Sec. 154. AS 21.42 is amended by adding a new section to read:

9 AS 21.42.025. INSTITUTIONAL BENEFICIARY INSTEAD OF INSURABLE  
10 INTEREST. (a) Except as provided under (e) of this section, a life insurance contract may be  
11 entered into in which a charitable organization is designated as the beneficiary or in which the  
12 person or organization paying the premium for the insurance has no insurable interest in the life  
13 of the individual insured.

14 (b) To enter into a contract of life insurance described in (a) of this section

15 (1) the person or organization paying the premium shall make and sign the  
16 application for life insurance as owner and irrevocably designate a charitable organization as the  
17 beneficiary of the life insurance contract; and

18 (2) the application shall be signed by the individual whose life is to be insured.

19 (c) This section does not prohibit any combination of the insured, applicant, premium  
20 payer, owner, and beneficiary from being the same person or the insured from modifying the  
21 contract.

22 (d) A contract of life insurance described in (a) of this section that is not for the benefit  
23 of a charitable organization described in (e) of this section is valid and binding among the parties  
24 in the absence of an insurable interest described in AS 21.42.020.

25 (e) A contract of life insurance may not be entered into by a charitable organization

26 (1) that

27 (A) loans to a controlling person a part of its income or corpus without  
28 the receipt of adequate security and a reasonable rate of interest;

29 (B) pays to a controlling person compensation in excess of a reasonable  
30 allowance for salaries or other compensation for personal services actually rendered;

31 (C) makes a part of its services available on a preferential basis to a

1 controlling person;

2 (D) makes a substantial purchase of securities or other property for more  
3 than adequate consideration in money or money's worth from a controlling person;

4 (E) sells a substantial part of its securities or other property for less than  
5 an adequate consideration in money or money's worth to a controlling person; or

6 (F) engages in another transaction that results in a substantial diversion  
7 of its income or corpus to a controlling person;

8 (2) if a substantial part of its activities consists of providing commercial type of  
9 insurance;

10 (3) that is chartered by or is an instrumentality of the federal government; or

11 (4) if the charter, bylaws, or other governing instrument or a written policy  
12 statement contains a provision that provides for discrimination against a person on the basis of  
13 race, color, or religion.

14 (f) Paragraph (e)(4) of this section does not apply to

15 (1) an auxiliary or feeder organization of a fraternal beneficiary society if the  
16 society is described in 26 U.S.C. 501(c)(8), is exempt from tax under 26 U.S.C. 501(a), and  
17 limits its membership to the members of a particular religion; or

18 (2) a club or feeder organization exempt from tax under 26 U.S.C. 501(a) that in  
19 good faith limits its membership to the members of a particular religion in order to further the  
20 teachings or principles of that religion and not to exclude individuals of a particular race or color.

21 (g) In this section,

22 (1) "charitable organization" means a

23 (A) charitable organization described in 26 U.S.C. 170(b)(1)(A), 26 U.S.C.  
24 170(c)(2) - (5), and 42 U.S.C. 701(c);

25 (B) feeder organization; or

26 (C) organization providing child care;

27 (2) "commercial type of insurance" means all other insurance except

28 (A) insurance provided at substantially below cost to a class of charitable  
29 recipients; or

30 (B) incidental health insurance provided by a health maintenance  
31 organization of a kind customarily provided by the organization;

1 (3) "controlling person" means the creator of a charitable organization, if a trust;  
2 a person who has made a substantial contribution to a charitable organization; a member of the  
3 family, or a successor of an individual who is the creator of the trust or who has made a  
4 substantial contribution to the charitable organization; or a corporation controlled by the creator  
5 or person through ownership, directly or indirectly, of 50 percent or more of the total combined  
6 voting power of all classes of stock entitled to vote or 50 percent or more of the total value of  
7 shares of all classes of stock of the corporation;

8 (4) "feeder organization" means an organization operated on a for profit basis, 95  
9 percent or more of whose profits are donated to one or more charitable organizations;

10 (5) "member of the family" has the meaning given in 26 U.S.C. 267(c)(4);

11 (6) "organization providing child care" means a charitable organization providing  
12 for care of children away from their homes if

13 (A) substantially all of the care provided by the organization is for  
14 purposes of enabling individuals to be gainfully employed; and

15 (B) the services provided by the organization are available to the general  
16 public.

17 \* Sec. 155. AS 21.66.010(a) is amended to read:

18 (a) Before a domestic or foreign title insurance company is entitled to a certificate of  
19 authority to transact a title insurance business in this state it shall have basic capital, additional  
20 surplus when first authorized, and additional maintained surplus as required by  
21 AS 21.09.070 including a deposit as required in AS 21.09.090 [A PAID-UP UNIMPAIRED  
22 CASH CAPITAL EQUAL TO NOT LESS THAN \$250,000, \$100,000 OF WHICH SHALL BE  
23 DEPOSITED WITH THE DIRECTOR OF INSURANCE AS A GUARANTY FUND FOR THE  
24 PROTECTION OF THE INSURED UNDER POLICIES OF TITLE INSURANCE ISSUED BY  
25 THE COMPANY].

26 \* Sec. 156. AS 21.66.010(b) is amended to read:

27 (b) A domestic or foreign title insurance company shall have on deposit with the director  
28 or insurance commissioner of the state of its domicile, before the issuance of any policy of title  
29 insurance in this state, the amount required by AS 21.09.090 for the purpose described in that  
30 section [SUM OF \$100,000 AS A GUARANTEE FUND FOR THE SECURITY AND  
31 PROTECTION OF ITS POLICYHOLDERS OR THEIR BENEFICIARIES WHEREVER

1 SITUATED]. The amount of this deposit shall be increased by the sum of \$50,000 for each state  
2 or territorial subdivision of the United States or the District of Columbia, other than the state of  
3 its domicile, in which it becomes qualified to engage in the business of title insurance, less the  
4 amount required by and deposited in the other states or territorial subdivisions, provided [  
5 HOWEVER,] the deposits shall be for the security and protection of its policyholders or their  
6 beneficiaries, wherever situated. When the aggregate of amounts deposited in this or other states  
7 or territorial subdivisions or the District of Columbia, has reached the sum of \$750,000 no further  
8 deposit is required of the title insurance company as a condition of engaging in the business of  
9 title insurance in this state.

10 \* Sec. 157. AS 21.66.020 is amended to read:

11 Sec. 21.66.020. DEPOSITS IN GUARANTY FUND. Within 30 days after the filing of  
12 each annual statement the title insurance company shall deposit with the director a sum equal to  
13 10 percent of the premiums received by it during the preceding year covering property in this  
14 state, as shown by the annual statement, until the accumulated deposits, added to the sums  
15 originally deposited with the director, as provided in this chapter, total \$750,000 [\$100,000] but  
16 [IN NO EVENT MAY] the title insurance company may not be required to deposit more than  
17 \$50,000 [\$10,000] in any one year.

18 \* Sec. 158. AS 21.66.060 is amended to read:

19 Sec. 21.66.060. DIVIDENDS. A title insurance company may not pay dividends except  
20 from net profits remaining on hand after retaining unimpaired

21 (1) the subscribed capital stock;

22 (2) the amount required to be set aside as unearned premium reserve fund under  
23 AS 21.18.073;

24 (3) a sum sufficient to pay current liabilities for operating expenses and taxes, and  
25 losses established or in process of settlement, without impairment of the unearned premium  
26 reserve fund required under AS 21.18.073.

27 \* Sec. 159. AS 21.66.080(a) is amended to read:

28 (a) Every [TITLE INSURANCE] company, on or before March 1 of each year, shall  
29 furnish the director a sworn statement of assets and liabilities, and of all title premiums received  
30 by it during the preceding calendar year, setting out among other things the amounts that  
31 [THREE PERCENT OF ALL GROSS PREMIUMS ON TITLE INSURANCE POLICIES

1 ISSUED BY IT DURING THE YEAR, COVERING PROPERTY IN THIS STATE.] have been  
2 set aside and held by it in an account required under AS 21.18.073 [KNOWN AS THE TITLE  
3 INSURANCE UNEARNED PREMIUM RESERVE FUND, AS PROVIDED IN THIS  
4 CHAPTER]. The reporting format for a given year is the most recently approved National  
5 Association of Insurance Commissioners [COMMISSIONERS'] Annual Financial Statement  
6 blank form and instructions, supplemented for additional information as required by the director.  
7 The director may require the statement to be filed on electronic media. The statement must also  
8 show all unpaid losses and claims upon title insurance policies of which the title insurance  
9 company has received due notice in writing from or on behalf of the insured. With the filing of  
10 the statement the title insurance company shall pay a filing fee set under AS 21.06.250.

11 \* Sec. 160. AS 21.66.090(a) is amended to read:

12 (a) Every company, before engaging in a title insurance business in this state, shall apply  
13 to the director for a certificate of authority to transact business under AS 21.09. [THE  
14 COMPANY SHALL SUBMIT WITH THE APPLICATION A STATEMENT SWORN TO BY  
15 THE PROPER OFFICERS OF THE COMPANY SHOWING ITS ASSETS AND LIABILITIES  
16 AND THAT IT HAS COMPLIED WITH THE CAPITAL REQUIREMENTS AND INITIAL  
17 GUARANTEE FUND DEPOSIT PRESCRIBED BY THIS CHAPTER.]

18 \* Sec. 161. AS 21.66.110 is amended to read:

19 Sec. 21.66.110. ANNUAL TAX ON TITLE INSURANCE PREMIUMS. Annually each  
20 title insurance company shall pay on or before March 1 [APRIL 1], a tax of one percent of the  
21 amount of gross title insurance premiums received by it including as premium income received  
22 from guaranteed certificates of title and other guarantees of title during the preceding calendar  
23 year covering property in this state, as shown by its annual statement to the director.

24 \* Sec. 162. AS 21.66.170(a) is amended to read:

25 (a) A policy or contract of title insurance may not be written until the title insurance  
26 company conducts or has conducted a reasonable search and examination of the title and has  
27 made a determination of insurability of title in accordance with its established underwriting  
28 practices. Evidence of the determination shall be preserved and retained in the files of the title  
29 insurance company or its agent for a period of not less than 15 years after the policy or contract  
30 of title insurance has been issued. In lieu of retaining the original evidence, the title insurance  
31 company or the title insurance limited producer [AGENT], may, in the regular course of

1 business, establish a system by which all or part of these writings are recorded, copied, or  
2 reproduced by any photographic, photostatic, microfilm, microcard, miniature photographic, or  
3 other process that accurately reproduces or forms a durable medium for reproducing the original.

4 \* Sec. 163. AS 21.66.180 is amended to read:

5 Sec. 21.66.180. GENERAL POWERS. A title insurance company may

6 (1) do business as defined in AS 21.66.480;

7 (2) do any act, directly or through a title insurance limited producer [AGENT],  
8 incidental to making a contract or policy of title insurance, including, but not limited to,  
9 conducting or holding an escrow, settlement, or closing of a transaction; and,

10 (3) provide other services relative or incidental to the sale and transfer of real or  
11 personal property.

12 \* Sec. 164. AS 21.66.210(a) is amended to read:

13 (a) Two or more title insurance companies or two or more title insurance limited  
14 producers, or a combination of title insurance companies and title insurance limited  
15 producers [AND ONE OR MORE TITLE INSURANCE AGENTS] may apply to the director  
16 of insurance to form an association, corporation, or other legal entity, for the purpose of engaging  
17 in the business of preparing abstracts of title searches from public records or from records to be  
18 owned by the entity, upon the basis of which a title insurance limited producer [AGENT] or a  
19 title insurance company will issue title policies. The owners or participants are considered to be  
20 in compliance with the provisions of this section if the title plant of the association, corporation,  
21 or other legal entity complies with the provisions of this section. The application must contain

22 (1) a copy of the proposed articles of incorporation or association and the bylaws  
23 or agreement governing the operation of the entity;

24 (2) a list of the owners or participants;

25 (3) the names and addresses of the persons who will operate the entity, with a  
26 description of their experience and qualifications;

27 (4) the conditions under which ownership or participation in the entity may be  
28 sold or acquired;

29 (5) a statement of whether or not title information will be compiled and sold to  
30 persons other than owners of or participants in the entity;

31 (6) a pro forma balance sheet and other financial information to indicate the

1       sufficiency of financing the entity.

2   \* Sec. 165. AS 21.66.270 is amended to read:

3           Sec. 21.66.270. TITLE INSURANCE LIMITED PRODUCERS [AGENTS] TO BE  
4       LICENSED. A title [TITLE] insurance limited producer [AGENTS] shall be licensed in the  
5       manner provided for [AGENTS OF INSURANCE COMPANIES] in AS 21.27. A title  
6       insurance limited producer may not be licensed to sell insurance other than title insurance.

7   \* Sec. 166. AS 21.66.280 is amended to read:

8           Sec. 21.66.280. TITLE INSURANCE LIMITED PRODUCERS [AGENTS], BOOKS,  
9       AND RECORDS. (a) In addition to any other requirement of this title, a [EACH] title  
10      insurance limited producer licensee [AGENT] shall maintain books of accounts and records and  
11      vouchers pertaining to the business of title insurance in a manner that the director, or an  
12      authorized representative, may readily ascertain whether the licensee [AGENT] has complied with  
13      the provisions of this chapter.

14           (b) A title insurance limited producer licensee [AGENT] may engage in the business  
15      of handling escrows, settlements, and closings in connection with the business of title insurance;  
16      however,

17           (1) the licensee [AGENT] shall maintain a separate record of all receipts and  
18      disbursements of escrow funds and may not commingle the funds with personal funds or with  
19      funds held by the licensee [AGENT] in any other capacity;

20           (2) the licensee [AGENT] shall comply with the standards of solvency that the  
21      director requires; and

22           (3) the licensee [AGENT] shall submit financial statements that the director  
23      requires.

24           (c) In addition to any other penalty provided by law, if [IF] the director determines  
25      that a title insurance limited producer licensee [AN AGENT] has failed to comply with a  
26      provision of this section, the director may, after a hearing, revoke the limited producer license  
27      [OF THE AGENT].

28   \* Sec. 167. AS 21.66.290 is amended to read:

29           Sec. 21.66.290. TITLE INSURANCE LIMITED PRODUCER [AGENT] REPLIES  
30      TO DIRECTOR INQUIRIES. A [EACH] title insurance limited producer [AGENT] shall reply  
31      in writing promptly, with a copy of the reply mailed to each title insurance company for which

1 the licensee [AGENT] is acting, to an inquiry of the director relating to the licensee's  
2 [AGENT'S] acts as a title insurance limited producer [AGENT]. In addition to any other  
3 penalty provided by law, failure [FAILURE] to reply is a ground for revocation of the  
4 [AGENT'S] license. A [IN ADDITION, A] copy of the inquiry shall be sent by the director to  
5 each title insurance company for which the licensee [AGENT] is acting.

6 \* Sec. 168. AS 21.66.300 is amended to read:

7 Sec. 21.66.300. CERTAIN [AGENCY] NAMES PROHIBITED. A title insurance  
8 limited producer [AFTER AUGUST 14, 1974, AN AGENT] for a title insurance company may  
9 not adopt a firm name containing the words "title insurance", "title guaranty", or "title guarantee",  
10 unless the words are followed by the words "agent" or "agency" in the same size and type as the  
11 words preceding them. This section does not apply to a title insurance company acting as an  
12 agent for another title insurance company.

13 \* Sec. 169. AS 21.66.310(a) is amended to read:

14 (a) A title insurer, or officer, employee, attorney, or title insurance limited producer  
15 [AGENT, OR SOLICITOR] of a title insurer, may not pay, allow, or give or offer to pay, allow,  
16 or give, directly or indirectly, as an inducement to obtaining a title insurance business, a rebate,  
17 reduction, or abatement of a rate or charge made incident to the issuance of the title insurance,  
18 a special favor or advantage, money consideration, or other inducement. A charge made incident  
19 to the issuance of the insurance is construed to include, without limitation, escrow, settlement,  
20 and closing charges.

21 \* Sec. 170. AS 21.66.310(c) is amended to read:

22 (c) Nothing in this section prohibits

23 (1) the payment of fees for services actually rendered as a result of a title  
24 insurance transaction; or

25 (2) the payment of a commission to a legally appointed title insurance limited  
26 producer [AGENT] who issues the policy of title insurance.

27 \* Sec. 171. AS 21.66.330 is amended to read:

28 Sec. 21.66.330. EXAMINATION OF RECORDS. If the director has reason to believe  
29 that a title insurance limited producer [AGENT] has violated or is in violation of AS 21.66.310,  
30 the director shall immediately examine the title insurance limited producer's [AGENT'S] books  
31 of account and record and vouchers pertaining to the business of title insurance. The title

1 insurance limited producer [AGENT] shall pay to the director the cost of an examination  
2 conducted under this section.

3 \* Sec. 172. AS 21.66.350 is amended to read:

4 Sec. 21.66.350. DIVISION OF RATES. Nothing in this chapter prohibits the division  
5 of rates and charges between or among a title insurance company and its agent, two or more title  
6 insurance companies, one or more title insurance companies and one or more title insurance  
7 limited producers [AGENTS], or two or more title insurance limited producers [AGENTS,]  
8 if the division of rates and charges does not constitute an unlawful rebate and is not in payment  
9 of a forwarding fee or finder's fee.

10 \* Sec. 173. AS 21.66.370(a) is amended to read:

11 (a) A title insurance company shall file with the director its schedules of rates, manuals  
12 of classifications, rules and plans relating to schedules of rates or manuals of classification, and  
13 every modification of the schedules or manuals that it proposes to use in this state. A filing  
14 under this section must contain the effective dates of the documents filed, and indicate the  
15 character and extent of the coverage contemplated. [A TITLE INSURANCE COMPANY MAY  
16 SATISFY ITS OBLIGATIONS TO MAKE THESE FILINGS BY BECOMING A MEMBER OF,  
17 OR A SUBSCRIBER TO, A LICENSED TITLE INSURANCE RATING ORGANIZATION  
18 THAT MAKES SUCH FILINGS, AND BY AUTHORIZING THE COMMISSIONER TO  
19 ACCEPT THE FILINGS ON ITS BEHALF.]

20 \* Sec. 174. AS 21.66.370(c) is amended to read:

21 (c) Subject to the provisions of (e) of this section, a [EACH] filing shall be on file for  
22 a period of 30 days before it becomes effective. The director may, upon written notice given  
23 within the 30-day period to the person making the filing, extend the waiting period for an  
24 additional period, not to exceed 30 days, in order to complete the review of the filing. Additional  
25 extensions of the waiting period may also be made with the consent of the title insurance  
26 company [OR RATING ORGANIZATION]. Upon written application by the title insurance  
27 company [OR RATING ORGANIZATION], the director, after review of the application, may  
28 authorize a filing or any part of it to become effective upon the expiration of the waiting period  
29 or its extension.

30 \* Sec. 175. AS 21.66.370(f) is amended to read:

31 (f) A title insurance company or title insurance limited producer [AGENT OF A

1 TITLE INSURANCE COMPANY] may not charge a rate for a policy or contract of title  
2 insurance except in accordance with filings or rates that are in effect for the title insurance  
3 company as provided in this chapter.

4 \* Sec. 176. AS 21.66.380(a) is amended to read:

5 (a) A rate filing shall be accompanied by a statement of the title insurance company [OR  
6 TITLE INSURANCE RATING ORGANIZATION] making the filing, setting out the basis on  
7 which the rate was determined, with the rates computed. A filing of rates may be justified by

8 (1) the experience or judgment of the title insurance company [OR TITLE  
9 INSURANCE RATING ORGANIZATION] making the filing;

10 (2) its interpretation of any statistical data relied upon;

11 (3) the experience of other title insurance companies [OR TITLE INSURANCE  
12 RATING ORGANIZATIONS] making the filings; or

13 (4) any other factors that the title insurance company [OR TITLE INSURANCE  
14 RATING ORGANIZATION] considers relevant.

15 \* Sec. 177. AS 21.66.390 is amended to read:

16 Sec. 21.66.390. MAKING OF RATES. (a) A title insurance company [THAT MAKES  
17 ITS OWN RATES AND EACH TITLE INSURANCE RATING ORGANIZATION] shall make  
18 rates that are not excessive or inadequate and that do not unfairly discriminate between risks in  
19 this state that involve essentially the same exposure to loss and expense elements, and that give  
20 due consideration to

21 (1) the desirability for stability of rate structures;

22 (2) the necessity of assuring the financial solvency of title insurance companies  
23 in periods of economic depression by encouraging growth in assets of title insurance companies  
24 in periods of high business activity; and

25 (3) the necessity for assuring a reasonable margin of underwriting and operating  
26 profit.

27 (b) A title insurance company [THAT MAKES ITS OWN RATES AND EACH TITLE  
28 INSURANCE RATING ORGANIZATION] shall adopt basic classifications of policies or  
29 contracts of title insurance that [WHICH] shall be used as the basis for rate-making.

30 \* Sec. 178. AS 21.66.400(a) is amended to read:

31 (a) If within the waiting period provided for in AS 21.66.370(c) the director finds that

1 a filing does not meet the requirements of this chapter, the director shall send to the title  
2 insurance company [OR TITLE INSURANCE RATING ORGANIZATION] that made the filing,  
3 written notice of disapproval of the filing specifying in what respects the director finds the filing  
4 fails to meet the requirements of this chapter and stating that the filing may not become effective.

5 \* Sec. 179. AS 21.66.400(b) is amended to read:

6 (b) If at any time after the applicable review period provided for in AS 21.66.370(c) the  
7 director finds that a filing does not meet the requirements of this chapter, the director shall,  
8 before issuing an order of disapproval, hold a hearing upon not less than 10 days written notice,  
9 specifying in reasonable detail the matters to be considered at the hearing. Notice of hearing shall  
10 be given to each title insurance company [OR TITLE INSURANCE RATING ORGANIZATION]  
11 that made the filing, and if, after the hearing, the director finds that the filing or a part of the  
12 filing does not meet the requirements of this chapter, the director shall issue an order specifying  
13 how it is deficient, and when, within a reasonable period thereafter, the filing or a part of it is  
14 considered no longer effective. A title insurance company [OR TITLE INSURANCE RATING  
15 ORGANIZATION] has the right to withdraw a filing or a part of a filing. Copies of the order  
16 issued under this section shall be sent to every title insurance company [AND TITLE  
17 INSURANCE RATING ORGANIZATION] affected. The order does not affect a contract or  
18 policy made or issued before the expiration of the period set out in the order.

19 \* Sec. 180. AS 21.66.400(c) is amended to read:

20 (c) A person or organization aggrieved with respect to a filing that is in effect may make  
21 a written application to the director for a hearing on the filing. The title insurance company [OR  
22 TITLE INSURANCE RATING ORGANIZATION] that made the filing may not proceed under  
23 this subsection. The application shall specify in reasonable detail the grounds to be relied on by  
24 the applicant. If the director finds that the application is made in good faith, that the applicant  
25 would be aggrieved if the applicant's grounds are established, and that the applicant's grounds  
26 otherwise justify holding a hearing, the director shall, within 60 days after receipt of the  
27 application, hold a hearing upon not less than 10 days written notice to the applicant and to each  
28 title insurance company [OR TITLE INSURANCE RATING ORGANIZATION] that made such  
29 a filing. If, after the hearing, the director finds that the filing or a part of it does not meet the  
30 requirements of this chapter, the director shall issue an order specifying how the filing or a part  
31 of it fails to meet the requirements of this chapter, stating when, within a reasonable period after

1 the order is issued, the filing or a part of it is considered no longer effective. Copies of the order  
2 shall be sent to the applicant and to every affected title insurance company [OR TITLE  
3 INSURANCE RATING ORGANIZATION]. The order does not affect a contract or policy made  
4 or issued before the expiration of the period set out in the order.

5 \* Sec. 181. AS 21.66.400(d) is amended to read:

6 (d) A title insurance company [OR TITLE INSURANCE RATING ORGANIZATION]  
7 to which the director has issued an order made without a hearing may, within 30 days after notice  
8 to it of the order, make a written request to the director for a hearing. The director shall hear  
9 the party or parties within 60 days after receipt of the request and shall give not less than 10 days  
10 written notice of the time and place of the hearing. Within 15 days after the hearing the director  
11 shall affirm, reverse, or modify the previous action, specifying the reasons. Pending the hearing  
12 and decision the director may suspend or postpone the effective date of the previous action.

13 \* Sec. 182. AS 21.66.410(c) is amended to read:

14 (c) In order to more uniformly administer rate regulations, the director and each title  
15 insurance company [OR TITLE INSURANCE RATING ORGANIZATION] may exchange  
16 information and experience data with insurance supervisory officials, title insurance companies,  
17 and title insurance rating organizations in other states, and may consult with them and with each  
18 other with respect to rate making and the application of rating systems.

19 \* Sec. 183. AS 21.66.420 is amended to read:

20 Sec. 21.66.420. FALSE OR MISLEADING INFORMATION. A title insurance company  
21 or title insurance limited producer [AGENT] may not wilfully withhold information from, or  
22 knowingly give false or misleading information to the director [OR TO ANY TITLE  
23 INSURANCE RATING ORGANIZATION OF WHICH THE TITLE INSURANCE COMPANY  
24 IS A MEMBER OR SUBSCRIBER] that will affect the rates chargeable under this chapter.

25 \* Sec. 184. AS 21.66.480(4) is amended to read:

26 (4) "rate" means a charge for title insurance risk, abstracting, searching,  
27 examination or determination of insurability, and every other activity, exclusive of escrow,  
28 settlement, or closing charges, whether denominated premium or otherwise, made by a title  
29 insurance company or an agent of a title insurance company to an insured or to an applicant for  
30 insurance, for a policy or contract of title insurance; however, "rate" does not include charges  
31 paid to and retained by an attorney at law, abstractor, surveyor, tax service, or any other person

1 acting in a capacity other than as a title insurance limited producer [AGENT] and on behalf of  
2 a client other than a title insurance company, or charges made for special services, even though  
3 performed in connection with a title insurance policy or contract;

4 \* Sec. 185. AS 21.66.480(7) is amended to read:

5 (7) "title insurance limited producer [AGENT]" means a person, firm,  
6 association, trust, corporation, cooperative, joint-stock company, or other legal entity authorized  
7 in writing by a title insurance company to solicit title insurance, collect premiums, determine  
8 insurability in accordance with the underwriting rules and standards prescribed by the title  
9 insurance company that the licensee [AGENT] represents, and issue policies in its behalf;  
10 however, the term "title insurance limited producer [AGENT]" does not include officers and  
11 salaried employees of a title insurance company;

12 \* Sec. 186. AS 21.66.480(8) is amended to read:

13 (8) "title insurance company" means a domestic company organized under the  
14 provisions of this title for the purpose of carrying on the business of title insurance, or any  
15 foreign title insurance company issued a certificate of authority to transact a title insurance  
16 business in this state and any title insurance company having the power and authority to transact  
17 a title insurance business within this state [AS OF AUGUST 14, 1974].

18 \* Sec. 187. AS 21.69.390 is amended by adding a new subsection to read:

19 (d) To meet the requirements of (a) of this section, a domestic insurer shall keep at its  
20 principal place of business in the state the following records of assets, transactions, and affairs:

21 (1) a general ledger;

22 (2) copies of reports prepared to comply with AS 21.09.200 - 21.09.210;

23 (3) if prepared in the normal course of business, financial statements prepared  
24 under general accepted accounting principals on which a licensed certified public accountant has  
25 expressed an opinion;

26 (4) filings made by a domestic insurer or affiliates of the domestic insurer with  
27 a government agency with which a domestic insurer or affiliates of the domestic insurer's  
28 securities may be registered;

29 (5) a state certificate of authority;

30 (6) filings made under AS 21.21;

31 (7) original policy and claim files for insurance of property or a risk resident or

1 located in the state;

2 (8) a corporate minutes book;

3 (9) articles of incorporation;

4 (10) corporate bylaws;

5 (11) contracts; and

6 (12) other records required by the director by regulation.

7 \* Sec. 188. AS 21.72.120(c) is amended to read:

8 (c) A copy of the annual statement certified by the director must be filed on or before  
9 the first day of March [APRIL] each year by the association in the office of the magistrate in  
10 the judicial district in which the business office of the association is located.

11 \* Sec. 189. AS 21.75.040(b) is amended to read:

12 (b) The attorney-in-fact [ATTORNEY] of a foreign or alien reciprocal insurer, that [,  
13 WHICH INSURER] is authorized to transact insurance in this state, may not, by virtue of  
14 discharge of its duties as the attorney-in-fact [ATTORNEY] with respect to the insurer's  
15 transactions in this state, be considered to be doing business in this state within the meaning of  
16 a law of this state applying to foreign firms or corporations.

17 \* Sec. 190. AS 21.75 is amended by adding a new section to read:

18 Sec. 21.75.045. LICENSING OF ATTORNEYS-IN-FACT. (a) A person may not act  
19 in the capacity of attorney-in-fact for a subscriber regarding a subject that is resident, located,  
20 or to be performed in this state or for a reciprocal insurer licensed to do business in this state  
21 unless the person is licensed under this chapter. The director may adopt regulations that establish  
22 qualifications for being licensed as an attorney-in-fact. The attorney-in-fact for a domestic  
23 reciprocal insurer transacting all of its insurance activities on a subject resident, located, and to  
24 be performed in this state is exempt from licensing under this title if the attorney-in-fact

25 (1) is a wholly-owned subsidiary of the reciprocal; and

26 (2) does not act as attorney-in-fact for another unaffiliated reciprocal insurer.

27 (b) The director may not issue or renew a license under this chapter to a person, or to  
28 be exercised by a person, found by the director to be untrustworthy, incompetent, financially  
29 irresponsible, or who has not established to the satisfaction of the director that the person is  
30 qualified under this chapter.

31 (c) To qualify for issuance or renewal of a license under this chapter, an applicant or

1 licensee shall comply with this title and

2 (1) be a trustworthy person;

3 (2) have active working experience in administrative functions that, in the  
4 director's opinion, exhibits the ability to competently perform the administrative functions of an  
5 attorney-in-fact;

6 (3) not have committed an act that is a cause for denial, nonrenewal, suspension,  
7 or revocation of a license in this state or another jurisdiction;

8 (4) have and maintain a lawfully established place of business physically  
9 accessible to the public where the attorney-in-fact principally conducts transactions under the  
10 license in this state, or if for a foreign reciprocal, in the state of domicile;

11 (5) disclose to the director all officers, directors, partners, principals, or managers  
12 and whether or not they are licensed in this state or another jurisdiction;

13 (6) designate an officer, partner, or principal responsible for the firm's compliance  
14 with the insurance statutes and regulations of this state;

15 (7) provide certified financial statements for the prior two years prepared by an  
16 independent certified public accountant that establish that the applicant is solvent, that the  
17 applicant's system of accounting, internal control, and procedure is operating effectively to  
18 provide reasonable assurance that money is promptly accounted for and paid to the person  
19 entitled to the money, and any other information that the director may require to review the  
20 current financial condition of the applicant;

21 (8) provide to the director documents necessary to verify statements contained in  
22 or in connection with the application; and

23 (9) notify the director within 30 days in writing by certified mail of a change in  
24 officer, director, partner, principal, or manager; place of business; mailing address; telephone  
25 number; suspension or revocation of an insurance license by another state or jurisdiction; or a  
26 conviction of a misdemeanor or felony of the attorney-in-fact, its officers, directors, partners,  
27 owners, or employees.

28 (d) The director may adopt regulations establishing education requirements, experience  
29 requirements, or examination requirements for applicants or licensees under this chapter.

30 (e) The director may require that an attorney-in-fact maintain an errors and omissions  
31 insurance policy acceptable to the director.

1 (f) If the director finds that the applicant or licensee is qualified and that application,  
2 license, or renewal fees set under AS 21.06.250 have been paid, the director may issue or renew  
3 the license.

4 (g) A license issued under this chapter shall be renewed each year by the attorney-in-fact  
5 when the annual statement is filed under AS 21.75.130.

6 (h) An attorney-in-fact shall be subject to hearings and orders on violations; denial,  
7 nonrenewal, suspension, or revocation of license; penalties; and surrender of a license under the  
8 procedures of AS 21.27.405 - 21.27.460.

9 \* Sec. 191. AS 21.75.060(b) is amended to read:

10 (b) The proposed attorney-in-fact [ATTORNEY] shall fulfill the requirements of and  
11 shall execute and file with the director when applying for a certificate of authority, a declaration  
12 setting out

13 (1) the name of the insurer;

14 (2) the location of the insurer's principal office, which shall be the same as that  
15 of the attorney-in-fact [ATTORNEY] and shall be maintained in this state;

16 (3) the kinds of insurance proposed to be transacted;

17 (4) the names and addresses of the original subscribers;

18 (5) the designation and appointment of the proposed attorney-in-fact  
19 [ATTORNEY] and a copy of the power of attorney;

20 (6) the names and addresses of the officers and directors of the attorney-in-fact  
21 [ATTORNEY], if a corporation, or its members, if a firm;

22 (7) the powers of the subscribers' advisory committee, and the names and terms  
23 of office of the members;

24 (8) that all money paid to the reciprocal insurer shall, after deducting any sum  
25 payable to the attorney-in-fact [ATTORNEY], be held in the name of the insurer and for  
26 the purposes specified in the subscribers' agreement;

27 (9) a copy of the subscribers' agreement;

28 (10) a statement that each of the original subscribers has in good faith applied for  
29 insurance of a kind proposed to be transacted, and that the insurer has received from each  
30 subscriber the full premium or premium deposit required for the policy applied for, for  
31 a term of not less than six months at an adequate rate filed with and approved by the

1 director,

2 (11) a statement of the financial condition of the insurer, a schedule of its assets,  
3 and a statement that the surplus as required by AS 21.75.050 is on hand;

4 (12) a copy of each policy, endorsement, and application form it then proposes  
5 to issue or use.

6 \* Sec. 192. AS 21.75.060(c) is amended to read:

7 (c) The declaration shall be acknowledged by the attorney-in-fact [ATTORNEY] in the  
8 manner required for the acknowledgment of deeds.

9 \* Sec. 193. AS 21.75.080 is repealed and reenacted to read:

10 Sec. 21.75.080. AUTHORITY OF ATTORNEY-IN-FACT. (a) A subscriber's agreement  
11 providing for an advisory committee consistent with AS 21.75.170 shall be executed by each  
12 subscriber and shall grant authority to the attorney-in-fact to manage the affairs of the reciprocal  
13 insurer.

14 (b) The duties of the attorney-in-fact shall be specified in the subscriber's agreement.  
15 The agreement shall be approved by the director and amendments shall be approved by the  
16 director and the advisory committee. The agreement must, at a minimum, provide that

17 (1) the attorney-in-fact shall provide written notice of and make the necessary  
18 arrangements for the election, in person or by proxy, of the members of the advisory committee;  
19 the cost of notice, ballot, or proxy for a meeting and the cost of a meeting that may be called for  
20 an election shall be paid by the reciprocal insurer;

21 (2) the attorney-in-fact shall provide written notice to the members of the advisory  
22 committee of not less than 10 business days for a regular meeting or a special meeting called  
23 under AS 21.75.170(e); the cost of notice shall be paid by the reciprocal insurer;

24 (3) the advisory committee may, upon majority vote of its members at a regular  
25 or special meeting and upon written notice of the vote to the director and the attorney-in-fact,  
26 recommend termination of the attorney-in-fact for a stated cause and the appointment of a new  
27 attorney-in-fact;

28 (4) termination of the attorney-in-fact shall require the approval of a two-thirds  
29 majority of the subscribers present in person or by proxy at a meeting called for that purpose;  
30 the attorney-in-fact shall provide written notice to all subscribers by certified mail not less than  
31 30 days before the meeting; the notice must include the recommendation of termination and

1 replacement drafted by the advisory committee and other appropriate documents drafted by the  
2 attorney-in-fact; a copy of all documents mailed and certification of mailing to all subscribers  
3 must be provided to all members of the advisory committee; the cost of notice and proxy for the  
4 meeting shall be paid by the reciprocal insurer; at least 25 percent of all subscribers shall  
5 constitute a quorum for reciprocal insurers with less than 10,000 subscribers; 2,500 subscribers  
6 or five percent of all subscribers, whichever is greater, shall constitute a quorum for all other  
7 reciprocals;

8 (5) the assets of the reciprocal insurer and its subscribers shall be invested under  
9 AS 21.21; investment guidelines shall be approved by the advisory committee and shall be  
10 properly accounted for on the financial records of the reciprocal insurer as being held for or on  
11 behalf of the subscribers; the cash assets of the reciprocal insurer and its subscribers not  
12 otherwise invested in short-term securities, covering policy obligations arising out of policies  
13 issued, or issued for delivery in the United States shall be held in one or more appropriately  
14 identified accounts in banks that are members of the Federal Reserve System; these accounts  
15 shall be drawn on by the attorney-in-fact or by employees or representatives of the reciprocal  
16 insurer authorized by the attorney-in-fact for payments on behalf of the reciprocal insurer;

17 (6) if the attorney-in-fact is acting for more than one reciprocal insurer, separate  
18 records and accounts shall be maintained for each reciprocal;

19 (7) the attorney-in-fact may not assign responsibilities detailed in the subscriber's  
20 agreement in whole or in part without prior approval of the advisory committee and the director;

21 (8) the attorney-in-fact shall

22 (A) establish and maintain underwriting procedures and manuals that state  
23 the rates and condition for the acceptance or rejection of risks;

24 (B) make a report to the advisory committee at each regular meeting of  
25 the committee on the financial condition of the reciprocal insurer and all material  
26 transactions entered into during the period since the last meeting;

27 (C) annually provide to each member of the advisory committee

28 (i) on or before March 2, a copy of the reciprocal insurer's annual  
29 statement and the accompanying statement of actuarial opinion filed with the  
30 director under AS 21.75.130; and

31 (ii) on or before June 1, a copy of a statement prepared by an

1 independent certified public accountant addressing the financial condition and  
2 solvency of the attorney-in-fact;

3 (D) maintain a financially solvent condition;

4 (9) the forms, amounts, and formulas of compensation the attorney-in-fact will  
5 receive for services rendered are specified;

6 (10) the books, accounts, and records of the reciprocal insurer, its subscribers, and  
7 the attorney-in-fact are maintained to clearly and accurately disclose the nature and details of  
8 each transaction, including all notes, workpapers, documents, and similar material in sufficient  
9 detail that relevant events, dates, and persons participating can be identified and information  
10 necessary to determine that the compensation received by or owing to the attorney-in-fact  
11 conforms to the subscriber's agreement; the books, accounts, and records of the reciprocal insurer  
12 are the sole property of the reciprocal insurer;

13 (11) if the subscriber's agreement provides that any of the attorney-in-fact's  
14 compensation is contingent upon the reciprocal insurer's profits, that compensation may not be  
15 determined and paid until at least five years after the premiums on casualty insurance are earned,  
16 at least one year after the premiums are earned on any other kind of insurance, and not until the  
17 adequacy of loss reserves on the remaining claims, known and unknown, have been verified  
18 under (8) of this subsection; and

19 (12) the attorney-in-fact shall conduct the affairs of the reciprocal insurer as  
20 required under this title.

21 (c) Unless subject to AS 21.22, a material transaction between the reciprocal insurer, its  
22 subscribers, the attorney-in-fact, and an affiliate of the attorney-in-fact may not be entered into  
23 unless it has been filed with the director of the reciprocal insurer's state of domicile, if accredited  
24 by the National Association of Insurance Commissioners, or with the director of this state, if not  
25 accredited, at least 30 days before its effective date and the director of the accredited state has  
26 not disapproved it; however, a transaction involving five percent or more of admitted assets is  
27 subject to prior approval of the director of the reciprocal insurer's state of domicile and the  
28 transaction must meet the following standards:

29 (1) the terms shall be fair and equitable;

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

31 (3) expenses incurred and payments received shall be allocated to the reciprocal

1 insurer on an equitable basis in conformity with statutory insurance accounting practices being  
2 consistently applied; and

3 (4) the books, accounts, and records of each party shall be maintained to disclose  
4 clearly and accurately the precise nature and details of the transaction, including accounting  
5 information that is necessary to support the reasonableness of the charges or fees to the respective  
6 parties.

7 (d) A subscriber's agreement containing the duties of the attorney-in-fact shall be  
8 provided by the attorney-in-fact to all subscribers. Renewing subscribers shall be informed that  
9 their failure to return a signed rejection of the subscriber's agreement within 30 days after the  
10 renewal date will be considered acceptance of the subscriber's agreement.

11 \* Sec. 194. AS 21.75.090 is amended to read:

12 Sec. 21.75.090. MODIFICATIONS. Modifications of the terms of the subscribers'  
13 agreement or of the power of attorney of a domestic reciprocal insurer shall be made jointly by  
14 the attorney-in-fact [ATTORNEY] and the subscribers' advisory committee. A modification  
15 may not be effective retroactively, or apply to an insurance contract issued before the  
16 modification.

17 \* Sec. 195. AS 21.75.100(a) is amended to read:

18 (a) Concurrently with the filing of the declaration provided in AS 21.75.060, the  
19 attorney-in-fact [ATTORNEY] of a domestic reciprocal insurer shall file with the director a  
20 bond in favor of this state for the benefit of all persons damaged as a result of a breach by the  
21 attorney-in-fact [ATTORNEY] of the conditions of the bond as set out in (b) of this section.  
22 The bond shall be executed by the attorney-in-fact [ATTORNEY] and by an authorized  
23 corporate surety, shall meet the requirements established under AS 21.27.190 and shall be  
24 subject to the director's approval.

25 \* Sec. 196. AS 21.75.100(b) is amended to read:

26 (b) The bond shall be in the [PENAL] sum of \$100,000 [\$25,000], aggregate in form,  
27 conditioned that the attorney-in-fact [ATTORNEY] will faithfully account for all money and  
28 other property of the insurer coming into the hands of the attorney-in-fact [ATTORNEY] and  
29 that the attorney-in-fact [ATTORNEY] will not withdraw or appropriate to personal use from  
30 the funds of the insurer, money or property to which the attorney-in-fact [ATTORNEY] is not  
31 entitled under the subscriber's agreement [POWER OF ATTORNEY].

1 \* Sec. 197. AS 21.75.100 is amended by adding a new subsection to read:

2 (d) The director may require the attorney-in-fact, unless wholly owned by the reciprocal  
3 insurer, to maintain an errors and omissions policy issued by an admitted insurer acceptable to  
4 the director providing coverage in an amount and issued by an insurer approved by the director.  
5 This requirement is satisfied if the attorney-in-fact maintains an errors and omissions policy to  
6 satisfy the laws of another state in an amount approved by the director.

7 \* Sec. 198. AS 21.75.110 is amended to read:

8 Sec. 21.75.110. ACTION ON BOND. Action on the attorney-in-fact's [ATTORNEY'S]  
9 bond or to recover against a deposit made in lieu of the bond [THEREOF] may be brought at  
10 any time by one or more subscribers suffering loss through a violation of its conditions, or by  
11 a receiver or liquidator of the insurer. Amounts recovered on the bond shall be deposited in and  
12 become part of the insurer's funds. The total aggregate liability of the surety shall be limited to  
13 the amount of the penalty of the bond.

14 \* Sec. 199. AS 21.75 is amended by adding a new section to read:

15 Sec. 21.75.115. EXAMINATION OF AN ATTORNEY-IN-FACT. An attorney-in-fact  
16 of a reciprocal insurer is subject to examination by order of the director under AS 21.06.120 and  
17 21.06.140 - 21.06.160 for the purpose of determining compliance with this title relating to the  
18 operations of the reciprocal insurer or its attorney-in-fact that the director determines cannot be  
19 obtained by examination of the reciprocal insurer. The cost of the examination shall be paid by  
20 the attorney-in-fact.

21 \* Sec. 200. AS 21.75.120(a) is amended to read:

22 (a) Legal process shall be served upon a domestic reciprocal insurer by serving the  
23 insurer's attorney-in-fact [ATTORNEY] at the principal offices of the attorney-in-fact  
24 [ATTORNEY] or by serving the director as the insurer's process agent under AS 21.09.180 and  
25 21.09.190.

26 \* Sec. 201. AS 21.75.130(a) is amended to read:

27 (a) The annual statement of a reciprocal insurer shall be made by its attorney-in-fact  
28 [ATTORNEY] and filed with the director, as provided in AS 21.09.200.

29 \* Sec. 202. AS 21.75.140 is amended to read:

30 Sec. 21.75.140. CONTRIBUTIONS TO INSURER. The attorney-in-fact [ATTORNEY]  
31 or other parties may advance to a domestic reciprocal insurer upon reasonable terms the funds

1 it may require from time to time in its operations. Sums advanced may not be treated as a  
2 liability of the insurer, and, except upon liquidation of the insurer, may not be withdrawn or  
3 repaid except out of the insurer's realized earned surplus in excess of its minimum required  
4 surplus. A withdrawal or repayment may not be made without the advance approval of the  
5 director. This section does not apply to bank loans or to loans for which security is given.

6 \* Sec. 203. AS 21.75.150 is amended to read:

7 Sec. 21.75.150. DETERMINATION OF FINANCIAL CONDITION. In determining  
8 the financial condition of a reciprocal insurer the director shall apply the following rules:

9 (1) the same reserves as are required of incorporated insurers issuing  
10 nonassessable policies on a reserve basis shall be charged as liabilities;

11 (2) the surplus deposits of subscribers shall be allowed as assets, except the  
12 premium deposits delinquent for 90 days shall first be charged against the surplus deposit;

13 (3) the surplus deposits of subscribers may [SHALL] not be charged as a liability;

14 (4) all premium deposits delinquent less than 90 days shall be allowed as assets;

15 (5) an assessment levied upon subscribers, and not collected, may not be allowed  
16 as an asset;

17 (6) the contingent liability of subscribers may not be allowed as an asset;

18 (7) the computation of reserves shall be based upon premium deposits other than  
19 membership fees and without deductions for expenses and the compensation of the attorney-in-  
20 fact [ATTORNEY].

21 \* Sec. 204. AS 21.75.170 is repealed and reenacted to read:

22 Sec. 21.75.170. SUBSCRIBER'S ADVISORY COMMITTEE. (a) The subscriber's  
23 advisory committee shall meet at least annually and shall consist of not less than nine individuals  
24 elected by the subscribers, at least two-thirds of whom are subscribers or officers or directors of  
25 subscriber corporations and, except for a reciprocal insurer that wholly owns its attorney-in-fact,  
26 not more than one-third of whom may be

27 (1) the attorney-in-fact or an employee, officer, director, affiliate, or a person  
28 having a financial interest in the attorney-in-fact; or

29 (2) a person representing the attorney-in-fact or an employee, officer, director,  
30 affiliate, or other person having a financial interest in the attorney-in-fact; a person shall be  
31 treated as having a financial interest in the attorney-in-fact if the person

1 (A) owns, directly or indirectly, more than one percent of the outstanding  
2 stock in the attorney-in-fact;

3 (B) has an outstanding loan from the attorney-in-fact; or

4 (C) earns a commission or other compensation as a producer for the  
5 reciprocal insurer.

6 (b) A member of the subscriber's advisory committee may be elected to a term of office  
7 of not less than one year nor more than four years. A member may be reelected for an unlimited  
8 number of terms. Terms of office may be staggered to provide for continuity.

9 (c) The chair of the committee shall be elected by the members of the committee and the  
10 committee shall adopt rules consistent with the purposes of the committee.

11 (d) The attorney-in-fact shall appoint a secretary.

12 (e) Special meetings of the committee may be called by the attorney-in-fact, the chair  
13 of the committee, three members of the committee, or a signed petition of at least one percent  
14 of the subscribers as of the most recent annual report of the reciprocal insurer.

15 (f) The committee shall

16 (1) supervise the finances of the reciprocal insurer;

17 (2) supervise the reciprocal insurer's operations to assure conformity with the  
18 subscriber's agreement;

19 (3) procure the audit of the accounts and records of the reciprocal insurer and of  
20 the attorney-in-fact at the expense of the reciprocal insurer; and

21 (4) have additional powers and functions that may be conferred by the  
22 subscriber's agreement.

23 \* Sec. 205. AS 21.75.200(a) is amended to read:

24 (a) Assessments may from time to time be levied upon subscribers of a domestic  
25 reciprocal insurer liable [THEREFOR] under the terms of their policies by the attorney-in-fact  
26 [ATTORNEY] upon approval in advance by the subscribers' advisory committee and the director,  
27 or by the director in liquidation of the insurer.

28 \* Sec. 206. AS 21.75.210 is amended to read:

29 Sec. 21.75.210. TIME LIMIT FOR ASSESSMENTS. A [EACH] subscriber of a  
30 domestic reciprocal insurer having contingent liability is liable for and shall pay the subscriber's  
31 share of any assessment, as computed and limited under [IN ACCORDANCE WITH] this

1 chapter, if

2 (1) while the subscriber's policy is in force or within one year after its  
3 termination, the subscriber is notified by either the attorney-in-fact [ATTORNEY] or the director  
4 of an intention to levy the assessment; [,] or

5 (2) an order to show cause why a receiver, conservator, rehabilitator, or liquidator  
6 of the insurer should not be appointed is issued while the subscriber's policy is in force or within  
7 one year after its termination.

8 \* Sec. 207. AS 21.75.230(a) is amended to read:

9 (a) If a reciprocal insurer has a surplus of assets over all liabilities at least equal to the  
10 minimum capital and surplus required of a domestic stock insurer authorized to transact like  
11 kinds of insurance, upon application of the attorney-in-fact [ATTORNEY] and as approved by  
12 the subscribers' advisory committee, the director shall issue a certificate authorizing the insurer  
13 to extinguish the contingent liability of subscribers under its policies then in force in this state,  
14 and to omit provisions imposing contingent liability in all policies delivered or issued for delivery  
15 in this state for as long as all the surplus remains unimpaired.

16 \* Sec. 208. AS 21.75.250 is amended to read:

17 Sec. 21.75.250. SUBSCRIBERS' SHARE IN ASSETS. Upon the liquidation of a  
18 domestic reciprocal insurer, its assets remaining after discharge of its indebtedness and policy  
19 obligations, the return of contributions of the attorney-in-fact [ATTORNEY] or other persons  
20 to its surplus made as provided in AS 21.75.140, and the return of an unused premium, savings,  
21 or credits then standing on subscribers' account, shall be distributed to its subscribers who were  
22 subscribers within the 12 months before the last termination of its certificate of authority,  
23 according to a reasonable formula that the director may approve.

24 \* Sec. 209. AS 21.75.270 is amended to read:

25 Sec. 21.75.270. FINANCIAL IMPAIRMENT: DETERMINATION OF  
26 INSOLVENCY [IMPAIRED RECIPROCALLS]. (a) If the assets of a reciprocal insurer are at  
27 any time insufficient to discharge its liabilities, other than a liability on account of funds  
28 contributed by the attorney-in-fact [ATTORNEY] or others, and to maintain the required  
29 surplus, its attorney-in-fact [ATTORNEY] shall immediately make up the deficiency or levy an  
30 assessment upon the subscribers for the amount needed to make up the deficiency; but subject  
31 to the limitation set out in the subscriber's agreement [POWER OF ATTORNEY OR POLICY].

1 (b) If the attorney-in-fact [ATTORNEY] fails to make up the deficiency or to make the  
2 assessment within 30 days after the director orders the attorney-in-fact [ATTORNEY] to do so,  
3 or if the deficiency is not fully made up within 60 days after the date the assessment was made,  
4 the insurer shall be considered insolvent and shall be proceeded against as authorized by this title.

5 (c) If liquidation of an insurer is ordered, an assessment shall be levied upon the  
6 subscriber for an amount, subject to limits as provided by this chapter, that the director  
7 determines to be necessary to discharge all liabilities of the insurer, exclusive of any funds  
8 contributed by the attorney-in-fact [ATTORNEY] or other persons, but including the reasonable  
9 cost of the liquidation.

10 \* Sec. 210. AS 21.75.270 is amended by adding a new subsection to read:

11 (d) If liquidation of a domestic reciprocal insurer is ordered, the receiver appointed under  
12 the order has a right to recover on behalf of the reciprocal insurer a payment in the form of a  
13 bonus, termination settlement, or extraordinary lump-sum compensation adjustment made by the  
14 reciprocal insurer or its subscribers to the attorney-in-fact if the distribution or payment is made  
15 during the 12 months preceding the order of liquidation, unless it can be shown that the payment  
16 was lawful and reasonable and that the reciprocal insurer did not know and, using due diligence,  
17 could not have known that the distribution might adversely affect the ability of the reciprocal  
18 insurer to fulfill its subscriber's contractual obligation.

19 \* Sec. 211. AS 21.75 is amended by adding a new section to read:

20 Sec. 21.75.345. DEFINITION. In this chapter, a "material transaction" means a  
21 transaction, other than a claim payment, involving more than one-half of one percent of the  
22 reciprocal insurer's admitted assets as of December 31 of the prior year.

23 \* Sec. 212. AS 21.78 is amended by adding a new section to read:

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

1 for liquidation, conservation, or rehabilitation, the distribution or payment is subject to the  
2 limitations of (b) - (d) of this section.

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

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

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

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

22 \* Sec. 213. AS 21.84.010 is amended to read:

23 Sec. 21.84.010. CHAPTER EXCLUSIVE. Except as otherwise provided, societies shall  
24 be governed by this chapter and shall be exempt from all other provisions of the insurance laws  
25 of this state, not only in governmental relations with the state, but for every other purpose. [A  
26 LAW ENACTED AFTER JULY 1, 1966, MAY NOT APPLY TO SOCIETIES UNLESS THEY  
27 ARE EXPRESSLY DESIGNATED IN THE LAW.]

28 \* Sec. 214. AS 21.84.350(a) is amended to read:

29 (a) As a part of the annual statement required under AS 21.84.340, each society shall,  
30 before the second day of March, file with the director a valuation of its certificates in force on  
31 the preceding December 31, provided, the director may, for cause shown, extend the time for

1 filing the valuation for not more than two calendar months. The report of valuation must  
2 include an opinion of a qualified actuary as to whether the reserves and related actuarial  
3 items held in support of the certificates in force are computed appropriately, are based on  
4 assumptions that satisfy contractual provisions, are consistent with prior reported amounts,  
5 and comply with applicable laws of this state. The report of valuation shall show, as reserve  
6 liabilities, the difference between the present mid-year value of the promised benefits provided  
7 in the certificates of the society in force and the present mid-year value of the future net  
8 premiums as the same are in practice actually collected, not including any value for the right to  
9 make extra assessments and not including any amount by which the present mid-year value of  
10 future net premiums exceeds the present mid-year value of promised benefits on individual  
11 certificates. At the option of a society, in lieu of the above, the valuation may show the net  
12 tabular value. The net tabular value on certificates issued before July 1, 1967, shall be  
13 determined under [IN ACCORDANCE WITH] the law applicable before July 1, 1966, and on  
14 certificates issued on or after July 1, 1967, may not be less than the reserves determined  
15 according to the Commissioner's Reserve Valuation Method as defined in this section. If the  
16 premium charged is less than the tabular net premium according to the basis of valuation used,  
17 an additional reserve equal to the present value of the deficiency in the premiums shall be set up  
18 and maintained as a liability. The reserve liabilities shall be properly adjusted if the mid-year  
19 or tabular values are not appropriate.

20 \* Sec. 215. AS 21.84.480(b) is amended to read:

21 (b) A society, by itself or any other party, and a fraternal benefit society limited  
22 producer [AN AGENT OR SOLICITOR], personally or by any other party, may not offer,  
23 promise, allow, give, set off, or pay, directly or indirectly, a valuable consideration or inducement  
24 to or for insurance on a risk authorized to be taken by the society that [, WHICH] is not  
25 specified in the certificate. A member may not receive or accept, directly or indirectly, a rebate  
26 of premium or part of a premium, or a fraternal benefit society limited producer's [AGENT'S  
27 OR SOLICITOR'S] commission payable on a certificate, or receive or accept a favor or  
28 advantage or share in the dividends or other benefits to accrue on, or any valuable consideration  
29 or inducement not specified in the contract of insurance.

30 \* Sec. 216. AS 21.84.590 is amended to read:

31 Sec. 21.84.590. OTHER PROVISIONS APPLICABLE. In addition to the provisions

1 contained in this chapter, the following provisions of this title apply to fraternal benefit societies  
2 to the extent applicable and not in conflict with the express provisions of this chapter and the  
3 reasonable implications of this chapter:

4 (1) AS 21.03

5 (2) AS 21.06

6 (3) AS 21.09.050 and 21.09.100

7 (4) AS 21.09.200 and 21.09.205

8 (5) AS 21.18

9 (6) AS 21.21

10 (7) AS 21.27

11 (8) AS 21.33

12 (9) [(5)] AS 21.36

13 (10) [(6)] AS 21.42.290 and 21.42.355

14 (11) [(7)] AS 21.53

15 (12) [(8)] AS 21.69.370 and 21.69.640

16 (13) [(9)] AS 21.78

17 (14) [(10)] AS 21.89.060.

18 \* Sec. 217. AS 21.84 is amended by adding a new section to read:

19 Sec. 21.84.900. DEFINITIONS. In this chapter,

20 (1) "fraternal benefit society" means an incorporated society, order, or supreme  
21 lodge, without capital stock, including one exempted under AS 21.84.020(a), whether  
22 incorporated or not, conducted solely for the benefit of its members and their beneficiaries and  
23 not for profit, operated on a lodge system with ritualistic form of work, having a representative  
24 form of government, and that makes provision for the payment of benefits under this chapter;

25 (2) "lodge system" means a society having a supreme legislative or governing  
26 body and subordinate lodges or branches by whatever name known, into which members are  
27 elected, initiated, or admitted under its constitution, laws, ritual, and rules; subordinate lodges or  
28 branches are required by law of the society to hold regular meetings at least once in each month;

29 (3) "premiums" means rates or other required contribution by whatever name  
30 known;

31 (4) "representative form of government" means a society in which

1 (A) there is provision in its constitution or laws for a supreme legislative  
2 or governing body, composed of representatives elected either by the members or by  
3 delegates elected directly or indirectly by the members, together with other members of  
4 the body prescribed by the society's constitution and laws;

5 (B) the representatives elected constitute a majority in number and have  
6 not less than two-thirds of the votes or less than the votes required to amend its  
7 constitution and laws;

8 (C) the meetings of the supreme legislative or governing body and the  
9 election of officers, representatives, or delegates are held as often as once in four calendar  
10 years;

11 (D) the society has a board of directors charged with the responsibility for  
12 managing its affairs in the interim between meetings of its supreme legislative or  
13 governing body, subject to control by the body and having powers and duties delegated  
14 to it in the constitution or laws of the society;

15 (E) the board of directors is elected by the supreme legislative or  
16 governing body, except in case of filling a vacancy in the interim between meetings of  
17 the body;

18 (F) the officers are elected either by the supreme legislative or governing  
19 body or by the board of directors; and

20 (G) the members, officers, representatives, or delegates may not vote by  
21 proxy;

22 (5) "society" unless otherwise indicated, means fraternal benefit society.

23 \* Sec. 218. AS 21.89.025(a) is amended to read:

24 (a) An insurer shall provide a rate reduction in the premium charged for a  
25 personal automobile [MOTOR VEHICLE CASUALTY] insurance policy when the principal  
26 operator of the motor vehicle covered by the insurance policy

27 (1) is 55 years of age or older;

28 (2) at renewal requests the insurer to provide the reduction;

29 (3) has had no chargeable accidents as set by established underwriting  
30 guidelines in use by the insurer or moving motor vehicle citations within three years  
31 preceding the request for the discount;

1                   (4) provides the insurer with proof satisfactory to the director that the operator  
2           has within the three years before requesting the reduction taken and successfully completed a  
3           motor vehicle accident prevention course approved by the Department of Public Safety under  
4           AS 28.05.035; and

5                   (5) [(4)] did not take and complete the accident prevention course described in  
6           (4) [(3)] of this subsection as a result of an order or sentence imposed by a court.

7   \* **Sec. 219.** AS 21.89.025(c) is amended to read:

8                   (c) The reduced rate provided for an operator under (a) of this section may not extend  
9           beyond three years after the last day of the operator's most recently successfully completed motor  
10          vehicle accident prevention course described in (a)(4) [(a)(3)] of this section.

11   \* **Sec. 220.** AS 21.89.025 is amended by adding a new subsection to read:

12                   (d) The director may establish by regulation the manner in which insurers inform  
13          applicants and insureds of the rate reduction available under this section.

14   \* **Sec. 221.** AS 21.89 is amended by adding a new section to read:

15                   Sec. 21.89.035. MANDATORY APPRAISAL. A motor vehicle or similar policy, a  
16          policy providing property coverage, or any other policy providing first party property, casualty,  
17          or inland marine coverage, issued or delivered in this state, must include an appraisal clause  
18          providing a contractual means to resolve a dispute between the insured and the insurer over the  
19          value of a covered first party loss for real property, personal property, business property, or  
20          similar risks. If the insured and the insurer fail to agree on the amount of a covered first party  
21          loss, either may make written demand upon the other to submit the dispute for appraisal. Within  
22          10 days of the written demand, the insured and insurer must notify the other of the competent  
23          appraiser each has selected. The two appraisers will promptly choose a competent and impartial  
24          umpire. Not later than 15 days after the umpire has been chosen, unless the time period is  
25          extended by the umpire, each appraiser will separately state in writing the amount of the loss.  
26          If the appraisers submit a written report of agreement on the amount of the loss, the agreed  
27          amount will be binding upon the insured and insurer. If the appraisers fail to agree, the  
28          appraisers will promptly submit their differences to the umpire. A decision agreed to by one of  
29          the appraisers and the umpire will be binding upon the insured and insurer. All expenses and  
30          fees, not including counsel or adjuster fees, incurred because of the appraisal shall be paid as  
31          determined by the umpire. Except as specifically provided, nothing in this section is intended

1 to or shall in any manner limit or restrict the rights of insureds or insurers or confer any rights  
2 to an insured or insurer.

3 \* Sec. 222. AS 21.90.900 is amended to read:

4 Sec. 21.90.900. DEFINITIONS FOR TITLE. In this title, unless the context requires  
5 otherwise,

6 (1) "admitted insurer" means an authorized insurer ["ADJUSTER" MEANS  
7 A PERSON WHO, FOR COMPENSATION AS AN INDEPENDENT CONTRACTOR OR  
8 AS AN EMPLOYEE OF AN INDEPENDENT CONTRACTOR, OR FOR FEE OR  
9 COMMISSION, INVESTIGATES AND ADJUSTS CLAIMS ARISING UNDER INSURANCE  
10 CONTRACTS ON BEHALF OF THE INSURER, BUT DOES NOT INCLUDE AN ATTORNEY  
11 AT LAW WHO ADJUSTS INSURANCE LOSSES FROM TIME TO TIME INCIDENTAL TO  
12 THE PRACTICE OF LAW OR A SALARIED EMPLOYEE OF AN INSURER];

13 (2) "agent" means a person appointed by an insurer to solicit applications for  
14 insurance or annuities on its behalf, and if authorized to do so, to effectuate and countersign  
15 insurance contracts, except life or disability insurance or annuities, and to collect premiums on  
16 insurance or annuities;

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

19 (4) "attorney-in-fact" means a person designated and appointed by the  
20 subscribers of a reciprocal insurer to act for and bind the subscribers in transactions  
21 relating to or arising out of the operations of a reciprocal insurer, subject to the limitations  
22 that may be lawfully provided;

23 (5) "authorized insurer" means an insurer authorized by a certificate of authority  
24 issued by the director to transact insurance in this state;

25 (6) [(5)] "broker" means a person who is not an agent of the insurer and who, on  
26 behalf of the insured, for compensation as an independent contractor by commission or fee,  
27 solicits, negotiates, or procures insurance or reinsurance or the renewal or continuance of  
28 insurance or reinsurance; or in any manner aids in the solicitation, negotiation, procurement,  
29 renewal, or continuance of insurance or reinsurance, for insureds or prospective insureds not  
30 including the broker;

31 (7) [(6)] "commissioner" means the commissioner of commerce and economic

1 development;

2 (8) [(7)] "court" means superior court;

3 (9) [(8)] "director" means the director of the division of insurance;

4 (10) [(9)] "division" means the division of insurance, Department of Commerce  
5 and Economic Development;

6 (11) [(10)] "domestic insurer" means an insurer formed under the laws of this  
7 state;

8 (12) "evergreen clause" means a contract clause that provides that the  
9 contract is automatically renewed unless notice to the contrary is given by one of the parties  
10 to the contract;

11 (13) "examiner" means an individual or firm that has been authorized by the  
12 director to conduct an examination under this title;

13 (14) "facultative reinsurance" means a contract of reinsurance for individual  
14 risks where the insurer retains the ability to accept or reject each risk offered by the ceding  
15 company;

16 (15) [(11)] "firm" means an organization of two or more licensees acting in  
17 association with each other, either in a partnership, corporation, or otherwise, or an organization  
18 in which a single licensee has less than 50 percent ownership interest in the organization;

19 (16) [(12)] "foreign insurer" means an insurer formed under the laws of a  
20 jurisdiction other than this state and includes an alien insurer;

21 (17) [(13)] "GENERAL AGENT" MEANS A PERSON, FIRM, OR  
22 CORPORATION THAT

23 (A) HAS AUTHORITY TO EXERCISE GENERAL SUPERVISION  
24 OVER THE BUSINESS, OR ANY PART OF THE BUSINESS, OF ONE OR MORE  
25 AUTHORIZED INSURERS IN THIS STATE, WITH THE AUTHORITY TO APPOINT  
26 AGENTS FOR THE INSURER AND TO TERMINATE THE APPOINTMENT; AND

27 (B) FOR COMPENSATION FROM AN AUTHORIZED INSURER  
28 PERFORMS ADMINISTRATIVE FUNCTIONS NORMALLY PERFORMED BY THE  
29 INSURER INCLUDING CLAIMS ADMINISTRATION AND PAYMENT,  
30 MARKETING ADMINISTRATION, AGENT APPOINTMENT, PREMIUM  
31 ACCOUNTING, PREMIUM BILLING, COVERAGE VERIFICATION, FINAL

1 UNDERWRITING AUTHORITY, AND CERTIFICATE ISSUANCE; "GENERAL  
2 AGENT" INCLUDES A THIRD-PARTY ADMINISTRATOR;

3 (14)] "impaired" or "impairment" means that

4 (A) an insurer's policyholder surplus is greater than zero but less than that  
5 required by AS 21.09.070 for the authority to transact the kinds of insurance being  
6 transacted; or

7 (B) an insurer is being operated in a manner that has caused or might  
8 cause irreparable loss and injury to the insurer or to the public;

9 (18) [(15)] "independent adjuster" means a person who, for compensation as an  
10 independent contractor or as an employee of an independent contractor, for fee or  
11 commission, investigates and adjusts losses or claims arising under insurance contracts on  
12 behalf of an insurer;

13 (19) "independently procured insurance" means insurance procured directly  
14 from a nonadmitted insurer directly by an insured, but does not include insurance lawfully  
15 procured through a surplus lines broker under AS 21.34 [AN ADJUSTER REPRESENTING  
16 THE INTERESTS OF THE INSURER];

17 (20) [(16)] "industrial life insurance" means that form of life insurance written  
18 under policies with a face amount of \$1,000 or less, with the words "industrial policy" imprinted  
19 on the face as part of the descriptive matter, and under which premiums are payable monthly or  
20 more often;

21 (21) [(17)] "insolvent" or "insolvency" means that an insurer's policyholder surplus  
22 is less than or equal to zero;

23 (22) [(18)] "insurance" means a contract whereby one undertakes to indemnify  
24 another or pay or provide a specified or determinable amount or benefit upon determinable  
25 contingencies;

26 (23) "insurance producer" means a person who solicits, negotiates, effects,  
27 procures, or delivers a policy of insurance, or to the extent authorized by the insurer,  
28 renews, continues, or binds a policy of insurance;

29 (24) [(19)] "insurer" includes a person engaged as indemnitor, surety, or contractor  
30 in the business of entering into contracts of insurance or of annuity;

31 (25) [(20)] "licensee" means a person or firm licensed as provided in AS 21.27

1 [OR AS 21.34];

2 (26) "managing general agent" means a person, firm, or corporation that

3 (A) has authority to exercise general supervision over the business, or  
4 any part of the business, of one or more admitted insurers; and

5 (B) performs administrative functions normally performed by the  
6 insurer including claims administration and payment, marketing administration,  
7 agent appointment, premium accounting, premium billing, coverage verification, final  
8 underwriting authority, and certificate issuance;

9 (27) "nonadmitted insurer" means an unauthorized insurer;

10 (28) [(21)] "person" has the meaning given in AS 01.10.060 and includes an  
11 insurer, Lloyd's, fraternal benefit society, medical service or hospital service plan as defined in  
12 AS 21.87, reciprocal or interinsurance exchange, syndicate, and any other legal entity engaged  
13 in the business of transacting insurance, including agents, brokers, and claims adjusters;

14 (29) [(22)] "policy" means the written contract of or written agreement for or  
15 effecting insurance, by whatever name called, and includes all clauses, riders, endorsements, and  
16 papers attached to it and a part of it;

17 (30) [(23)] "policyholder surplus" means

18 (A) for a stock insurer, the sum of its capital, as represented by the  
19 aggregate par value to its outstanding capital stock, and its surplus, if any;

20 (B) for a mutual insurer, its surplus, both basic guaranteed and additional,  
21 if any;

22 (C) for an insurer other than a stock or mutual insurer, the net worth of  
23 the insurer, calculated as its recorded assets less its liabilities, as determined by the  
24 accounting criteria set out in this title;

25 (31) [(24)] "premium" means the consideration for insurance, by whatever name  
26 called, and by whatever method paid or collected, including an assessment, or membership,  
27 policy, survey, inspection, service or similar fee or charge made in consideration for an insurance  
28 contract;

29 (32) "reinsurance intermediary" means a person who acts as a producer in  
30 soliciting, negotiating, or procuring the making of a reinsurance contract or binder on  
31 behalf of a ceding admitted insurer or acts as a producer in accepting a reinsurance

1 contract or binder on behalf of an assuming admitted insurer;

2 (33) "reinsurance intermediary broker" means a person who solicits,  
3 negotiates, or places reinsurance cessions or retrocessions on behalf of a ceding admitted  
4 insurer without the authority or power to bind reinsurance on behalf of the insurer;

5 (34) "reinsurance intermediary manager" means a person including an  
6 insurer who has authority to bind or manage all or part of the assumed reinsurance  
7 business of an admitted reinsurer, including the management of a separate division,  
8 department, or underwriting office, and who acts as an agent for the reinsurer [(25)  
9 "SOLICITOR" MEANS AN INDIVIDUAL AUTHORIZED BY AN AGENT OR BROKER TO  
10 SOLICIT APPLICATIONS FOR INSURANCE AS A REPRESENTATIVE OF THE AGENT  
11 OR BROKER AND TO COLLECT PREMIUMS IN CONNECTION WITH THE INSURANCE];

12 (35) [(26)] "state" means a state, District of Columbia, territory, commonwealth,  
13 or possession of the United States of America;

14 (36) "surplus lines broker" means a person licensed under AS 21.27 to place  
15 insurance in this state or relative to a subject resident, located, or to be performed in this  
16 state with eligible surplus lines insurers under AS 21.34;

17 (37) "surplus lines insurance" means any insurance in this state or relative  
18 to a subject resident, located, or to be performed in this state that is permitted under  
19 AS 21.34 to be placed through a surplus lines broker licensed under AS 21.27 with  
20 nonadmitted insurers eligible to accept insurance other than reinsurance, wet marine and  
21 transportation insurance, insurance independently procured, life insurance, and an annuity  
22 contract;

23 (38) "third-party administrator" means a person who for residents of this  
24 state, or for residents of another jurisdiction from a place of business in this state, performs  
25 administrative functions including claims administration and payment, marketing  
26 administrative functions, premium accounting, premium billing, coverage verification,  
27 underwriting authority, or certificate issuance in regard to life insurance, disability  
28 insurance, or annuities;

29 (39) [(27)] "transact" with respect to insurance includes

30 (A) solicitation and inducement;

31 (B) preliminary negotiations;

- 1 (C) effectuation of a contract of insurance;  
2 (D) transaction of matters subsequent to effectuation of the contract of  
3 insurance and arising out of it;

4 (40) [(28)] "unauthorized insurer" means an insurer not authorized to transact  
5 insurance in this state.

6 \* Sec. 223. AS 28.05.035 is amended to read:

7 Sec. 28.05.035. APPROVAL OF ACCIDENT PREVENTION COURSES. For the  
8 purposes of AS 21.89.025(a)(4) [AS 21.89.025(a)(3)], the commissioner may approve driver  
9 education courses intended to prevent motor vehicle accidents and promote safe driving practices.

10 \* Sec. 224. AS 21.06.130(b); AS 21.27.050, 21.27.070, 21.27.090, 21.27.095, 21.27.120, 21.27.200,  
11 21.27.210, 21.27.240, 21.27.250, 21.27.260, 21.27.280, 21.27.310, 21.27.320, 21.27.360(g), 21.27.400,  
12 21.27.450; AS 21.33.061(e), 21.33.061(i), 21.33.065(c); AS 21.34.140, 21.34.160, 21.34.200(b),  
13 21.34.210; AS 21.66.030, 21.66.040, 21.66.050, 21.66.100, 21.66.120(b), 21.66.130, 21.66.140,  
14 21.66.160, 21.66.260, 21.66.401, 21.66.402, 21.66.403, 21.66.430, 21.66.440; AS 21.75.040(a),  
15 21.75.100(c); AS 21.84.290, 21.84.410, 21.84.420, 21.84.430, 21.84.440, 21.84.450, 21.84.460,  
16 21.84.560, 21.84.570, 21.84.580; and AS 21.90.910 are repealed.

17 \* Sec. 225. APPLICABILITY OF AS 21.18.110(m). The actuarial opinion required under  
18 AS 21.18.110(m), as enacted by sec. 24 of this Act, shall be submitted with the annual statement  
19 beginning with the year ending December 31, 1993.

20 \* Sec. 226. Sections 2, 20, 25, 61, 62, 95, 96, and 190 of this Act take effect January 1, 1994.

21 \* Sec. 227. Except as provided in sec. 226 of this Act, this Act takes effect July 1, 1992.

S B

3 9 6

SENATE COMMITTEE REPORT

DATE: 3/9/92

FURTHER:

DATE TURNED INTO OFFICE: 3/17/92  
~~SB 396~~

Judiciary Committee considered SENATE BILL NO. 396

"An Act clarifying the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents; and providing for an effective date."

and recommends:

- replace with \_\_\_\_\_ CS SB 396 (HFSS)
- 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:**

*[Handwritten signatures]*

**PREVIOUS FISCAL NOTES:** Dept/Date

zero fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

**OTHER RECOMMENDATIONS:**

*Patricia Jolley no rec.*

*Rick Halford do pass*

Chair: Signature and Recommendation

# FISCAL NOTE

No. 1

Bill Version: SB396

BILL (S) Publish Date: 3-9-92

STATE OF ALASKA  
1992 LEGISLATIVE SESSION

Revision Date: \_\_\_\_\_ Dept. Affected Health and Social Services  
 Title: Medical costs...children in custody BRU: DFYS - Purchased Services  
 Component: Foster Care  
 Sponsor: Senator Collins  
 Requestor: Governor COMPONENT SERIAL NO. 0252

**Expenditures/Revenues**

(Thousands of Dollars)

	FY93	FY94	FY95	FY96	FY97	FY98
OPERATING						
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>
CAPITAL						
REVENUE						

**FUNDING:**

(Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

**ANALYSIS:** (Attach a separate page if necessary)

This bill is critical to the Division of Family and Youth Services. There will be no increased costs incurred if this bill passes, but there is a serious potential for a sizeable increase in foster care costs if it does not pass.

Prepared by: Brian Saylor, Deputy Commissioner *Brian Saylor*  
 Division: Family and Youth Services

Phone: 465-3030  
 Date: February 25, 1992

Approved by Commissioner: *[Signature]*  
 Agency: Department of Health and Social Services

Date: 3/3/92

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

Changes in CS SB 396 HES  
 have no fiscal impact. This  
 fiscal note is appropriate.

*[Signature]*  
 date      Comte Aide(initial)

# Alaska State Legislature

During Session  
State Capitol  
Juneau, Alaska 99801-1182  
(907) 465-2828

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During Interim  
3111 C Street, Suite 540  
Anchorage, Alaska 99503  
(907) 561-2040

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## Senator Virginia Collins

### CSSB 396 (HES)

#### Clarifying parental responsibilities for a child in state custody

CSSB 396 (HES) clarifies the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents.

The bill responds to a recent Alaska Supreme Court decision that will incur new and substantial costs to the state.

In the August 1991 decision in the case of In re E.A.O., the court reversed a lower court decision and ruled that the state must pay for the medical costs of a child in state custody even though the child lives with his or her parents.

Prior to this decision, the state interpreted the law to pay for medical care costs of children in physical custody of the state. Holding the state responsible for medical costs of children in its custody who are placed at home would result in less protection for these children and other children in need of aid.

The ramifications of this decision may also lead to the state's being held liable for other costs of child rearing such as food, shelter, and education.

In an era of projected declining revenues, CSSB 396 (HES) responds to these costly implications.

Sponsor Statement



# Alaska State Legislature

## Senate

Official Business

Pouch V  
State Capitol  
Juneau, Alaska 99811

M E M O R A N D U M

March 16, 1992

**SUBJECT:** Sectional Summary of CSSB 396 (HES)  
**TO:** Members, Senate Judiciary Committee  
**FROM:** Senator Virginia Collins *VC*

What follows is a sectional analysis of the above described bill. As a preliminary matter, please note that a sectional analysis or summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 amends AS 47.10.084(a) by clarifying responsibilities of a child's parent when a child is committed to state custody and placed by the state with the child's parent.

Section 2 makes the Act retroactive to August 30, 1991, the date of the Supreme Court decision in the case of In re E.A.O.

Section 3 makes the Act effective immediately.

Sectional Summary

STATE COMMITTEE REPORT  
FIRST COMMITTEE OF REFERRAL

*Jim*

DATE: 2/12/92

FURTHER: Judiciary

Date of 5-Day Notice: FEB 27, 92  
(in accordance with Uniform Rule 23)

DATE TURNED INTO OFFICE: MARCH 06, 1992

HES Committee considered SB 396

"An Act clarifying the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents; and providing for an effective date." and recommends it be replaced with

and recommends:

replace with \_\_\_\_\_ CS SB396 (HES)

attaches amendment(s)

~~AND AMENDMENT~~  
~~NO. 50-1116WS~~ *tap*

- 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

*OK*

NEW FISCAL NOTES: Dept/Date  
 zero fiscal notes DHSS 3-3-92

fiscal notes \_\_\_\_\_

appropriation--no fiscal note

PREVIOUS FISCAL NOTES: Dept/Date  
 Governor's bill with fiscal notes; zero fiscal notes \_\_\_\_\_

fiscal notes \_\_\_\_\_

DO PASS:

OTHER RECOMMENDATIONS:

*[Handwritten signatures]*

*Paul Frank* *John*

*Chair: Signature and Recommendation*

Chair: Signature and Recommendation

## SENATE BILL 396

"An Act clarifying the responsibilities of the Department of Health and Social Services and parents for children who are committed to the custody of the department and are placed by the department with the parents; and providing for an effective date."

The Department of Health and Social Services strongly supports SB396, which clarifies the responsibilities of the Department for children committed to its legal custody who continue to reside with the parent or parents. The Bill amends AS 47.10.084(a) to expressly require a parent or parents to provide for the day to day care of their children if the children are residing with them when the state has legal custody as a result of child protective services purposes.

This bill was made necessary as a result of the Alaska Supreme Court ruling in the case of In re E.A.O., 816 P.2d 1352 (Alaska 1991), in which the court ruled that the current AS 47.10.084 requires the department to pay for medical costs associated with the care of children, even though they live with their parents. The department has never interpreted the statute in this manner in the past. Therefore, absent an amendment, the department will incur substantial additional financial expenses for these medical costs and may also be exposed to legal suits to resolve the responsibility for other costs of child rearing, including food, shelter, and education, while a child is placed at home by the department. The department has not budgeted for these type of costs, and these costs would significantly impact our budget, as well as the Medicaid budget. Although the court did acknowledge a possible right of reimbursement from the parents, the collection would not be practical nor cost-effective.

The bill provides for a retroactive effective date to August 30, 1991, the date that the court issued its ruling. A retroactive effective date is necessary to avoid the additional unbudgeted expenses and to resolve a legal question as to the department's responsibilities for other expenses, such as shelter, which the court did not direct address in its decision.

The Department of Health and Social Services urges the passage of this bill.

Brian L. King  
Deputy Commissioner  
Health and Social Services

Wendore Blum  
Commissioner  
Health and Social Services

Date: 3/3/92

Date: 3 March 1992

agree with Grasle that the "ordinary consumer" standard is necessarily objective. Grasle analogizes to *Prince v. Parachutes, Inc.*, 685 P.2d 83, 88 (Alaska 1984), where we stated that the ordinary user standard was an objective test for product liability cases based on a failure to warn. In *Prince*, we rejected the argument that the subjective knowledge of the actual user was relevant to the duty to warn. *Id.*

[14] The expectations of the ordinary consumer must also be an objective test. The focus in a strict product liability case is on the product, not on the conduct of the defendant. *Beck*, 593 P.2d at 883. If the defendant knew that one individual consumer could not safely use its product, that defendant may be negligent. That defendant will not be strictly liable under the first prong of *Beck*, however, unless the product fails to meet the safety expectations of the ordinary consumer. Therefore, the superior court correctly refused to instruct the jury that the class of ordinary consumers was limited to the unskilled employees of Ruby Electric.

### III. CONCLUSION.

The judgment entered below is AFFIRMED.

BURKE, J., not participating.



of this case, each side could argue its version to the jury. Similarly, Keogh could argue to the jury that the class of ordinary consumers eligible to sue in strict liability would not include "kite flyers and passerbys." On this record, we cannot say that Keogh was prejudiced by any

In the Matter of E.A.O. A Minor Under the Age of Eighteen (18) Years.

L.O., Appellant,

v.

STATE of Alaska, Appellee.

No. S-3467.

Supreme Court of Alaska.

Aug. 30, 1991.

After child was adjudicated child in need of aid, and was placed in temporary legal custody of Department of Health and Social Services, child's guardian ad litem filed motion to clarify Department's responsibility to provide costs of child's medical care. Department objected to master's report, following disposition hearing, by which master found that child should continue to be committed to custody of Department. The Superior Court, Third Judicial District, Anchorage, Victor D. Carlson, J., released child to custody of parents subject to supervision of Department and ruled that Department was not responsible for costs of medical care of child in its legal custody who was returned to parents, and appeal was taken. The Supreme Court, Burke, J., held that Department was responsible for medical expenses incurred by child while she was in Department's legal custody, though she was placed in her parents' home.

Reversed and remanded.

### Infants ←228

Department of Health and Social Services was responsible for medical expenses incurred by child in Department's temporary legal custody, as child in need of aid, even during period that child was returned to her parents' home; it was relationship of legal custody, and not placement of child,

arguments Grasle raised to this effect. See Alaska R.Civ.P. 61. In short, the superior court did not abuse its discretion by rejecting Keogh's proffered instruction defining the class of ordinary consumers as the employees of Ruby Electric.

that imposed on Department duty of providing child with medical care. AS 47.10.084(a), 47.10.142(e).

Blair McCune, Asst. Public Defender,  
John B. Salemi, Public Defender, Anchorage,  
for appellant, L.O.

Philip J. McCarthy, Jr., Deputy Public  
Advocate, Anchorage, guardian ad litem,  
for E.A.O.

Dianne Olsen, Asst. Atty. Gen., Anchorage,  
Douglas B. Baily, Atty. Gen., Juneau,  
for appellee.

Before RABINOWITZ, C.J., and  
BURKE, MATTHEWS, COMPTON and  
MOORE, JJ.

#### OPINION

BURKE, Justice.

In this appeal from the superior court, the mother and guardian ad litem of E.A.O. seek to clarify the responsibility of the Department of Health and Social Services for the medical costs of children in the department's legal custody who are placed in their parents' home. The superior court held that in such a case the department has no responsibility. We reverse.

#### I

E.A.O. was born prematurely on June 11, 1987, at Anchorage's Humana Hospital and soon transferred to Providence Hospital's Neonatal Intensive Care Unit. On August 12, 1988, the Department of Health and Social Services petitioned to have E.A.O. adjudicated a child in need of aid (CINA) under AS 47.10.010(a)(2)(A) based on the following facts:

[E.A.O.] was born prematurely (30 weeks gestation) due to alcohol abuse by her mother. [E.A.O.] has remained hospital-

ized at Providence Hospital since birth with one trip to Seattle for heart surgery. She must have 24 hour oxygen, BEM and heart monitor and be fed through a gastrometer. [E.A.O.] has stabilized enough to be discharged to a home setting. [E.A.O.'s mother] has completed in-patient treatment in Seattle and continues to receive aftercare through Charter North. She regularly attends Alcoholics Anonymous meetings. Her husband works out-of-town and they have three other children. The parents are requesting placement in a medical foster home until [E.A.O.'s father] returns in November. (A medical foster home has been recruited by this worker and is available.) Due to [the father's] absence and [the mother's] treatment needs, the parents are unable to provide the needed care for [E.A.O.] at this time.

At an emergency custody hearing on August 25, 1988, the parents stipulated to the facts alleged in the petition, and the superior court gave temporary legal custody to the department pursuant to AS 47.10.142.<sup>1</sup> The order authorized the department to place E.A.O. in a medical foster home.

The department apparently returned E.A.O. to her parents' home in October 1988. In an order effective December 7, 1988, the superior court adjudicated E.A.O. a child in need of aid, granting continued "temporary custody" to the department and authorizing the department "to place the minor in a home deemed suitable, which it indicates at the present time to be in the home of the minor's parents." On January 20, 1989, the child's guardian ad litem filed a motion to "clarify" the department's responsibility, as E.A.O.'s legal custodian, to provide the cost of her medical care.

Before any ruling on this motion, a disposition hearing was held on March 6, 1989. The parents and guardian ad litem argued

(f) When a minor is committed to the department for temporary placement under (c) of this section, the court order shall specify the terms, conditions, and duration of placement.

1. AS 47.10.142 provides:

(e) If the court finds that probable cause exists it shall order the minor committed to the department for temporary placement, or order the minor returned to the custody of the minor's parents or guardian subject to the department's supervision of the minor's care and treatment....

that the department should continue to have legal custody of E.A.O., emphasizing that the family had no means of paying for the extensive and continuing medical care required by E.A.O.<sup>2</sup> The department argued that the conditions justifying intervention—the mother's alcoholism and the father's work-related absence—no longer existed and that legal custody should be returned to the parents, with supervisory monitoring by the department. The department specifically rejected any assertion that it took action because of E.A.O.'s medical needs.

Subsequent to this disposition hearing, the Children's Master concluded that he could

not agree with the Department that the situation has improved to the extent that this court can approve a return of legal custody to the parents. I find that the Department must continue to play a pinnacle role in the coordination and delivery of services in this case, and that therefore, the child should be committed to the custody of the Department pursuant to AS 47.10.080(c)(1).

The master emphasized that the "fact that [E.A.O.] is a special needs child is a material factor in this case." He made no ruling on the guardian's motion concerning the department's responsibility for medical costs.

The department objected to the master's report on the ground that the family's limited abilities to meet E.A.O.'s medical needs "do not relate to any specific child protec-

2. E.A.O. was hospitalized for fluid in her lungs at the time of this hearing. She had been hospitalized numerous times during the period that the department had legal custody of her. The record reveals numerous, persistent medical problems requiring constant care.

3. The mother and guardian ad litem filed a joint appellant's brief. The guardian ad litem did not participate in the reply brief due to a change in attorneys. We have generally used the term "the mother" both to refer to the main appellant brief and to the reply brief.

4. The period of time during which the state had legal custody of E.A.O. but placed her in her parents' home was approximately nine months.

5. Because resolution of this issue involves statutory interpretation, this court will apply its inde-

tion risk caused by the parents. Under the circumstances, the department need not have legal custody of the child." The superior court agreed. It released E.A.O. to the custody of her parents subject to the supervision of the department. Concerning the guardian ad litem's motion for clarification of responsibility for medical costs, the court ruled:

The Department of Health and Social Services is not responsible for the costs of medical care of children in their legal custody who continue to reside with their parents.

... The Department of Health and Social Services is responsible for paying the costs of medical care of children in foster care, subject to the existence of other insurance and subject to reimbursement by the child's parents.

E.A.O.'s mother<sup>3</sup> appeals solely on the question of whether the department was responsible for the costs of E.A.O.'s medical care when the state had legal custody of the child, but she actually resided with her parents.<sup>4</sup>

## II

This narrow question requires us to interpret the provisions of Alaska's CINA statute.<sup>5</sup> Concerning legal custody and various rights and responsibilities, the law provides:

(a) When a child is committed under AS 47.10.080(b)(1) or (c)(1) to the department or released under AS 47.10-

pendent judgment. *Waller v. Richardson*, 757 P.2d 1036, 1039 n. 4 (Alaska 1988).

As an initial matter, we note that E.A.O. is no longer in the legal custody of the state, nor is there any indication that she is likely to be again in the future. The case may therefore be technically moot. *Doe v. State*, 487 P.2d 47, 53 (Alaska 1971). We have long held, however, that the mootness doctrine in Alaska "is a matter of judicial policy, not constitutional law." *R.L.R. v. State*, 487 P.2d 27, 45 (Alaska 1971). We find the circumstances of this case to fall under the exception to the mootness doctrine for cases "where the matter is one of grave public concern and is recurrent but is capable of evading review." *Doe*, 487 P.2d at 53. We will thus consider the merits of the case.

080(b)(2) or (3) or (c)(2) to the child's parents, guardian, or other suitable person, a relationship of legal custody exists. This relationship imposes on the department and its authorized agents or the parents, guardian, or other suitable person the responsibility of physical care and control of the child, the determination of where and with whom the child shall live, the right and duty to protect, train and discipline the child, and the duty of providing the child with food, shelter, education, and medical care. These obligations are subject to any residual parental rights and responsibilities and rights and responsibilities of a guardian if one has been appointed. When parental rights have been terminated, or there are no living parents and no guardian has been appointed, the responsibilities of legal custody include those in (b) and (c) of this section. The department or person having legal custody of the child may delegate any of the responsibilities under this section, except authority to consent to marriage, adoption, and military enlistment may not be delegated. For purposes of this chapter a person in charge of a placement setting is an agent of the department.

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(c) When there has been transfer of legal custody or appointment of a guardian and parental rights have not been terminated by court decree, the parents shall have residual rights and responsibilities. These residual rights and responsibilities of the parent include, but are not limited to, the right and responsibility of reasonable visitation, consent to adoption, consent to marriage, consent to military enlistment, consent to major medical treatment except in cases of emergency or cases falling under AS 09.65.100, and the responsibility for support, except if by court order any residual right and responsibility has been delegated to a guardian under (b) of this section.

6. The department initially frames the issue in terms of whether parents are relieved of their responsibility to pay for the medical care of children who live with them merely because the children are in the legal custody of the state. The answer is clearly that the parents are not

AS 47.10.084. Although section .084 on its face only applies to cases where children are committed to the department after a disposition hearing, AS 47.10.080, the parties agree that its principles apply here, where the commitment was the result of a temporary placement hearing, AS 47.10.142(e). The parties also agree that when the department has legal custody over a child placed in a foster home, the department is responsible for the cost of the child's medical care. The parties disagree, however, over the scope of the department's responsibilities when it has legal custody, but chooses to place a child in the parents' home.

The core of the department's argument is that "AS 47.10.084 read in conjunction with other applicable statutes does not require the department to pay for the costs of medical care for E.A.O. during the time she resided with her parents, simply because the department had legal custody of her for child protection purposes."<sup>6</sup> Appellee's Brief at 9. It argues that the statutory scheme taken as a whole provides a rational basis for distinguishing the legal custody of children in the parental home from legal custody of children removed from the parental home.

The department points first to AS 47.10.084(c), which provides for residual parental responsibilities. The department would interpret that to mean that parental responsibility eliminates any departmental responsibility in the absence of a specific provision to the contrary. The department notes that other sections of the statute authorize it to pay maintenance costs and to apply for medicaid benefits when a child is placed in a foster home, AS 47.10.230(b), and require it to pay for the medical expenses of handicapped foster children, AS 47.10.230(d). The inclusion of these specific terms, the department argues, presumptively excludes terms which are not men-

relieved of ultimate responsibility, and the mother concedes as much; but the salient issue on the facts of this case is whether the department is also responsible, by virtue of having legal custody, for medical costs.

tioned. Thus, it is not authorized to pay costs of a child left in the parental home and it is not required to pay for the care of handicapped children left in the home.

The department buttresses this view of the law through reference to the statutory statement of "[p]urpose and policy relating to children:"

The purpose of this title as it relates to children is to secure for each child the care and guidance, preferably in the child's own home, that will serve the moral, emotional, mental, and physical welfare of the child and the best interests of the community; to preserve and strengthen the child's family ties unless efforts to preserve and strengthen the ties are likely to result in physical or emotional damage to the child; removing the child from the custody of the parents only as a last resort when the child's welfare or safety or the protection of the public cannot be adequately safeguarded without removal; and, *when the child is removed from the family, to secure for the child adequate custody and care and adequate planning for permanent placement of the child.*

AS 47.05.060 (emphasis added). The department asserts that the emphasized text accords with its view that the AS 47.10.084(a) discussion of the responsibilities of legal custody "primarily" applies to situations where the child is removed from the parental home.

The department refers to an analysis by the Legislative Affairs Agency of AS 47.10.084 before its enactment, which explained the rationale of the legal custody provision:

By stating the major rights and responsibilities of those with legal custody or appointed guardians it is hoped these persons can act without feeling unduly restrained, because of fear of not having

7. The first portion of the policy argument is entitled "The Alaskan child protection system is not an entitlement program of last resort." It attributes without specific citations a number of arguments to the appellants that they simply do not make. For example, the department alleges that the appellants "would have the court believe that E.A.O. was taken into custody because

the right and power to act in certain instances. By stating the residual rights and responsibilities of the parents it is intended to assert the parent[s]' inherent rights and responsibilities and thus help maintain the parent and child relationship.

Children's Code Revision Task Force, Legislative Affairs Agency, Memorandum to Rep. Terry Gardiner (April 13, 1977). The department translates this passage as meaning "the intent is to inform those with the physical care of the child that they may provide day-to-day care to the child, but not to limit the 'parent's inherent rights and responsibilities.'"

The department finally makes a vigorous policy argument against holding it responsible for the medical costs of children in its legal custody who are still living at home.<sup>7</sup> The result of such a holding, the department fears, could be "a chilling effect on the department's willingness to take legal custody of children," because it is not budgeted to pay for the medical care of children left at home. It points out that the medical costs of children placed in foster homes are generally covered by Medicaid, which often—as in E.A.O.'s case—is not available for children left at home. The goals of legal custody have only been to attain the power to protect the child and provide treatment services. The department fears that these goals would be sacrificed if legal custody were held to include a responsibility the department is not capable of accepting.

We find the department's arguments unpersuasive. We think it clear that the department is responsible for the medical costs of children in its custody, whether the children are placed at home or in a foster home. Alaska Statute 47.10.084(a) is very explicit in saying that the "relationship [of legal custody] imposes on the department

of [her extraordinary] medical needs." Appellee's Brief at 20. What the mother and guardian in fact say is that the "question is not so much why or under what circumstances the state obtained custody over E.A.O., but what its responsibilities were once it obtained custody." Appellant's Brief at 19.

... the duty of providing the child with ... medical care." As this court has noted, "[i]f the meaning of a statute is plain[,] it should be enforced as it reads without judicial modification or construction." *Horowitz v. Alaska Bar Ass'n*, 609 P.2d 39, 41 (Alaska 1980).<sup>8</sup>

Nothing in other statutory provisions necessarily contradicts the plain and unambiguous language of AS 47.10.084(a). Any apparent contradictions should be harmonized, if possible, rather than read to make one provision negate another. *In re Estate of Hutchinson*, 577 P.2d 1074, 1075 (Alaska 1978). The language concerning residual parental responsibilities, for example, should be read as clarifying that the department's responsibility for medical care does not mean that parents are *relieved* of responsibility. Rather, the law provides a basis for the department, having fulfilled its duty toward the child, to turn to the parents for reimbursement. AS 47.10.084(c); AS 47.10.120. The department's reading that residual parental responsibilities eliminate the department's responsibility, besides being strained, would unnecessarily contradict the plain language of section .084(a).<sup>9</sup>

Alaska Statute 47.10.230, which the department claims only allows it to pay maintenance costs of foster children, can also be harmonized with the explicit language of section .084(a). The only specific limitation concerning foster children appears in paragraph (d): "In addition to money paid for the maintenance of foster children under (b) of this section, the department (1) shall pay the costs of caring for physically or mentally handicapped foster children. . . ." AS 47.10.230(d). The paragraph goes on to specify various expenses related to caring for physically and mentally handicapped

foster children—such as "respite care"—that the department will pay.

This statute means what it says, but it does not imply that the state has no responsibility to pay for the medical care of its wards who are not foster children. Such an implication would mean that the state could not pay medical care for children under its jurisdiction who are institutionalized. Instead, as E.A.O.'s mother suggests, it seems far more likely that the statute was enacted to fulfill the legal commitments the state is required to make in order to receive federal funds under Title IV-E of the Social Security Act.

Section .084(a) plainly and specifically assigns the department the duty of providing medical care to children in its legal custody. Elsewhere, in the context of a discussion of placement of children in foster care, the law specifies that the department may pay the medical costs of foster children. AS 47.10.230(d). There is no more reason to view this as a prohibition of paying medical costs of children placed at home, than there would be to view it as a prohibition of paying medical costs of children placed in institutions.

The purpose sections of the statute and of the Legislative Affairs Agency memorandum are both vague and they do not provide any convincing reason to ignore the plain language of the statute. *Alex*, 646 P.2d at 208 n. 4. Section .060 is only obliquely supportive of the department's position. The memorandum is not at all inconsistent with the position of the mother.

The department's policy argument—that holding the department responsible for medical costs of children in its custody who are placed at home would result in less protection for children because of budgetary constraints—is beyond the purview of

8. We have rejected a "mechanical" plain meaning rule, recognizing that ambiguity is a matter of degree. *State v. Alex*, 646 P.2d 203, 208 n. 4 (Alaska 1982). The appropriate approach involves a "sliding scale," such that the plainer the language, the more convincing must be evidence contrary to that plain meaning. *Id.*; *State v. Haines*, 627 P.2d 1047, 1049 n. 6 (Alaska 1981). The statutory language of section .084(a) seems quite plain.

9. The term "subject to" in section .084(a) best connotes the idea that the state's responsibility is subordinate to that of the parent, not that it is eliminated because the parents are also responsible. See *Black's Law Dictionary* 1425 (6th ed. 1990) ("Subject to" defined as "subordinate, subservient, inferior").

this court. Whether the department is adequately funded to carry out its statutory responsibilities, or whether those responsibilities should be changed in response to budgetary realities, is a question for the legislature to answer. The law as it stands today clearly assigns to the department the duty to pay the medical costs of all children in its legal custody, subject to reimbursement from the parents.

The decision of the superior court is REVERSED and this case REMANDED for entry of appropriate judgment.



John J. SHAW, Appellant,

v.

STATE of Alaska, DEPARTMENT OF ADMINISTRATION, PUBLIC DEFENDER AGENCY, and David C. Backstrom, Appellees.

No. S-3720.

Supreme Court of Alaska.

Aug. 30, 1991.

Convicted criminal defendant, following postconviction relief, brought legal malpractice action against attorney and Public Defender Agency. The Superior Court, Fourth Judicial District at Fairbanks, Richard D. Savell, J., granted summary judgment in favor of counsel, and convicted defendant appealed. The Supreme Court, Rabinowitz, C.J., held that convicted criminal defendant must obtain postconviction relief before pursuing action for legal malpractice against his or her attorney and, thus, limitations period applicable to legal malpractice claim does not commence to run until postconviction relief is obtained.

Reversed and remanded.

1. Attorney and Client  $\S$ 129(1)

Limitation of Actions  $\S$ 105(1)

Convicted criminal defendant must obtain postconviction relief before pursuing action for legal malpractice against his or her attorney and, thus, limitations period applicable to legal malpractice claim does not commence to run until postconviction relief is obtained.

2. Attorney and Client  $\S$ 129(2)

Dispositive postconviction relief is relevant in convicted criminal defendant's legal malpractice action against his or her attorney as to issues of proximate causation and damages.

3. Judgment  $\S$ 559

If convicted criminal defendant had been denied postconviction relief, collateral estoppel would have served to eliminate any frivolous legal malpractice claim.

4. Attorney and Client  $\S$ 105, 129(1)

Elements of legal malpractice arising from civil litigation apply to malpractice action by convicted criminal defendant, with additional requirement that defendant must first obtain postconviction relief.

5. Malicious Prosecution  $\S$ 34

Establishing tort of malicious prosecution requires plaintiff to prove unsuccessful prosecution occurred, which element is not established until cessation of underlying action.

Joseph L. Paskvan, Hoppner & Paskvan, P.C., Fairbanks, for appellant.

Randy M. Olsen, Asst. Atty. Gen., Fairbanks, and Douglas B. Baily, Atty. Gen., Juneau, for appellees.

Before RABINOWITZ, C.J., and BURKE, MATTHEWS, COMPTON and MOORE, JJ.

OPINION

RABINOWITZ, Chief Justice.

John Shaw brought suit against David Backstrom and the Public Defender Agency alleging legal malpractice. The superior court granted summary judgment, concluding

ing that the action was barred by the statute of limitations. We reverse and hold that a convicted criminal defendant must obtain post-conviction relief as a precondition to maintaining a legal malpractice claim against his or her attorney.

#### *Facts and Proceedings*

On March 8, 1973, John Shaw and Toney Powell, both represented by assistant public defender David Backstrom, were convicted of two counts of burglary not in a dwelling and two counts of larceny in a building. Powell had stolen seventeen pairs of pants from a men's store where he and Shaw worked as janitors, and Shaw had allegedly assisted him. Shaw has steadfastly maintained his innocence.

While representing both Shaw and Powell on the burglary and theft charges, Backstrom advised the superior court that a "conflict situation" was arising. However, separate attorneys for the defendants were never provided. The conflict continued through the trial. Powell was willing to testify that Shaw had nothing to do with the theft but defense counsel did not permit him to do so. Further, Backstrom did not advise Shaw that he could take the stand in his own defense, because he wanted to protect Powell. Additionally, several witnesses at trial were not allowed to testify as to statements by Shaw because of the threat to Powell.<sup>1</sup> As noted above, Powell and Shaw were convicted. Sentencing was set for April 10, 1973. Backstrom indicated to Shaw that he would file an appeal, but he did not. Nor did Backstrom contact Shaw, although he had indicated that he would.

Shaw never appeared for sentencing because "he was not going to jail for something he didn't do." He left the jurisdiction and from mid-March of 1973 until September of 1978, Shaw lived in St. Louis, Missouri. The superior court issued a bench warrant for his arrest. Shaw later returned to Alaska and on December 26,

1979, he was stopped in Fairbanks for operating a motor vehicle with a defective tail light. This stop resulted in a routine check, revealing the outstanding warrant for his arrest. Shaw was subsequently charged with failure to appear.

Thereafter, the superior court scheduled a sentencing hearing for Shaw's 1973 convictions. Shaw was originally represented by the Public Defender Agency ("PDA"), but, due to conflict, the superior court released the PDA as his counsel and appointed Daniel Saluri to represent Shaw. After a hearing, the court suspended imposition of a sentence for the 1973 convictions and placed Shaw on probation for two years.

Saluri also represented Shaw in his April 1980 jury trial for failure to appear. After his conviction for failure to appear, the superior court sentenced Shaw to a term of three years with two suspended. An appeal followed. While the appeal was pending, Shaw moved to Barrow, where he was employed by the North Slope Borough until his arrest in 1981 for receiving a stolen handgun and being a felon in possession of a handgun. Again represented by Saluri, Shaw pled *nolo contendere* to the possession charge, and the larceny charge was dropped.

After Shaw's arrest on the felon in possession charge, his probation officer petitioned to revoke Shaw's probation on the 1973 burglary and larceny convictions. Originally, Saluri represented Shaw on this matter, but later the law firm of Birch, Horton, Bittner, Pestinger and Anderson was appointed to represent Shaw. In early 1984, an attorney with that firm notified Shaw that he intended to argue that Shaw was denied effective assistance of counsel in connection with the 1973 burglary and theft convictions, based on Backstrom's original representation of Shaw.

Later, in 1986, the Office of Public Advocacy was appointed to represent Shaw in a sentence appeal for the felon in possession

1. On December 23, 1985, the Public Defender Agency raised the following argument in trying to get Shaw's original conviction vacated:

Because the State of Alaska provided one attorney for two defendants, the attorney did

not want to use Powell to exculpate Shaw, because then Powell would be prejudiced. This is a classic case of conflict of interest between clients.

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# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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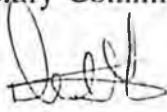
240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

March 19, 1992

**SUBJECT:** CSSB 399(Judiciary)(1992 Revisor's Bill)

**TO:** Senator Rick Halford  
Chair, Senate Judiciary Committee

**FROM:** David R. Dierdorff   
Revisor of Statutes

This memorandum discusses CSSB 399(Judiciary) (the 1992 revisor's bill, Work Order No. 7-LS1706(D), which was approved by your committee.

The bill was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

\* \* \* shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of \* \* \* the statute law of this state.

To assist in understanding the bill, I have summarized the contents by listing sections that have similar effects.

Sections that delete, repeal, or update obsolete provisions: Sections 3 - 5, 10, 11, 21 - 23, 29, 33, 37, and 38 delete, repeal, or update provisions that have become obsolete either through other legislative action or the passage of time.

Sections that corrects errors or oversights: Sections 1, 7 - 9, 12, 13, 18 - 20, 24, and 30 - 32 correct errors or oversights that can not be corrected editorially.

Sections that improve the form or substance of the law: Sections 2, 6, 14 - 17, 25 - 28, and 34 - 36 propose amendments to improve the form or substance of the statute law of Alaska.

### SECTIONAL ANALYSIS

Section 1. AS 05.15.210(35) defines "veterans organization," but the term is not used in AS 05.15. The Department of Commerce and Economic Development treats veterans organizations as "qualified organizations," which is consistent with apparent legislative intent. The amendment to AS 05.15.210(29) in sec. 1 of the bill adds veterans organizations to the list of organizations that qualify for charitable gaming permits, thus making express that which had been implied.

Secs. 2, 6, 14, and 15. Each of these sections adds facsimile as an authorized means of communication where existing law allows the use of telegraph. The amendments are intended to keep these laws abreast of technological changes.

Secs. 3 - 5. Each of these sections deletes material that is obsolete in that it is redundant to the general provisions of AS 08.01.020, enacted in 1987.

Secs. 7, 20, 31, and 32. Delete references to the Medical Indemnity Corporation of Alaska, which is no longer functioning. Chapter 14, SLA 1991 repealed the authority for the corporation. These remaining references were overlooked when ch. 14 was enacted.

Sec. 8. This amendment corrects an erroneous reference in the laws relating to electric cooperatives. The need for the amendment was brought to our attention by the corporations section of the Department of Commerce and Economic Development.

Sec. 9. A drafting oversight in ch. 64, SLA 1991 had the effect of taking away the authority of peace officers to make warrantless arrests for violation of domestic violence restraining orders that prohibit communication between the parties. The intended effect of replacing AS 11.61.120(a)(6) with new AS 11.56.740 in last year's legislation was to increase the penalty for a violation to a class A misdemeanor. Unfortunately, AS 12.25.030(b) should have been amended to include a reference to the new provision. This section of the bill corrects that oversight, and also incorporates a change in the description of the protected class of victims to parallel other changes made by ch. 64.

Sec. 10. Deletes obsolete language relating to the initial board of the Alaska school activities association.

Sec. 11. AS 14.30.410(b) is amended to delete a reference to the statewide bilingual-bicultural center. The statutory direction for that center was deleted from subsection (a) in 1978 and the reference to it in (b) should have been deleted at the same time.

Sec. 12. The section amends AS 14.48.080(b) to correct an erroneous internal references to "this section." Minimum standards are established by AS 14.48.060, not AS 14.48.080.

Sec. 13. AS 14.48.130(c) is amended to correct an erroneous internal reference. Penalties are set out in AS 14.48.190, whereas AS 14.48.180 simply authorizes a suit for injunctive relief.

Sec. 16. This section merely relocates language in a fish and game provision and divides it into paragraphs to eliminate any ambiguity in the scope of the requirement of possession. The provision could be read to require license possession only with respect to taxidermy, when, of course, it relates to all of the listed activities.

Sec. 17. AS 16.05.420(b) makes false statements in fish and game license applications subject to prosecution for unsworn falsification. The provisions of AS 16.05.408(b) make false statements in affidavits required for applications under that section subject to a perjury prosecution. AS 16.04.420(b) applies to AS 16.05.408 as well. The amendment proposed in this bill section makes it clear that the provisions of AS 16.05.408(b) control as to those false statements.

Sec. 18. This section adds "elk" (when lawfully owned) to the definition of "domestic mammals" for purposes of the fish and game code. This should have been done when elk farming was authorized in 1987.

Sec. 19. In the 1975 revisor's bill, the spanned reference in AS 16.10.030 (a penalty provision) was amended to include AS 16.10.055, which had been enacted in 1974. The amendment was not necessary and not appropriate for a revisor's bill. AS 16.10.055 (prohibiting interference with commercial fishing gear) contains its own penalty provision, which is more stringent (a class A misdemeanor) than the penalty set out in AS 16.10.030 for a violation of AS 16.10.010 - 16.10.050 (a fine of not less than \$100 nor more than \$500). Further, AS 16.10.010 - 16.10.050 deal with conduct that interferes with or is destructive to waters used for spawning or propagation by salmon unless the conduct is allowed under a permit issued by DEC, and bear very little relationship to the conduct covered by AS 16.10.055. The amendment proposed in the bill restores the law to its original state. If this amendment is made, we will set out AS 16.10.055 in its own article when the AS 16 pamphlet is replaced later this year.

Sec. 21. The sentence proposed for deletion from AS 18.35.120 is meaningless because of the repeal of AS 18.35.100(a) in 1982.

Secs. 22 and 23. These provisions simply update the name of the Nuclear Regulatory Commission, formerly the Atomic Energy Commission.

Sec. 24. The Department of Transportation and Public Facilities does not regulate the referenced pressure vessels. They are regulated by the federal Department of Transportation.

Sec. 25. The proposed amendment corrects the description of the action required to initiate a judicial appeal of certain administrative action.

Secs. 26 and 27. Both sections involve changing erroneous references to the entire chapter to references to the relevant article.

Sec. 28. The first part of each of AS 18.67.020(c) and (d) duplicate each other. This amendment eliminates the redundant portion of (d).

Sec. 29. The proposed amendment updates a reference to the Alaska Rules of Court.

Sec. 30. Corrects a statutory reference in the insurance code.

Sec. 33. Deletes obsolete language relating to a deadline for certain administrative action.

Sec. 34. Rewrites the language used to describe vehicles that may receive dealer plates to correct the context. No vehicles are "specified" in AS 28.10.421(d)(10).

Secs. 35 and 36. The term "material land" is not used in AS 38.05, but the word "material" or "materials" is used frequently, most often in the context of "timber and other materials." The term "timber land" is used once in AS 38.05. These two sections of the bill amend the old definition of "'timber land' and 'material land'" to delete the reference to "material land" and the types of materials, so that the definition is now limited to "timber land," and enact a definition for "material" that incorporates the language deleted in the first amendment.

Sec. 37. The language that is amended out of AS 44.81.250(c) became obsolete in 1987 with the passage of ch. 49, SLA 1987, which removed the participation requirements formerly contained in AS 44.81.210(a)(20).

Sec. 38. Repeals provisions that are obsolete. Those provisions and the reasons for their obsolescence are:

AS 14.11.135(2) and (4) - define terms that are defined for the title in AS 14.60.010;

AS 14.17.250(3) - defines a term that is defined for the title;

AS 14.17.250(8) - defines a term that is not used;

AS 14.30.350(3) - defines a term that is defined for the title;

AS 16.05.050(19) - this provision required that a report be given to the legislature by January 1, 1991 and is now obsolete;

AS 18.31.500(?) - defines a term that is not used;

AS 18.35.230(3) - the term related to a repealed provision (see discussion for sec. 14 of this bill);

AS 18.55.950(5) - defines a term that is not used, except in a different context;

AS 18.55.950(9) - defines a term that is not used;

AS 18.60.775 - obsolete through the passage of time;

AS 26.05.040 - the provisions of federal law that are incorporated by reference in this section have all been repealed (the old federal provisions related to the Territorial Guard and have, in large part, been subsequently enacted as a part of state law in AS 26.05).

The text of all provisions proposed for repeal is set out in the appendix.

Sec. 39. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

cc: Deborah Behr  
Department of Law

APPENDIX - TEXT OF REPEALED PROVISIONS

AS 14.11.135(2) and (4):

- (2) "commissioner" means the commissioner of education;  
\* \* \*  
(4) "department" means the Department of Education;

AS 14.17.250(3) and (8):

- (3) "commissioner" means the commissioner of the Department of Education;  
\* \* \*  
(8) "pre-fiscal year" means the year immediately before the fiscal year;

AS 14.30.350(3):

- (3) "department" means the Department of Education;

AS 16.05.050(19):

Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commissioner has, but not by way of limitation, the following powers and duties:

\* \* \*

- (19) to report to the legislature by January 1, 1991, concerning the production and sale of merchandise bearing designs, labels, or words associating the merchandise with the department;

AS 18.31.500(3):

- (3) "asbestos product" means a product that produces airborne asbestos.

AS 18.35.230(3):

- (3) "remodeling" means any substantial modification of the physical structure or redesign and redecoration the value of which exceeds 10 per cent of the fair market value of the structure;

AS 18.55.950(5) and (9):

- (5) "clerk" means the clerk or other official of the municipality who is the custodian of its official records;

\* \* \*

- (9) "mayor" means the mayor of a municipality or the officer having the duties customarily imposed upon the executive head of a municipality;

AS 18.60.775:

Sec. 18.60.775. APPLICABILITY. AS 18.60.750 - 18.60.755 apply only to installations or replacements of safety glazing materials made after January 1, 1975, but do not apply to contracts awarded, under an invitation for bids, before January 1, 1975.

AS 26.05.040:

Sec. 26.05.040. RATIFICATION AND CONFIRMATION OF EXISTING MILITARY FORCES. The provisions of 48 U.S.C. 473 - 479 pertaining to the National Guard apply to the existing units and individuals of the military forces in the state, heretofore organized and known as the Alaska National Guard, and this organization is ratified and confirmed.

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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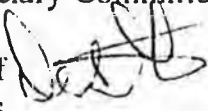
240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

### MEMORANDUM

March 13, 1992

**SUBJECT:** CSSB 399(Judiciary)(1992 Revisor's Bill)

**TO:** Senator Rick Halford  
Chair, Senate Judiciary Committee

**FROM:** David R. Dierdorff   
Revisor of Statutes

This memorandum discusses CSSB 399(Judiciary) (the 1992 revisor's bill, Work Order No. 7-LS1706\D), which I prepared for your committee. The sections that were added following the adoption of amendments at the March 12, 1992, hearing are secs. 1, 2, 4, 8, 13 - 17, and 37.

The bill was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

\* \* \* shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of \* \* \* the statute law of this state.

To assist in understanding the bill, I have summarized the contents by listing sections that have similar effects.

**Sections that delete, repeal, or update obsolete provisions:** Sections 5 -7, 12, 13, 23 - 25, 31, 35, 40, and 41 delete, repeal, or update provisions that have become obsolete either through other legislative action or the passage of time.

**Sections that corrects errors or oversights:** Sections 3, 9 - 11, 14, 15, 20 -22, 26, 32 - 34, and 37 correct errors or oversights that can not be corrected editorially.

**Sections that improve the form or substance of the law:** Sections 1, 2, 4, 8, 16 - 19, 27 - 30, 36, 38, and 39 propose amendments to improve the form or substance of the statute law of Alaska.

### SECTIONAL ANALYSIS

Sections 1 and 2. Section 2 amends AS 01.10.055(a), relating to the criteria for establishing residency in Alaska, by substituting the word "permanently" for the word "indefinitely" in describing the intent required to establish residency. The change is recommended to bring Alaska's statutory law into conformity with the general legal principle that a person's residence is not one for a temporary or special purpose, but one that is intended to be permanent for an unlimited or indefinite time. Section 1 simply emphasizes that no substantive change should be inferred from the passage of this amendment.

Section 3. AS 05.15.210(35) defines "veterans organization," but the term is not used in AS 05.15. The Department of Commerce and Economic Development treats veterans organizations as "qualified organizations," which is consistent with apparent legislative intent. The amendment to AS 05.15.210(29) in sec. 1 of the bill adds veterans organizations to the list of organizations that qualify for charitable gaming permits, thus making express that which had been implied.

Secs. 4, 8, 16, and 17. Each of these sections adds facsimile as an authorized means of communication where existing law allows the use of telegraph. The amendments are intended to keep these laws abreast of technological changes.

Secs. 5 - 7. Each of these sections deletes material that is obsolete in that it is redundant to the general provisions of AS 08.01.020, enacted in 1987.

Secs. 9, 22, 33, and 34. Delete references to the Medical Indemnity Corporation of Alaska, which is no longer functioning. Chapter 14, SLA 1991 repealed the authority for the corporation. These remaining references were overlooked when ch. 14 was enacted.

Sec. 10. This amendment corrects an erroneous reference in the laws relating to electric cooperatives. The need for the amendment was brought to our attention by the corporations section of the Department of Commerce and Economic Development.

Sec. 11. A drafting oversight in ch. 64, SLA 1991 had the effect of taking away the authority of peace officers to make warrantless arrests for violation of domestic violence restraining orders that prohibit communication between the parties. The intended effect of replacing AS 11.61.120(a)(6) with new AS 11.56.740 in last year's legislation was to increase the penalty for a violation to a class A misdemeanor. Unfortunately, AS 12.25.030(b) should have been amended to include a reference to the new provision. This section of the bill corrects that oversight, and also

incorporates a change in the description of the protected class of victims to parallel other changes made by ch. 64.

Sec. 12. Deletes obsolete language relating to the initial board of the Alaska school activities association.

Sec. 13. AS 14.30.410(b) is amended to delete a reference to the statewide bilingual-bicultural center. The statutory direction for that center was deleted from subsection (a) in 1978 and the reference to it in (b) should have been deleted at the same time.

Sec. 14. The section amends AS 14.48.080(b) to correct an erroneous internal references to "this section." Minimum standards are established by AS 14.48.060, not AS 14.48.080.

Sec. 15. AS 14.48.130(c) is amended to correct an erroneous internal reference. Penalties are set out in AS 14.48.190, whereas AS 14.48.180 simply authorizes a suit for injunctive relief.

Sec. 18. This section merely relocates language in a fish and game provision and divides it into paragraphs to eliminate any ambiguity in the scope of the requirement of possession. The provision could be read to require license possession only with respect to taxidermy, when, of course, it relates to all of the listed activities.

Sec. 19. AS 16.05.420(b) makes false statements in fish and game license applications subject to prosecution for unsworn falsification. The provisions of AS 16.05.408(b) make false statements in affidavits required for applications under that section subject to a perjury prosecution. AS 16.04.420(b) applies to AS 16.05.408 as well. The amendment proposed in this bill section makes it clear that the provisions of AS 16.05.408(b) control as to those false statements.

Sec. 20. This section adds "elk" (when lawfully owned) to the definition of "domestic mammals" for purposes of the fish and game code. This should have been done when elk farming was authorized in 1987.

Sec. 21. In the 1975 revisor's bill, the spanned reference in AS 16.10.030 (a penalty provision) was amended to include AS 16.10.055, which had been enacted in 1974. The amendment was not necessary and not appropriate for a revisor's bill. AS 16.10.055 (prohibiting interference with commercial fishing gear) contains its own penalty provision, which is more stringent (a class A misdemeanor) than the penalty set out in AS 16.10.030 for a violation of AS 16.10.010 - 16.10.050 (a fine of not less than \$100 nor more than \$500). Further, AS 16.10.010 - 16.10.050 deal with conduct that interferes with or is destructive to waters used for spawning or propagation by salmon unless the conduct is allowed under a permit issued by DEC, and bear very little relationship to the conduct covered by AS 16.10.055. The amendment proposed

in the bill restores the law to its original state. If this amendment is made, we will set out AS 16.10.055 in its own article when the AS 16 pamphlet is replaced later this year.

Sec. 23. The sentence proposed for deletion from AS 18.35.120 is meaningless because of the repeal of AS 18.35.100(a) in 1982.

Secs. 24 and 25. These provisions simply update the name of the Nuclear Regulatory Commission, formerly the Atomic Energy Commission.

Sec. 26. The Department of Transportation and Public Facilities does not regulate the referenced pressure vessels. They are regulated by the federal Department of Transportation.

Sec. 27. The proposed amendment corrects the description of the action required to initiate a judicial appeal of certain administrative action.

Secs. 28 and 29. Both sections involve changing erroneous references to the entire chapter to references to the relevant article.

Sec. 30. The first part of each of AS 18.67.020(c) and (d) duplicate each other. This amendment eliminates the redundant portion of (d).

Sec. 31. The proposed amendment updates a reference to the Alaska Rules of Court.

Sec. 32. Corrects a statutory reference in the insurance code.

Sec. 35. Deletes obsolete language relating to a deadline for certain administrative action.

Sec. 36. Rewrites the language used to describe vehicles that may receive dealer plates to correct the context. No vehicles are "specified" in AS 28.10.421(d)(10).

Sec. 37. AS 34.50.020(b) is amended to correct an error made when the codifier rewrote § 1, ch. 98, SLA 1957 when codifying it as AS 34.50.020. The language of the 1957 Act read "\* \* \* [may] not be subject to such liability \* \* \* " (emphasis added), clearly referring to the liability described in that portion of the Act which became AS 34.50.020(a). That liability is the limited liability of parents for property damage caused by their children. It is important to note, however, that the incorrect version of the law has been interpreted by the executive branch for years as being correct and granting an immunity much broader than that intended by the 1957 Act. Because the revisor's bill can only correct the codification error, the legislature is urged to consider separate legislation, perhaps an amendment to AS 47, that would

clarify the liability/immunity of the state and its agents for acts of minors in their care and custody.

**Secs. 38 and 39.** The term "material land" is not used in AS 38.05, but the word "material" or "materials" is used frequently, most often in the context of "timber and other materials." The term "timber land" is used once in AS 38.05. These two sections of the bill amend the old definition of "'timber land' and 'material land'" to delete the reference to "material land" and the types of materials, so that the definition is now limited to "timber land," and enact a definition for "material" that incorporates the language deleted in the first amendment.

**Sec. 40.** The language that is amended out of AS 44.81.250(c) became obsolete in 1987 with the passage of ch. 49, SLA 1987, which removed the participation requirements formerly contained in AS 44.81.210(a)(20).

**Sec. 41.** Repeals provisions that are obsolete. Those provisions and the reasons for their obsolescence are:

- AS 14.11.135(2) and (4) - define terms that are defined for the title in AS 14.60.010;
- AS 14.17.250(3) - defines a term that is defined for the title;
- AS 14.17.250(8) - defines a term that is not used;
- AS 14.30.350(3) - defines a term that is defined for the title;
- AS 16.05.050(19) - this provision required that a report be given to the legislature by January 1, 1991 and is now obsolete;
- AS 18.31.500(3) - defines a term that is not used;
- AS 18.35.230(3) - the term related to a repealed provision (see discussion for sec. 14 of this bill);
- AS 18.55.950(5) - defines a term that is not used, except in a different context;
- AS 18.55.950(9) - defines a term that is not used;
- AS 18.60.775 - obsolete through the passage of time;
- AS 26.05.040 - the provisions of federal law that are incorporated by reference in this section have all been repealed (the old federal provisions related to the Territorial Guard and have, in large part, been subsequently enacted as a part of state law in AS 26.05).

The text of all provisions proposed for repeal is set out in the appendix.

**Sec. 42.** Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

cc: Deborah Behr  
Department of Law

APPENDIX - TEXT OF REPEALED PROVISIONS

**AS 14.11.135(2) and (4):**

- (2) "commissioner" means the commissioner of education;  
\* \* \*  
(4) "department" means the Department of Education;

**AS 14.17.250(3) and (8):**

- (3) "commissioner" means the commissioner of the Department of Education;  
\* \* \*  
(8) "pre-fiscal year" means the year immediately before the fiscal year;

**AS 14.30.350(3):**

- (3) "department" means the Department of Education;

**AS 16.05.050(19):**

Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commissioner has, but not by way of limitation, the following powers and duties:

- \* \* \*  
(19) to report to the legislature by January 1, 1991, concerning the production and sale of merchandise bearing designs, labels, or words associating the merchandise with the department;

**AS 18.31.500(3):**

- (3) "asbestos product" means a product that produces airborne asbestos.

**AS 18.35.230(3):**

- (3) "remodeling" means any substantial modification of the physical structure or redesign and redecoration the value of which exceeds 10 per cent of the fair market value of the structure;

**AS 18.55.950(5) and (9):**

- (5) "clerk" means the clerk or other official of the municipality who is the custodian of its official records;  
\* \* \*  
(9) "mayor" means the mayor of a municipality or the officer having the duties customarily imposed upon the executive head of a municipality;

**AS 18.60.775:**

Sec. 18.60.775. APPLICABILITY. AS 18.60.750 - 18.60.755 apply only to installations or replacements of safety glazing materials made after January 1, 1975, but do not apply to contracts awarded, under an invitation for bids, before January 1, 1975.

**AS 26.05.040:**

Sec. 26.05.040. RATIFICATION AND CONFIRMATION OF EXISTING MILITARY FORCES. The provisions of 48 U.S.C. 473 - 479 pertaining to the National Guard apply to the existing units and individuals of the military forces in the state, heretofore organized and known as the Alaska National Guard, and this organization is ratified and confirmed.

7  
DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY  
STATE OF ALASKA

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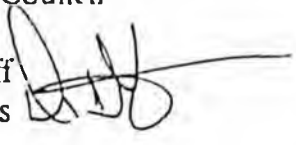
240 Main Street, Suite 500  
Juneau, Alaska 99801-2101

MEMORANDUM

February 7, 1992

**SUBJECT:** 1992 Revisor's Bill (Work Order No. 7-LS1706A) SB 399  
Sen. Supp. #14

**TO:** Senator Dick Eliason  
Chair, Legislative Council

**FROM:** David R. Dierdorff   
Revisor of Statutes

This memorandum discusses the draft 1992 revisor's bill, Work Order No. 7-LS1706A, which I am presenting to Legislative Council for its consideration for introduction during upcoming session.

The bill was prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

\* \* \* shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of \* \* \* the statute law of this state.

To assist in understanding the draft, I have summarized the contents by listing sections that have similar effects.

Sections that delete, repeal, or update obsolete provisions: Sections 2 - 4, 8, 14 - 16, 22, 26, 30 and 31 delete, repeal, or update provisions that have become obsolete either through other legislative action or the passage of time.

Sections that corrects errors or oversights: Sections 1, 5 - 7, 11 - 13, 17, and 23 - 25 correct errors or oversights that can not be corrected editorially.

Sections that improve the form or substance of the law: Sections 9, 10, 18 - 21, and 27 - 29 propose amendments to improve the form or substance of the statute law of Alaska.

Transmittal Letter

### SECTIONAL ANALYSIS

Section 1. AS 05.15.210(35) defines "veterans organization," but the term is not used in AS 05.15. The Department of Commerce and Economic Development treats veterans organizations as "qualified organizations," which is consistent with apparent legislative intent. The amendment to AS 05.15.210(29) in sec. 1 of the bill adds veterans organizations to the list of organizations that qualify for charitable gaming permits, thus making express that which had been implied.

Secs. 2 - 4. Each of these sections deletes material that is obsolete in that it is redundant to the general provisions of AS 08.01.020, enacted in 1987.

Secs. 5, 13, 24, and 25. Delete references to the Medical Indemnity Corporation of Alaska, which is no longer functioning. Chapter 14, SLA 1991 repealed the authority for the corporation. These remaining references were overlooked when ch. 14 was enacted.

Sec. 6. This amendment corrects an erroneous reference in the laws relating to electric cooperatives. The need for the amendment was brought to our attention by the corporations section of the Department of Commerce and Economic Development.

Sec. 7. A drafting oversight in ch. 64, SLA 1991 had the effect of taking away the authority of peace officers to make warrantless arrests for violation of domestic violence restraining orders that prohibit communication between the parties. The intended effect of replacing AS 11.61.120(a)(6) with new AS 11.56.740 in last year's legislation was to increase the penalty for a violation to a class A misdemeanor. Unfortunately, AS 12.25.030(b) should have been amended to include a reference to the new provision. This section of the bill corrects that oversight, and also incorporates a change in the description of the protected class of victims to parallel other changes made by ch. 64.

Sec. 8. Deletes obsolete language relating to the initial board of the Alaska school activities association.

Sec. 9. This section merely relocates language in a fish and game provision and divides it into paragraphs to eliminate any ambiguity in the scope of the requirement of possession. The provision could be read to require license possession only with respect to taxidermy, when, of course, it relates to all of the listed activities.

Sec. 10. AS 16.05.420(b) makes false statements in fish and game license applications subject to prosecution for unsworn falsification. The provisions of AS 16.05.408(b) make false statements in affidavits required for applications under that section subject

to a perjury prosecution. AS 16.05.420(b) applies to AS 16.05.408 as well. The amendment proposed in this bill section makes it clear that the provisions of AS 16.05.408(b) control as to those false statements.

Sec. 11. This section adds "elk" (when lawfully owned) to the definition of "domestic mammals" for purposes of the fish and game code. This should have been done when elk farming was authorized in 1987.

Sec. 12. In the 1975 revisor's bill, the spanned reference in AS 16.10.030 (a penalty provision) was amended to include AS 16.10.055, which had been enacted in 1974. The amendment was not necessary and not appropriate for a revisor's bill. AS 16.10.055 (prohibiting interference with commercial fishing gear) contains its own penalty provision, which is more stringent (a class A misdemeanor) than the penalty set out in AS 16.10.030 for a violation of AS 16.10.010 - 16.10.050 (a fine of not less than \$100 nor more than \$500). Further, AS 16.10.010 - 16.10.050 deal with conduct that interferes with or is destructive to waters used for spawning or propagation by salmon unless the conduct is allowed under a permit issued by DEC, and bear very little relationship to the conduct covered by AS 16.10.055. The amendment proposed in the bill restores the law to its original state. If this amendment is made, we will set out AS 16.10.055 in its own article when the AS 16 pamphlet is replaced later this year.

Sec. 14. The sentence proposed for deletion from AS 18.35.120 is meaningless because of the repeal of AS 18.35.100(a) in 1982.

Secs. 15 and 16. These provisions simply update the name of the Nuclear Regulatory Commission, formerly the Atomic Energy Commission.

Sec. 17. The Department of Transportation and Public Facilities does not regulate the referenced pressure vessels. They are regulated by the federal Department of Transportation.

Sec. 18. The proposed amendment corrects the description of the action required to initiate a judicial appeal of certain administrative action.

Secs. 19 and 20. Both sections involve changing erroneous references to the entire chapter to references to the relevant article.

Sec. 21. The first part of each of AS 18.67.020(c) and (d) duplicate each other. This amendment eliminates the redundant portion of (d).

Sec. 22. The proposed amendment updates a reference to the Alaska Rules of Court.

Sec. 23. Corrects a statutory reference in the insurance code.

Sec. 26. Deletes obsolete language relating to a deadline for certain administrative action.

Sec. 27. Rewrites the language used to describe vehicles that may receive dealer plates to correct the context. No vehicles are "specified" in AS 28.10.421(d)(10).

Secs. 28 and 29. The term "material land" is not used in AS 38.05, but the word "material" or "materials" is used frequently, most often in the context of "timber and other materials." The term "timber land" is used once in AS 38.05. These two sections of the bill amend the old definition of "'timber land' and 'material land'" to delete the reference to "material land" and the types of materials, so that the definition is now limited to "timber land," and enact a definition for "material" that incorporates the language deleted in the first amendment.

Sec. 30. The language that is amended out of AS 44.81.250(c) became obsolete in 1987 with the passage of ch. 49, SLA 1987, which removed the participation requirements formerly contained in AS 44.81.210(a)(20).

Sec. 31. Repeals provisions that are obsolete. Those provisions and the reasons for their obsolescence are:

AS 14.11.135(2) and (4) - define terms that are defined for the title in AS 14.60.010;

AS 14.17.250(3) - defines a term that is defined for the title;

AS 14.17.250(8) - defines a term that is not used;

AS 16.05.050(19) - this provision required that a report be given to the legislature by January 1, 1991 and is now obsolete;

AS 18.31.500(3) - defines a term that is not used;

AS 18.35.230(3) - the term related to a repealed provision (see discussion for sec. 14 of this bill);

AS 18.55.950(5) - defines a term that is not used, except in a different context;

AS 18.55.950(9) - defines a term that is not used;

AS 18.60.775 - obsolete through the passage of time.

The text of all provisions proposed for repeal is set out in the appendix.

Sec. 32. Gives the bill an immediate effective date.

If I may be of further assistance, please advise.

APPENDIX - TEXT OF REPEALED PROVISIONS

AS 14.11.135(2) and (4):

- (2) "commissioner" means the commissioner of education;  
\* \* \*  
(4) "department" means the Department of Education;

AS 14.17.250(3) and (8):

- (3) "commissioner" means the commissioner of the Department of Education;  
\* \* \*  
(8) "pre-fiscal year" means the year immediately before the fiscal year;

AS 16.05.050(19):

Sec. 16.05.050. POWERS AND DUTIES OF COMMISSIONER. The commissioner has, but not by way of limitation, the following powers and duties:

- \* \* \*  
(19) to report to the legislature by January 1, 1991, concerning the production and sale of merchandise bearing designs, labels, or words associating the merchandise with the department;

AS 18.31.500(3):

- (3) "asbestos product" means a product that produces airborne asbestos.

AS 18.35.230(3):

(3) "remodeling" means any substantial modification of the physical structure or redesign and redecoration the value of which exceeds 10 per cent of the fair market value of the structure;

AS 18.55.950(5) and (9):

- (5) "clerk" means the clerk or other official of the municipality who is the custodian of its official records;  
\* \* \*  
(9) "mayor" means the mayor of a municipality or the officer having the duties customarily imposed upon the executive head of a municipality;

AS 18.60.775:

Sec. 18.60.775. APPLICABILITY. AS 18.60.750 - 18.60.755 apply only to installations or replacements of safety glazing materials made after January 1, 1975, but do not apply to contracts awarded, under an invitation for bids, before January 1, 1975.

DRD:pl  
92-083.plm

A M E N D M E N T

OFFERED IN THE  
TO: SB 399

Page 1, after line 3:

Insert new bill sections to read:

**\*\* Section 1. PURPOSE OF SECTION 2.** The amendment to AS 01.10.055(a) in sec. 2 of this Act is technical only and made for uniformity. The words "indefinitely" and "permanently" are intended to have the same legal effect.

**\* Sec. 2.** AS 01.10.055(a) is amended to read:

(a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state permanently [INDEFINITELY] and to make a home in the state."

Page 1, line 4:

Delete **\*\* Section 1.**"

Insert **\*\* Sec. 3.**"

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE

TO: 7-LS1706A (Draft 2/7/92)

Page 1, after line 11:

Insert a new bill section to read:

"\* Sec. 2. AS 08.01.087(b) is amended to read:

(b) If it appears to the commissioner that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it, or a provision of AS 43.70, or a provision of this title or regulation adopted under this title dealing with an occupation or board listed in AS 08.01.010, the commissioner may, if the commissioner considers it in the public interest, and after notification of a proposed order or action by telephone, [OR] telegraph, or facsimile to all board members, if a board regulates the act or practice involved, unless a majority of the members of the board object within 10 days,

(1) issue an order directing the person to stop the act or practice; however, reasonable notice of and an opportunity for a hearing must first be given to the person, except that the commissioner may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days after the person receives the notice and has not requested a hearing by that time; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; the commissioner or the commissioner's designee shall be the hearing officer at the hearing and shall issue a final order within 10 days after the hearing;

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with this chapter, a regulation adopted under it, an order issued under it, or with a provision of this title or regulation adopted under this title dealing with business licenses or an occupation or board listed in AS 08.01.010;

(3) examine or have examined the books and records of a person whose business activities require a business license or licensure by a board listed in AS 08.01.010, or whose

occupation is listed in AS 08.01.010; the commissioner may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records, and other documents."

Renumber the following bill sections accordingly.

Page 2, after line 12:

Insert a new bill section to read:

"\* Sec. 6. AS 08.88.037(b) is amended to read:

(b) If it appears to the department that a person has engaged in or is about to engage in an act or practice in violation of a provision of this chapter or a regulation adopted under it and that action is warranted in the public interest, the department shall notify all commission members by telephone, [OR] telegraph, or facsimile of a proposed order or action, and, if a majority of the members of the commission approve, the department may

(1) after reasonable notice of and an opportunity for a hearing is given to the person, issue an order directing the person to stop the act or practice; the department may issue a temporary order before a hearing is held; a temporary order remains in effect until a final order affirming, modifying, or reversing the temporary order is issued or until 15 days have elapsed after the person receives the notice and has not requested a hearing; a temporary order becomes final if the person to whom the notice is addressed does not request a hearing within 15 days after receiving the notice; if a hearing is requested, a hearing shall be conducted by a hearing officer within 30 days; the commission shall issue a final order within 10 days after the hearing;

(2) bring an action in superior court to enjoin the act or practice and to enforce compliance with this chapter, a regulation adopted under it, or an order issued under it;

(3) examine or have examined the books and records of a person whose business activities require licensure under this chapter and the department may require the person to pay the reasonable costs of the examination; and

(4) issue subpoenas for the attendance of witnesses, and the production of books, records, and other documents."

Renumber the following bill sections accordingly.

Page 3, after line 23:

Insert new bill sections to read:

"\* Sec. 11. AS 15.20.470 is amended to read:

Sec. 15.20.470. REQUIREMENT OF NOTICE. The director shall give the candidate or designated chairman signing the application, the two or more persons appointed to represent the applicant during the recount, and other directly interested parties, notice of the time and place of the recount by certified mail, [BY] telegraph, [OR BY] telephone, or facsimile.

\* Sec. 12. AS 15.25.130 is amended to read:

Sec. 15.25.130. SELECTION OF NOMINEES FOR PARTY PETITION. The nominees of political parties by party petition may be selected for statewide offices by the party central committee or in any other manner prescribed by the party bylaws, and the petition for statewide offices shall be signed by the chairman of the central committee, or in the absence of the chairman, by any two members of the committee. The nominees of political parties by party petition may be selected for district-wide offices by the respective party district committee or in any other manner prescribed by the party bylaws, and the petition for district-wide offices shall be signed by the chairman of the party district committee, or in the absence of the chairman, by any two members of the party committee, or in any other manner prescribed by the party bylaws. The petition may be delivered in person, or by mail, [OR BY] telegraph, or facsimile."

Renumber the following bill sections accordingly.

A M E N D M E N T

OFFERED IN THE SENATE JUDICIARY COMMITTEE

TO: SB 399

Page 3, after line 23:

Insert new bill sections to read:

"\* Sec. 9. AS 14.30.410(b) is amended to read:

(b) The department shall adopt regulations for the determination of entitlement and the distribution of bilingual-bicultural funds to city and borough school districts and regional educational attendance areas [AND THE STATEWIDE CENTER].

\* Sec. 10. AS 14.48.080(b) is amended to read:

(b) An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only a postsecondary educational institution or institutions that [WHICH] meet the minimum standards established in AS 14.48.060 [THIS SECTION] and the criteria established under AS 14.48.050(1).

\* Sec. 11. AS 14.48.130(c) is amended to read:

(c) If, upon the evidence at a hearing, the commission finds that a postsecondary educational institution or its agent, or both, has engaged in or is engaging in, an act or practice which violates this chapter or the regulations adopted under this chapter the commission shall serve upon the institution or agent or both, an order requiring the institution or agent or both to cease and desist from the act or practice. If the commission finds that the complainant, or class of complainants, has suffered loss or damage as a result of the act or practice, the commission may also award the complainant, or class of complainants, full or partial restitution for the damage or loss and may impose the penalties provided for in AS 14.48.190 [AS 14.48.180]. The commission may also, based on its own investigation and the evidence adduced at the hearing, begin an action to revoke an institution's authorization to operate or an agent's permit."

Renumber the following bill sections accordingly.

Page 7, after line 31:

Insert a new bill section to read:

\*\* Sec. 31. AS 34.50.020(b) is amended to read:

(b) A state agency or its agents, including a person working in or responsible for the operation of a foster, receiving, or detention home, or children's institution, is not liable under (a) of this section for the acts of unemancipated minors in its charge or custody."

Renumber the following bill sections accordingly.

Page 8, line 17, after "14.17.250(8);":

Insert "AS 14.30.350(3);"

Page 8, line 18:

Delete "and"

After "AS 18.60.775":

Insert "; and AS 26.05.040"

*Parents. liability  
for children  
\$2000 limit*

*This amendment would  
bring back immunity to property  
damage or wear in 1959*

*Exec interpretation*

7-LS1706D

Dierdorff

3/13/92

*Sen. Halford*  
*memo*  
*copy to D. Behr*  
*draft memo*

## CS FOR SENATE BILL NO. 399 (JUDICIARY)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Offered:

Referred:

Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE LEGISLATIVE COUNCIL

## A BILL

## FOR AN ACT ENTITLED

1 "An Act making corrective amendments to the Alaska Statutes as recommended by the  
 2 revisor of statutes; and providing for an effective date."

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

4 \* Section 1. PURPOSE OF SECTION 2. The amendment to AS 01.10.055(a) in sec. 2 of this Act  
 5 is technical only and made for uniformity. The words "indefinitely" and "permanently" are intended to  
 6 have the same legal effect.

7 \* Sec. 2. AS 01.10.055(a) is amended to read:

8 (a) A person establishes residency in the state by being physically present in the state  
 9 with the intent to remain in the state permanently [INDEFINITELY] and to make a home in the  
 10 state.

11 \* Sec. 3. AS 05.15.210(29) is amended to read:

12 (29) "qualified organization" means a bona fide civic or service organization or  
 13 a bona fide religious, charitable, fraternal, veterans, labor, political, or educational organization,  
 14 police or fire department and company, dog mushers' association, outboard motor association,

1 or fishing derby or nonprofit trade association in the state, that operates without profits to its  
2 members and that has been in existence continually for a period of three years immediately  
3 before applying for a license; the organization may be a firm, corporation, company, association,  
4 or partnership,

5 \* Sec. 4. AS 08.01.087(b) is amended to read:

6 (b) If it appears to the commissioner that a person has engaged in or is about to engage  
7 in an act or practice in violation of a provision of this chapter or a regulation adopted under it,  
8 or a provision of AS 43.70, or a provision of this title or regulation adopted under this title  
9 dealing with an occupation or board listed in AS 08.01.010, the commissioner may, if the  
10 commissioner considers it in the public interest, and after notification of a proposed order or  
11 action by telephone, [OR] telegraph, or facsimile to all board members, if a board regulates the  
12 act or practice involved, unless a majority of the members of the board object within 10 days,

13 (1) issue an order directing the person to stop the act or practice; however,  
14 reasonable notice of and an opportunity for a hearing must first be given to the person, except  
15 that the commissioner may issue a temporary order before a hearing is held; a temporary order  
16 remains in effect until a final order affirming, modifying, or reversing the temporary order is  
17 issued or until 15 days after the person receives the notice and has not requested a hearing by  
18 that time; a temporary order becomes final if the person to whom the notice is addressed does  
19 not request a hearing within 15 days after receiving the notice; the commissioner or the  
20 commissioner's designee shall be the hearing officer at the hearing and shall issue a final order  
21 within 10 days after the hearing;

22 (2) bring an action in the superior court to enjoin the acts or practices and to  
23 enforce compliance with this chapter, a regulation adopted under it, an order issued under it, or  
24 with a provision of this title or regulation adopted under this title dealing with business licenses  
25 or an occupation or board listed in AS 08.01.010;

26 (3) examine or have examined the books and records of a person whose business  
27 activities require a business license or licensure by a board listed in AS 08.01.010, or whose  
28 occupation is listed in AS 08.01.010; the commissioner may require the person to pay the  
29 reasonable costs of the examination; and

30 (4) issue subpoenas for the attendance of witnesses, and the production of books,  
31 records, and other documents.

1 \* Sec. 5. AS 08.20.025 is amended to read:

2 Sec. 08.20.025. REMOVAL OF BOARD MEMBERS. A member of the board may be  
3 removed from office by the governor for cause. [THE BOARD MAY BY REGULATION  
4 PROVIDE THAT UNEXCUSED ABSENCES FROM MEETINGS CONSTITUTE CAUSE FOR  
5 REMOVAL.]

6 \* Sec. 6. AS 08.70.055 is amended to read:

7 Sec. 08.70.055. REMOVAL OF BOARD MEMBERS. A member of the board may be  
8 removed from office by the governor for cause. [THE BOARD MAY BY REGULATION  
9 PROVIDE THAT UNEXCUSED ABSENCES FROM MEETINGS CONSTITUTE CAUSE FOR  
10 REMOVAL.]

11 \* Sec. 7. AS 08.80.105 is amended to read:

12 Sec. 08.80.105. REMOVAL OF BOARD MEMBERS. A member of the board may be  
13 removed from office by the governor for cause. [THE BOARD MAY BY REGULATION  
14 PROVIDE THAT UNEXCUSED ABSENCES FROM MEETINGS CONSTITUTE CAUSE FOR  
15 REMOVAL.]

16 \* Sec. 8. AS 08.88.037(b) is amended to read:

17 (b) If it appears to the department that a person has engaged in or is about to engage in  
18 an act or practice in violation of a provision of this chapter or a regulation adopted under it and  
19 that action is warranted in the public interest, the department shall notify all commission  
20 members by telephone, [OR] telegraph, or facsimile of a proposed order or action, and, if a  
21 majority of the members of the commission approve, the department may

22 (1) after reasonable notice of and an opportunity for a hearing is given to the  
23 person, issue an order directing the person to stop the act or practice; the department may issue  
24 a temporary order before a hearing is held; a temporary order remains in effect until a final order  
25 affirming, modifying, or reversing the temporary order is issued or until 15 days have elapsed  
26 after the person receives the notice and has not requested a hearing; a temporary order becomes  
27 final if the person to whom the notice is addressed does not request a hearing within 15 days  
28 after receiving the notice; if a hearing is requested, a hearing shall be conducted by a hearing  
29 officer within 30 days; the commission shall issue a final order within 10 days after the hearing;

30 (2) bring an action in superior court to enjoin the act or practice and to enforce  
31 compliance with this chapter, a regulation adopted under it, or an order issued under it;

1 (3) examine or have examined the books and records of a person whose business  
2 activities require licensure under this chapter and the department may require the person to pay  
3 the reasonable costs of the examination; and

4 (4) issue subpoenas for the attendance of witnesses, and the production of books,  
5 records, and other documents.

6 \* Sec. 9. AS 09.55.548(a) is amended to read:

7 (a) Damages shall be awarded in accordance with principles of the common law. The fact  
8 finder in a malpractice action shall render any award for damages by category of loss. The court  
9 may enter a judgement that future damages be paid in whole or in part by periodic payments  
10 rather than by a lump-sum payment; the judgment shall include, if necessary, other provisions  
11 to assure that funds are available as periodic payments become due. Insurance from an authorized  
12 insurer as defined in AS 21.90.900 [OR FROM THE MEDICAL INDEMNITY CORPORATION  
13 OF ALASKA] is sufficient assurance that funds will be available. Any part of the award that  
14 [WHICH] is paid on a periodic basis shall be adjusted annually according to changes in the  
15 consumer price index in the community where the claimant resides. In this subsection, future  
16 damages includes damages for future medical treatment, care or custody, loss of future earnings,  
17 or loss of bodily function of the claimant.

18 \* Sec. 10. AS 10.25.040 is amended to read:

19 Sec. 10.25.040. NAME. The name of a cooperative must include the words "electric"  
20 or "telephone," as appropriate to its purpose, and "cooperative," and the abbreviation "inc." The  
21 name of a cooperative shall be distinct from the name of other cooperatives or corporations  
22 organized under the laws of or authorized to do business in this state. This section does not apply  
23 to a corporation that [WHICH] becomes subject to this chapter by compliance with AS 10.25.290  
24 and 10.25.300 or 10.25.620 [10.25.600] and that [WHICH] elects to retain a corporate name that  
25 [WHICH] does not comply with this section.

26 \* Sec. 11. AS 12.25.030(b) is amended to read:

27 (b) In addition to the authority granted under (a) of this section, a peace officer without  
28 a warrant may arrest a person when the peace officer has reasonable cause for believing that the  
29 person has committed a crime under

30 (1) AS 11.56.740; or

31 (2) AS 11.41, AS 11.46.330, or AS 11.61.120, or has violated an ordinance with

1 elements substantially similar to the elements of a crime under AS 11.41, AS 11.46.330, or  
2 AS 11.61.120, when the victim is a spouse or former spouse of the person who committed the  
3 crime; a parent, grandparent, child, or grandchild of the person who committed the crime; a  
4 member of the social unit comprised of those living together in the same dwelling as the person  
5 who committed the crime; or another person who is not a spouse or former spouse of the person  
6 who committed the crime but who previously lived in a spousal relationship with the person who  
7 committed the crime or is in or has been in a dating, courtship, or engagement relationship  
8 with the person who committed the crime.

9 \* Sec. 12. AS 14.07.058(d) is amended to read:

10 (d) The governing body of the association shall be the board of control with at least one  
11 member from each judicial district on the board of control. A member of the board shall be  
12 elected from each regional activities association by the members of that region. The term of  
13 office for each member is two years [, EXCEPT THAT ONE-HALF OF THE MEMBERS  
14 ELECTED TO THE FIRST ELECTED BOARD SHALL BE ELECTED FOR ONE-YEAR  
15 TERMS UNDER REGULATIONS PRESCRIBED BY THE COMMISSIONER OF  
16 EDUCATION].

17 \* Sec. 13. AS 14.30.410(b) is amended to read:

18 (b) The department shall adopt regulations for the determination of entitlement and the  
19 distribution of bilingual-bicultural funds to city and borough school districts and regional  
20 educational attendance areas [AND THE STATEWIDE CENTER].

21 \* Sec. 14. AS 14.48.080(b) is amended to read:

22 (b) An applicant for an agent's permit shall be an individual of good reputation and  
23 character and shall represent only a postsecondary educational institution or institutions that  
24 [WHICH] meet the minimum standards established in AS 14.48.060 [THIS SECTION] and the  
25 criteria established under AS 14.48.050(1).

26 \* Sec. 15. AS 14.48.130(c) is amended to read:

27 (c) If, upon the evidence at a hearing, the commission finds that a postsecondary  
28 educational institution or its agent, or both, has engaged in or is engaging in, an act or practice  
29 which violates this chapter or the regulations adopted under this chapter the commission shall  
30 serve upon the institution or agent or both, an order requiring the institution or agent or both to  
31 cease and desist from the act or practice. If the commission finds that the complainant, or class

1 of complainants, has suffered loss or damage as a result of the act or practice, the commission  
2 may also award the complainant, or class of complainants, full or partial restitution for the  
3 damage or loss and may impose the penalties provided for in AS 14.48.190 [AS 14.48.180]. The  
4 commission may also, based on its own investigation and the evidence adduced at the hearing,  
5 begin an action to revoke an institution's authorization to operate or an agent's permit.

6 \* Sec. 16. AS 15.20.470 is amended to read:

7 Sec. 15.20.470. REQUIREMENT OF NOTICE. The director shall give the candidate or  
8 designated chairman signing the application, the two or more persons appointed to represent the  
9 applicant during the recount, and other directly interested parties, notice of the time and place  
10 of the recount by certified mail, [BY] telegraph, [OR BY] telephone, or facsimile.

11 \* Sec. 17. AS 15.25.130 is amended to read:

12 Sec. 15.25.130. SELECTION OF NOMINEES FOR PARTY PETITION. The nominees  
13 of political parties by party petition may be selected for statewide offices by the party central  
14 committee or in any other manner prescribed by the party bylaws, and the petition for statewide  
15 offices shall be signed by the chairman of the central committee, or in the absence of the  
16 chairman, by any two members of the committee. The nominees of political parties by party  
17 petition may be selected for district-wide offices by the respective party district committee or in  
18 any other manner prescribed by the party bylaws, and the petition for district-wide offices shall  
19 be signed by the chairman of the party district committee, or in the absence of the chairman, by  
20 any two members of the party committee, or in any other manner prescribed by the party bylaws.  
21 The petition may be delivered in person, or by mail, [OR BY] telegraph, or facsimile.

22 \* Sec. 18. AS 16.05.330(a) is amended to read:

23 (a) Except as otherwise permitted in this chapter, without having the appropriate  
24 license or tag in actual possession a person may not engage in

25 (1) sport fishing, including the taking of razor clams;

26 (2) [IN] hunting, trapping, or fur dealing;

27 (3) [IN] the farming of fish, fur, or game; or

28 (4) [IN] taxidermy [, WITHOUT HAVING THE APPROPRIATE LICENSE OR

29 TAG IN ACTUAL POSSESSION].

30 \* Sec. 19. AS 16.05.420(b) is amended to read:

31 (b) Except as provided in AS 16.05.408(b), a [A] person who knowingly makes a false

1 statement, or knowingly omits a material fact, in an application for a license, tag, or permit  
2 issued under AS 16.05.330 - 16.05.430 is guilty of unsworn falsification under AS 11.56.210.

3 \* Sec. 20. AS 16.05.940(8) is amended to read:

4 (8) "domestic mammals" include musk oxen, bison, elk, and reindeer, if they are  
5 lawfully owned;

6 \* Sec. 21. AS 16.10.030 is amended to read:

7 Sec. 16.10.030. PENALTY FOR VIOLATION OF AS 16.10.010 - 16.10.050  
8 [AS 16.10.010 - 16.10.055]. A person who violates AS 16.10.010 - 16.10.050 [AS 16.10.010 -  
9 16.10.055] is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not less  
10 than \$100 nor more than \$500.

11 \* Sec. 22. AS 18.20.075(a) is amended to read:

12 (a) To be eligible for a license, each hospital shall have in operation an internal risk  
13 management program that shall:

14 (1) investigate the frequency and causes of incidents in hospitals that cause injury  
15 to patients;

16 (2) develop and implement measures to minimize the risk of injury to patients;  
17 in developing these measures each hospital shall take into account recommendations of its  
18 medical staff, [THE MEDICAL INDEMNITY CORPORATION OF ALASKA,] private  
19 underwriters, industry standards, experience of other hospitals, and recommendations of licensing  
20 boards of other health care providers; and

21 (3) analyze patient grievances that relate to patient care.

22 \* Sec. 23. AS 18.35.120 is amended to read:

23 Sec. 18.35.120. ENFORCEMENT OF AS 18.35.100. The department shall adopt  
24 regulations to implement and enforce AS 18.35.100 by appropriate means. The regulations must  
25 set standards of sanitation and must provide for, but need not be limited to, periodic inspections.  
26 However, the regulations may not require a restaurant or tavern to have more than one toilet  
27 accommodation. [A RESTAURANT OR TAVERN THAT IS REMODELED AFTER  
28 AUGUST 15, 1976 IS CONSIDERED TO BE NEWLY CONSTRUCTED.]

29 \* Sec. 24. AS 18.45.020 is amended to read:

30 Sec. 18.45.020. UNITED STATES LICENSES OR PERMITS REQUIRED. A person  
31 may not manufacture, construct, produce, transfer, acquire, or possess a special nuclear material,