

ALASKA LEGISLATURE COMMITTEE FILES 2001-2002 8672

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1 (3) if a licensee has accumulated more credit hours than required under
2 (2) of this subsection by the end of the license period, a maximum of eight hours may
3 be carried over to meet the requirements of (2) of this subsection in the next license
4 period;

5 (4) a program or seminar may not be approved as an acceptable
6 continuing education program unless it is a formal program of learning that
7 contributes to the professional competence of the licensee; individual study programs
8 or correspondence courses may be used to fulfill continuing education requirements if
9 approved by the director;

10 (5) a nonresident licensee is exempt from the requirements of this
11 subsection [IF THE LICENSEE SUBMITS EVIDENCE SATISFACTORY TO THE
12 DIRECTOR THAT THE LICENSEE HAS SATISFIED ANY CONTINUING
13 EDUCATION REQUIREMENTS OF THE LICENSEE'S DOMICILIARY STATE].

14 * Sec. 7. AS 21.27.025(a) is amended to read:

15 (a) A licensee shall notify the director within 30 days in writing [BY
16 CERTIFIED MAIL] of a change in residence, employment that is licensed under this
17 chapter, place of business, legal name, fictitious name or alias, mailing address, or
18 phone number. A licensee shall report in writing to the director any
19 administrative action taken against the licensee by a governmental agency of
20 another state or by a governmental agency of another jurisdiction within 30 days
21 after the final disposition of the action. A licensee shall submit to the director the
22 final order and other relevant legal documents in the action. A licensee shall
23 report to the director any criminal prosecution of the licensee in this or another
24 state or jurisdiction within 30 days after the date of filing of the criminal
25 complaint, indictment, information, or citation in the prosecution. The licensee
26 shall submit to the director a copy of the criminal complaint, calendaring order,
27 and other relevant legal documents in the prosecution [; A SUSPENSION,
28 REVOCATION, OR DISCIPLINARY ACTION OF A LICENSE BY ANOTHER
29 STATE OR JURISDICTION; OR A CONVICTION OF A MISDEMEANOR OR
30 FELONY].

31 * Sec. 8. AS 21.27.025(b) is amended to read:

1 (b) A compliance officer [PRINCIPAL OR MANAGER] shall notify the
2 director in writing within 30 days of a termination of employment of a licensed
3 individual in the firm. Notice required under this subsection must include

4 (1) the licensee's name;

5 (2) the firm's name and address;

6 (3) the date of hire, self-employment, or termination of the licensee;

7 and

8 (4) other information required by the director.

9 * Sec. 9. AS 21.27.040(a) is amended to read:

10 (a) Application for a license shall be made to the director upon forms
11 prescribed by the director. As a part of or in connection with the application, the
12 applicant shall furnish information concerning the applicant's identity, personal
13 history, experience, business record, purposes, and other pertinent facts that the
14 director may reasonably require. The applicant shall declare, [UNDER OATH AND]
15 subject to penalty of denial, nonrenewal, suspension, or revocation of a license issued
16 by the director that the statements made in or in connection with the application are
17 true, correct, and complete to the best of the applicant's knowledge and belief.
18 Payment of an application fee established under AS 21.06.250 must be submitted with
19 the application.

20 * Sec. 10. AS 21.27.040 is amended by adding a new subsection to read:

21 (e) As part of the application required by (a) of this section, an applicant shall
22 furnish to the director a full set of fingerprints so that the director may obtain criminal
23 justice information as provided under AS 12.62 about the applicant. The director shall
24 submit the completed fingerprint card to the Department of Public Safety. The
25 Department of Public Safety is authorized to submit the fingerprints to the Federal
26 Bureau of Investigation for a national criminal history record check.

27 * Sec. 11. AS 21.27.060(a) is amended to read:

28 (a) Except as provided in this chapter, an applicant for an individual license
29 and a compliance officer [PRINCIPAL OR MANAGER] applicant for a firm license
30 shall, before the issuance of the license, personally take and pass, to the satisfaction of
31 the director, an examination that tests the knowledge and competence of the applicant

1 as to the applicant's duties and responsibilities as a licensee and the insurance statutes
2 [LAWS] and regulations of the state.

3 * Sec. 12. AS 21.27.060(c) is repealed and reenacted to read:

4 (c) An individual who applies for an insurance producer license in this state
5 who was previously licensed for the same lines of authority in that individual's prior
6 home state is not required to pass the examination required by (a) of this section in
7 order to secure the same authority in this state. The exemption available under this
8 subsection applies only if the application is received within 90 days after the
9 cancellation of the applicant's previous license in the applicant's prior home state and

10 (1) the applicant's prior home state verifies that, at the time of
11 cancellation, the applicant held an insurance producer license that was in good
12 standing in that state; or

13 (2) the insurance producer licensing database records for the prior
14 home state that are maintained by the National Association of Insurance
15 Commissioners or its affiliates or subsidiaries indicate that the applicant is or was
16 licensed in good standing for the kind of license requested.

17 * Sec. 13. AS 21.27.060(d) is amended to read:

18 (d) This section does not apply to an applicant

19 (1) for a limited license under AS 21.27.150(a)(1), (5), or (6)
20 [AS 21.27.150(a)(1), (2), (6), OR (7)]; or

21 (2) who, at any time within the one-year [TWO-YEAR] period
22 immediately preceding the date the current pending application is received by the
23 division, had been licensed in good standing in this state under a license requiring
24 substantially similar qualifications as required by the license applied for [; OR

25 (3) WHOSE LICENSE IN ITS RESIDENT JURISDICTION
26 REQUIRES THE SAME QUALIFICATIONS AS THE LICENSE APPLIED FOR IN
27 THIS STATE IF THE LICENSE IN ALL JURISDICTIONS IS IN GOOD
28 STANDING].

29 * Sec. 14. AS 21.27.100 is amended by adding new subsections to read:

30 (f) An insurer may appoint an insurance producer to all or some insurers
31 within the insurer's holding company system or group by the filing of a single

1 appointment under this subsection.

2 (g) The authorized or apparently authorized acts on behalf of an appointing
3 insurer of an insurance producer appointed under this section are considered the acts
4 of that insurer.

5 * Sec. 15. AS 21.27.110 is repealed and reenacted to read:

6 **Sec. 21.27.110. Term of appointment.** (a) An appointment under
7 AS 21.27.100 continues in force until the appointment is terminated in accordance
8 with this section.

9 (b) If an appointment is terminated by an insurer, reinsurer, or authorized
10 representative, the insurer, reinsurer, or authorized representative shall, on a form or in
11 a format prescribed by the director, notify the director within 30 days after the date of
12 termination of the appointment.

13 (c) If an appointment is terminated by the director, a written or an electronic
14 notice of termination shall be given to the appointee, to the person that made the
15 appointment, and, if different from the person making the appointment, to the insurer
16 or reinsurer, at least 10 days before the effective date of the termination. The director
17 shall send notification under this subsection to the latest address on record with the
18 director.

19 (d) If, after termination and notice under (b) of this section, an insurer,
20 reinsurer, or authorized representative discovers additional information showing that
21 the appointee whose appointment was terminated has engaged in an activity identified
22 in AS 21.27.410 during the period of the appointment, the insurer, reinsurer, or
23 authorized representative shall, on a form or in a format prescribed by the director,
24 promptly notify the director.

25 (e) Within 15 days after providing notification in accordance with (b) and (d)
26 of this section, the insurer, reinsurer, or authorized representative shall mail a copy of
27 the notification to the appointee at the last address on record with the director. The
28 notice must be provided by certified mail, return receipt requested, postage prepaid, or
29 by overnight delivery using a nationally recognized mail carrier, if the appointment
30 was terminated for an activity identified in AS 21.27.410.

31 (f) Within 30 days after the appointee receives notification in accordance with

1 (c) of this section, the appointee may file written comments concerning the substance
2 of the notification with the director and must provide a copy of the written comments
3 to the insurer, reinsurer, or authorized representative. The written comments filed
4 with the director must be included with each report distributed or disclosed concerning
5 a reason about the termination of the appointment.

6 (g) If requested by the director, an insurer, reinsurer, or authorized
7 representative shall provide to the director additional information, documents, records,
8 or other data pertaining to a termination or activity of a licensee under this title.

9 (h) A notice of termination submitted to the director under this section must
10 include a statement of the reasons for the termination. A statement of the reasons for
11 termination is confidential and not subject to inspection and copying under
12 AS 40.25.110. A statement of reasons for the termination may not be admitted as
13 evidence in a civil action or an administrative proceeding against an insurer, reinsurer,
14 or authorized representative by or on behalf of a person affected by the termination,
15 except when the action or proceeding involves perjury, unsworn falsification, fraud, or
16 failure to comply with this subsection.

17 (i) If an insurer, reinsurer, or authorized representative fails to report as
18 required under this section or is found by a court to have knowingly or intentionally
19 falsely made that report, the director may, after notice and hearing, suspend or revoke
20 the license or certificate of authority of the insurer, reinsurer, or authorized
21 representative and may impose a penalty in accordance with AS 21.27.440.

22 (j) The director may require that an insurer renew an appointment annually
23 and may require payment of a renewal fee under AS 21.06.250 for an appointment in
24 effect on December 31 of the current year. If the director requires that an appointment
25 be renewed or a renewal fee be paid, the director shall terminate the appointment if the
26 renewal fees have not been received by the director on or before the close of business
27 on March 1 of the renewal year.

28 * Sec. 16. AS 21.27 is amended by adding a new section to read:

29 **Sec. 21.27.115. Lines of authority.** If a person has met the applicable
30 requirements of AS 21.27.020 and 21.27.270, the director shall issue a license for one
31 or more of the following lines of authority:

1 (1) life insurance coverage on natural persons; in this paragraph, "life
2 insurance coverage"

3 (A) includes benefits of endowment and annuities; and

4 (B) may include benefits in the event of death or
5 dismemberment by accident and benefits for disability income;

6 (2) health insurance coverage for sickness, bodily injury, or accidental
7 death; in this paragraph, "health insurance coverage" may include benefits for
8 disability income;

9 (3) property insurance coverage for the direct or consequential loss for
10 damage to property of every kind;

11 (4) casualty insurance coverage against legal liability, including that
12 for death, injury, or disability or damage to real or personal property; in this
13 paragraph, "casualty insurance" includes surety insurance as defined in AS 21.12.080;

14 (5) variable life and variable annuity products insurance coverage;

15 (6) personal lines property and casualty insurance coverage sold to
16 individuals and families for primarily noncommercial purposes;

17 (7) limited lines credit insurance;

18 (8) any insurance for which a limited lines license may be issued under
19 AS 21.27.150.

20 * Sec. 17. AS 21.27.130 is amended to read:

21 **Sec. 21.27.130. Form and content of licenses.** A license must be in the form
22 the director prescribes and must set out

23 (1) the name and address of the licensee [,] and, if the licensee is
24 required to have a place of business, the physical address of the place of business;

25 (2) [IF FOR A FIRM, THE NAME OF THE PRINCIPAL OR
26 MANAGER OF THE FIRM;

27 (3)] the type, [KIND OR] class, and lines of authority [OF
28 INSURANCE] the licensee is licensed to handle;

29 (3) [(4)] the effective date and expiration date of the license;

30 (4) each condition, if any, [(5) THE CONDITION] under which the
31 license is granted;

- 1 (5) [(6)] the date of issuance of the license;
2 (6) [(7)] each fictitious name and alias under which the licensee may
3 do business; and
4 (7) [(8)] other information required by the director.

5 * Sec. 18. AS 21.27.130 is amended by adding a new subsection to read:

- 6 (b) A license issued by the director does not in itself create any authority,
7 actual, apparent, or inherent, in the holder of the license to represent or commit an
8 insurer.

9 * Sec. 19. AS 21.27.140(b) is amended to read:

- 10 (b) A firm may not be licensed as an insurance producer, managing general
11 agent, reinsurance intermediary broker, reinsurance intermediary manager, surplus
12 lines broker, or independent adjuster, or transact insurance unless each individual
13 employed as an insurance producer, managing general agent, surplus lines broker,
14 trainee insurance producer, trainee independent adjuster, or independent adjuster by
15 the firm is licensed as an individual in the firm and the compliance officer
16 [PRINCIPAL OR MANAGER] of the firm is licensed as an individual in the firm to
17 exercise all the powers conferred by the firm's license.

18 * Sec. 20. AS 21.27.140(c) is amended to read:

- 19 (c) If the director determines under AS 21.06.170 - 21.06.240 that a firm knew
20 or should have known of an act or representation made on the firm's behalf by a
21 person not licensed as required by this chapter, the firm and the firm's compliance
22 officer [PRINCIPAL OR MANAGER] are subject to the penalties provided under
23 AS 21.27.440.

24 * Sec. 21. AS 21.27.150(a) is amended to read:

- 25 (a) The director may issue a
26 (1) travel insurance limited producer license to a person [WHOSE
27 PLACE OF BUSINESS IS LOCATED IN THIS STATE,] who sells transportation
28 tickets of a common carrier of persons or property, who is appointed under
29 AS 21.27.100, and whose sole purpose is to be appointed by and act as an agent for
30 transportation ticket policies of health insurance, baggage insurance on personal
31 effects, and trip cancellation or trip interruption insurance;

1 (2) [HEALTH INSURANCE LIMITED PRODUCER LICENSE TO
2 A RESIDENT OF THIS STATE WHOSE SOLE PURPOSE IS TO BE APPOINTED
3 BY AND ACT AS AN AGENT FOR HEALTH INSURANCE PERTAINING TO
4 SPORTS AND RECREATION;

5 (3)] title insurance limited producer license to a person whose place of
6 business is located in this state and whose sole purpose is to be appointed by and act
7 on behalf of a title insurer;

8 (3) [(4)] bail bond limited producer license to a person [WHOSE
9 PLACE OF BUSINESS IS LOCATED IN THIS STATE AND] whose sole purpose is
10 to be appointed by and act on behalf of a surety insurer pertaining to bail bonds;

11 (4) [(5)] fraternal benefit society limited producer license to a person
12 whose sole purpose is to be appointed by and act on behalf of a fraternal benefit
13 society licensed under AS 21.84;

14 (5) [(6) RETIRED INSURANCE PRODUCER LICENSE TO A
15 RESIDENT WHO IS RETIRED OR RETIRING FROM THE BUSINESS OF
16 INSURANCE AND SURRENDERS ALL IN-FORCE LICENSES TO ALLOW THE
17 PERSON TO RECEIVE A CONTINUING COMMISSION IN REGARD TO
18 INSURANCE TRANSACTED BEFORE RETIREMENT; A RETIRED
19 INSURANCE PRODUCER LICENSEE MAY NOT SOLICIT, INDUCE,
20 NEGOTIATE, OR EFFECTUATE CONTRACTS OF INSURANCE; THE
21 DIRECTOR MAY RENEW A RETIRED INSURANCE PRODUCER LICENSE IF
22 THE LICENSEE CEASES TO BE A RESIDENT OF THIS STATE;

23 (7)] motor vehicle rental agency limited producer license to a person
24 and, subject to the approval of the director, to employees of the person licensed that
25 the licensee authorizes to transact the business of insurance on the licensee's behalf if,
26 as to an employee, the licensee complies with (D) of this paragraph and if the licensee

27 (A) rents to others, without operators,

28 (i) private passenger motor vehicles, including
29 passenger vans, minivans, and sport utility vehicles; or

30 (ii) cargo motor vehicles, including cargo vans, pickup
31 trucks, and trucks with a gross vehicle weight of less than 26,000

1 pounds that do not require the operator to possess a commercial driver's
2 license;

3 (B) rents motor vehicles only to persons under rental
4 agreements that do not exceed a term of 90 days;

5 (C) transacts only the following kinds of insurance:

6 (i) motor vehicle liability insurance with respect to
7 liability arising out of the use of a vehicle rented from the licensee
8 during the term of the rental agreement;

9 (ii) uninsured or underinsured motorist coverage, with
10 minimum limits described in AS 21.89.020(c) and (d) arising out of the
11 use of a vehicle rented from the licensee during the term of the rental
12 agreement;

13 (iii) insurance against medical, hospital, surgical, and
14 disability benefits to an injured person and funeral and death benefits to
15 dependents, beneficiaries, or personal representatives of a deceased
16 person if the insurance is issued as incidental coverage with or
17 supplemental to liability insurance and arises out of the use of a vehicle
18 rented from the licensee during the term of the rental agreement;

19 (iv) personal effects insurance, including loss of use,
20 with respect to damage to or loss of personal property of a person
21 renting the vehicle and other vehicle occupants while that property is
22 being loaded into, transported by, or unloaded from a vehicle rented
23 from the licensee during the term of the rental agreement;

24 (v) towing and roadside assistance with respect to
25 vehicles rented from the licensee during the term of the rental
26 agreement; and

27 (vi) other insurance as may be authorized by regulation
28 by the director;

29 (D) notifies the director in writing, within 30 days of
30 employment, of the name, date of birth, social security number, location of
31 employment, and home address of an employee authorized by the licensee to

1 transact insurance on the licensee's behalf; and

2 (E) provides other information as required by the director;

3 (6) nonresident limited producer license to a person; a license that
4 the director issues under this paragraph grants the same scope of authority as a
5 limited lines producer license issued to the person by the person's home state;

6 (7) credit insurance limited producer license to a person who sells
7 limited lines credit insurance;

8 (8) miscellaneous limited producer license to a person who
9 transacts insurance in this state that restricts the person's authority to less than
10 the total authority for a line of authority described in AS 21.27.115(1) - (6).

11 * Sec. 22. AS 21.27.270 is repealed and reenacted to read:

12 Sec. 21.27.270. Licensing of nonresidents. (a) In accordance with P.L. 106-
13 102 (Gramm-Leach-Bliley Act), the director shall issue a license to a nonresident
14 license applicant on terms that are reciprocal with those of the applicant's home state.
15 Notwithstanding any contrary provision of this chapter, the director may by order
16 waive any license application requirement in this chapter to achieve reciprocity to
17 license a nonresident in accordance with P.L. 106-102 (Gramm-Leach-Bliley Act).

18 (b) Unless the director denies or refuses to renew a license under
19 AS 21.27.410, the director shall issue a nonresident producer, limited lines, surplus
20 lines broker, managing general agent, reinsurance intermediary broker, or reinsurance
21 intermediary manager license to a person who is not a resident of this state if

22 (1) the person is currently licensed and is in good standing in the
23 person's home state; the director may verify the person's licensing status through the
24 producer licensing database records maintained by the National Association of
25 Insurance Commissioners or its affiliates or subsidiaries;

26 (2) the person has paid the fees required under AS 21.06.250 and has
27 submitted to the director

28 (A) the license application the person submitted to the person's
29 home state; or

30 (B) if the person is not a firm, a completed uniform application
31 or, if a firm, the uniform business entity application; and

1 (3) the person's home state awards nonresident producer, limited lines,
2 surplus lines, managing general agent, reinsurance intermediary broker, and
3 reinsurance intermediary manager licenses to residents of this state on the same basis
4 as does this state.

5 (c) Notwithstanding (b) of this section, the director may require a person
6 applying for a

7 (1) nonresident license to furnish the person's fingerprints as required
8 of a person applying for a license under AS 21.27.040(e);

9 (2) surplus lines broker license under this section to have, and maintain
10 while licensed in this state, the bond required of a person applying for a license under
11 AS 21.27.790(2); and

12 (3) nonresident license to comply with the premium fiduciary account
13 requirements of AS 21.27.360 and the regulations adopted under that statute.

14 (d) A person licensed as a limited lines producer in the person's home state
15 shall receive a nonresident limited lines producer license granting the same scope of
16 authority as the license issued by the producer's home state.

17 (e) In addition to the other requirements of this chapter, a person may not be
18 licensed as a nonresident licensee until the person files a power of attorney as follows:

19 (1) an applicant shall appoint the director as attorney to receive service
20 of legal process issued against the licensee in this state upon a cause of action arising
21 in this state or relative to a subject resident, located, or to be performed in this state;
22 service upon the director as attorney shall constitute effective legal service upon the
23 licensee; and

24 (2) the appointment shall be irrevocable for as long as there could be a
25 cause of action against the licensee arising out of an insurance transaction in this state
26 or relative to a subject resident, located, or to be performed in this state.

27 (f) Duplicate copies of legal process against a licensed or formerly licensed
28 nonresident licensee shall be served upon the director either by a peace officer or
29 through certified mail with return receipt requested. At the time of service, the
30 plaintiff shall pay to the director a fee set under AS 21.06.250.

31 (g) Upon receiving a service of process, the director shall immediately send

1 one of the copies of the process by certified mail, return receipt requested, to the
2 licensed or formerly licensed nonresident licensee at the last address of record filed
3 with the director.

4 * Sec. 23. AS 21.27 is amended by adding a new section to read:

5 Sec. 21.27.275. Alien licensees. The director may issue a license authorized
6 by this chapter to a nonresident of this state who does not have a home state if that
7 person meets all the requirements of this chapter for that license applicable to a
8 resident of this state applying for the same license.

9 * Sec. 24. AS 21.27.330 is repealed and reenacted to read:

10 Sec. 21.27.330. Place of business. (a) A person licensed under this chapter
11 shall have and maintain at least one place of business that is physically accessible to
12 the public in this state unless the person holds a nonresident license and principally
13 conducts transactions in another state. However, the nonresident licensee must have at
14 least one physically accessible place in the nonresident licensee's home state. The
15 requirements of this subsection do not apply to a licensee who only conducts business
16 in life or health insurance or annuities.

17 (b) If a licensee that is a firm transacts business at more than one place of
18 business in this state, the licensee shall pay a license fee for each place of business.

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

20 (c) The records of a particular transaction shall be retained and kept open for
21 examination and inspection by the director at any business time during the five years
22 immediately after the date of the completion of the transaction or 10 years for
23 reinsurance transactions, unless the director orders a longer period of retention. If a
24 licensee assumes the business of another licensee or former licensee by merger,
25 purchase, or otherwise, the compliance officer [PRINCIPAL OR MANAGER] of the
26 assuming licensee firm shall provide to the director in writing each location where the
27 assumed licensee's records are maintained by the assuming licensee during the period
28 in which the records must be kept available and open to the inspection of the director.
29 A formerly licensed person shall provide to the director in writing each location where
30 records shall be maintained during the period in which the records of a particular
31 transaction must be kept available and open to the examination and inspection of the

1 director. A formerly licensed person may, with the permission of the director, arrange
2 to have a current licensee or the home office of the last known insurer of each
3 policyholder [,] maintain the records open to the examination and inspection of the
4 director during the period in which the records must be maintained.

5 * **Sec. 26.** AS 21.27.370 is repealed and reenacted to read:

6 **Sec. 21.27.370. Sharing compensation.** (a) Except as provided in (c) and (d)
7 of this section, a licensee may not compensate a person, other than a licensee who is
8 acting within the scope of the person's license, for transacting insurance in this state or
9 relative to a risk resident, located, or to be performed in this state.

10 (b) Except as provided in (c) and (d) of this section, a person may not be
11 promised or paid, directly or indirectly, compensation for transacting a kind or class of
12 insurance for which the person is not then licensed to transact or for insurance that the
13 person is prohibited by this title from transacting.

14 (c) An unlicensed person who refers a customer or potential customer to a
15 licensee and who does not discuss specific terms and conditions of a policy, or who
16 gives opinions or advice regarding insurance, may be compensated for the referral, if
17 the compensation

18 (1) for each referral is

19 (A) nominal;

20 (B) on a one-time basis; and

21 (C) fixed in amount by referral;

22 (2) does not depend on whether the customer or potential customer
23 purchases the insurance; and

24 (3) is not contingent on the volume of insurance transacted.

25 (d) An insurer or insurance producer may compensate an insurance agency or
26 another person if that person does not transact the business of insurance in this state
27 and the payment does not violate AS 21.36.100 or 21.36.120.

28 (e) A person who is no longer licensed in this state may be paid renewal or
29 other deferred compensation for selling, soliciting, or negotiating insurance in this
30 state if the person

31 (1) was required to be licensed under this chapter at the time of the

1 sale, solicitation, or negotiation; and

2 (2) held that required license.

3 (f) In addition to any other penalty provided by law, the director may suspend
4 or revoke the license of a licensee participating in a violation of this section. The
5 director may order a licensee who violates this section to pay a penalty of not more
6 than three times the compensation promised or paid.

7 * Sec. 27. AS 21.27.390(a) is amended to read:

8 (a) The director may issue a temporary license only to a person who, except
9 for experience, training, or the taking of an examination, meets all qualifications for a
10 permanent license and if the person is

11 (1) the surviving spouse, next of kin, or the administrator or executor
12 of a deceased licensed insurance producer or managing general agent;

13 (2) the spouse, next of kin, employee, or legal guardian of a licensed
14 insurance producer or managing general agent who is disabled from transacting
15 insurance because of sickness, mental illness [INSANITY], or injury;

16 (3) a surviving member, officer, or employee of a firm licensed as
17 insurance producer or managing general agent upon the death of the compliance
18 officer [PRINCIPAL OR MANAGER] of the firm holding the same licenses as the
19 firm; or

20 (4) the designee of a licensed insurance producer who enters active
21 service in the armed forces of the United States, but only for insurance relating to
22 insurers for whom the licensee was acting as an agent.

23 * Sec. 28. AS 21.27.410(b) is amended to read:

24 (b) The license of a firm and its compliance officer [PRINCIPAL OR
25 MANAGER] may be denied, nonrenewed, suspended, or revoked for a violation or
26 cause that relates to a person representing or acting on behalf of the firm.

27 * Sec. 29. AS 21.27.460(c) is amended to read:

28 (c) Upon a change in the state of residence, a place of business, a mailing
29 address, or in the compliance officer [PRINCIPAL OR MANAGER] of a firm, a
30 license subject to the change shall be surrendered to the director within 10 days either
31 personally or by certified mail and the division shall reissue the license reflecting the

1 changes if the licensee continues to satisfy the qualifications under this chapter.

2 * Sec. 30. AS 21.27.540(g) is amended to read:

3 (g) In addition to any other penalty provided by law, if the director determines
4 under AS 21.06.170 - 21.06.240 that the employing licensed insurance producer knew
5 of or should have known that a trainee insurance producer violated this section, the
6 employing licensed insurance producer and firm, and the compliance officer
7 [PRINCIPAL AND MANAGER], if any, are subject to the penalties provided under
8 AS 21.27.440.

9 * Sec. 31. AS 21.27.560(a) is amended to read:

10 (a) A client who appoints an insurance producer as its broker in this state or
11 relative to a subject resident, located, or to be performed in this state shall execute a
12 written contract that specifically sets out the duties, functions, powers, authority, and
13 compensation of the insurance producer, if the broker is compensated by a fee paid by
14 the client or by a combination of a fee paid by a client and a commission paid by an
15 insurer with which coverage has been placed. The written contract shall be kept in the
16 permanent records of the insurance producer and be open to inspection by the director.

17 * Sec. 32. AS 21.27.600(g) is amended to read:

18 (g) In addition to any other penalty provided by law

19 (1) the director shall revoke the trainee license of a trainee managing
20 general agent who the director determines has violated the provisions of this section; a
21 licensee or other person having possession or custody of the license shall immediately
22 surrender the license to the director either personally or by certified mail;

23 (2) if the director determines under AS 21.06.170 - 21.06.240 that the
24 employing managing general agent knew of or should have known that a trainee
25 managing general agent violated this section, the employing managing general agent
26 and firm, and the compliance officer [PRINCIPAL, AND MANAGER], if any, are
27 subject to the penalties provided under AS 21.27.440.

28 * Sec. 33. AS 21.27.620 is amended by adding a new subsection to read:

29 (l) In this section, "transact" has the meaning given in AS 21.90.900.

30 * Sec. 34. AS 21.27.640(b) is repealed and reenacted to read:

31 (b) To qualify for issuance or renewal of a registration, an applicant or

1 registrant shall comply with this title, regulations adopted under AS 21.06.090, and

2 (1) be a trustworthy person;

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

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

9 (4) maintain a lawfully established place of business as described in
10 AS 21.27.330 in this state, unless licensed as a nonresident under AS 21.27.270;

11 (5) disclose to the director all owners, officers, directors, or partners, if
12 any;

13 (6) designate a compliance officer for the firm;

14 (7) provide in or with its application

15 (A) all basic organizational documents of the third-party
16 administrator, including articles of incorporation, articles of association,
17 partnership agreement, trade name certificate, trust agreement, shareholder
18 agreement, and other applicable documents and all endorsements to the
19 required documents;

20 (B) the bylaws, rules, regulations, or similar documents
21 regulating the internal affairs of the administrator;

22 (C) the names, mailing addresses, physical addresses, official
23 positions, and professional qualifications of persons who are responsible for
24 the conduct of affairs of the third-party administrator, including the members
25 of the board of directors, board of trustees, executive committee, or other
26 governing board or committee; the principal officers in the case of a
27 corporation, or the partners or members in the case of a partnership, limited
28 liability company, limited liability partnership, or association; shareholders
29 holding directly or indirectly 10 percent or more of the voting securities of the
30 third-party administrator; and any other person who exercises control or
31 influence over the affairs of the third-party administrator;

1 (D) certified financial statements for the preceding two years,
2 or for each year and partial year that the applicant has been in business if less
3 than two years, prepared by an independent certified public accountant
4 establishing that the applicant is solvent, that the applicant's system of
5 accounting, internal control, and procedure is operating effectively to provide
6 reasonable assurance that money is promptly accounted for and paid to the
7 person entitled to the money, and any other information that the director may
8 require to review the current financial condition of the applicant; and

9 (E) a statement describing the business plan, including
10 information on staffing levels and activities proposed in this state and in other
11 jurisdictions and providing details establishing the third-party administrator's
12 capability for providing a sufficient number of experienced and qualified
13 personnel in the areas of claims handling, underwriting, and record keeping;

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

16 (9) notify the director, in writing, within 30 days of

17 (A) a change in compliance officer, residence, place of
18 business, mailing address, or phone number;

19 (B) the suspension or revocation of an insurance license or
20 registration by another state or jurisdiction; or

21 (C) a conviction of a misdemeanor or felony of the third-party
22 administrator, its officers, directors, partners, owners, or employees.

23 * Sec. 35. AS 21.27.650 is amended by adding a new subsection to read:

24 (p) In this section, "transact" has the meaning given in AS 21.90.900.

25 * Sec. 36. AS 21.27.680(g) is amended to read:

26 (g) In addition to any other penalty provided by law,

27 (1) the director shall revoke the license of a trainee reinsurance
28 intermediary broker who the director determines has violated the provisions of this
29 section; a licensee or other person having possession or custody of the license shall
30 immediately surrender the license to the director either personally or by certified mail;

31 (2) if the director determines under AS 21.06.170 - 21.06.240 that the

1 employing reinsurance intermediary broker knew of or should have known that a
2 trainee reinsurance intermediary broker violated this section, the employing
3 reinsurance intermediary broker and firm and compliance officer [, PRINCIPAL
4 AND MANAGER], if any, are subject to the penalties provided under AS 21.27.440.

5 * Sec. 37. AS 21.27.690 is amended by adding a new subsection to read:

6 (g) In this section, "transact" has the meaning given in AS 21.90.900.

7 * Sec. 38. AS 21.27.760 is amended by adding a new subsection to read:

8 (l) In this section, "transact" has the meaning given in AS 21.90.900.

9 * Sec. 39. AS 21.27.790(2) is amended to read:

10 (2) if required by the director by regulation maintain a bond as
11 described in AS 21.27.190 in an amount acceptable to the director [HAVE AND
12 MAINTAIN WHILE LICENSED, A BOND IN THE SUM OF NOT LESS THAN
13 \$200,000 AGGREGATE LIABILITY AND] with the conditions that the surplus lines
14 broker conduct business under the provisions of this title, promptly remit the taxes and
15 fees provided by law, return premiums promptly when due, and pay proper losses
16 promptly;

17 * Sec. 40. AS 21.27.800(g) is amended to read:

18 (g) In addition to any other penalty provided by law,

19 (1) the director shall revoke the license of a trainee surplus lines broker
20 who the director determines has violated the provisions of this section; a licensee or
21 other person having possession or custody of the license shall immediately surrender
22 the license to the director either personally or by certified mail;

23 (2) if the director determines under AS 21.06.170 - 21.06.240 that the
24 employing surplus lines broker knew of or should have known that a trainee licensed
25 under this section violated this section, the employing surplus lines broker and firm,
26 and the compliance officer [PRINCIPAL, AND MANAGER], if any, are subject to
27 the penalties provided under AS 21.27.440.

28 * Sec. 41. AS 21.27.840(f) is amended to read:

29 (f) A trainee independent adjuster shall at all times be working at the direction
30 and under the supervision of the employing licensed independent adjuster, and the file
31 and record documentation shall reflect the direction and supervision. The employing

1 licensed independent adjuster and its firm, and the compliance officer [MANAGER,
2 AND PRINCIPAL], if any, are responsible for all insurance actions of the trainee
3 independent adjuster.

4 * Sec. 42. AS 21.27.840(i) is amended to read:

5 (i) In addition to any other penalty provided by law,

6 (1) a trainee independent adjuster who the director determines has
7 violated the provisions of this section shall have its license terminated; a licensee or
8 other person having possession or custody of the license shall within 30 days surrender
9 the license to the director either personally or by certified mail;

10 (2) if the director determines under AS 21.06.170 - 21.06.240 that the
11 employing licensed independent adjuster knew of or should have known that a trainee
12 independent adjuster violated this section, the employing licensed independent
13 adjuster and firm, and the compliance officer [PRINCIPAL AND MANAGER], if
14 any, are subject to the penalties provided under AS 21.27.440.

15 * Sec. 43. AS 21.27.900(10) is amended to read:

16 (10) "individual" means a natural person required to be licensed under
17 AS 21.27.010 [WHO IS NOT ACTING IN ASSOCIATION WITH TWO OR MORE
18 LICENSEES, EITHER IN PARTNERSHIP, CORPORATION, OR OTHERWISE,
19 OR AN ORGANIZATION IN WHICH A SINGLE LICENSEE HAS 50 PERCENT
20 OR MORE OWNERSHIP INTEREST IN THE ORGANIZATION];

21 * Sec. 44. AS 21.27.900 is amended by adding new paragraphs to read:

22 (23) "compliance officer" means a licensee under this chapter that is
23 responsible for a firm's compliance with the insurance statutes and regulations of this
24 state;

25 (24) "home state" means the District of Columbia or a state or territory
26 of the United States in which an insurance producer maintains the producer's principal
27 place of residence or principal place of business and is licensed to act as an insurance
28 producer;

29 (25) "insurance producer" means a person who sells, solicits, or
30 negotiates insurance or insurance products;

31 (26) "license" means, unless the context requires otherwise, a

1 document issued by the director of insurance authorizing a person to act for the type,
2 class, and lines of authority specified in the document;

3 (27) "limited lines credit insurance" includes credit life, credit
4 disability, credit property, credit unemployment, involuntary unemployment, mortgage
5 life, mortgage guaranty, mortgage disability, guaranteed automobile protection
6 insurance, and any other form of insurance offered in connection with an extension of
7 credit that is limited to partially or wholly extinguishing that credit obligation that the
8 director of insurance determines must be designated a form of limited lines credit
9 insurance;

10 (28) "limited lines" means those lines of insurance defined in
11 AS 21.27.150 or any other line of insurance that the director of insurance designates
12 by order as a limited line;

13 (29) "negotiate" means the act of conferring directly with or offering
14 advice directly to a purchaser or prospective purchaser of a particular contract of
15 insurance concerning any of the substantive benefits, terms, or conditions of the
16 contract if the person engaged in that act either sells insurance or obtains insurance
17 from insurers for purchasers;

18 (30) "sells" means to exchange a contract of insurance by any means,
19 for money or its equivalent, on behalf of an insurance company;

20 (31) "solicit" means attempting to sell insurance or asking or urging a
21 person to apply for a particular kind of insurance from a particular company;

22 (32) "transact" or "transact business" means sell, solicit, or negotiate
23 insurance or insurance products;

24 (33) "uniform application" means the most recent version of the
25 uniform application of the National Association of Insurance Commissioners;

26 (34) "uniform business entity application" means the most recent
27 version of the uniform business entity application of the National Association of
28 Insurance Commissioners.

29 * Sec. 45. AS 21.36 is amended by adding new sections to read:

30 Sec. 21.36.162. Nondisclosure of personal information. (a) Except as
31 provided in 15 U.S.C. 6801 - 6809 (Title V, Gramm-Leach-Bliley Act, P.L. 106 -

1 102), a person may not disclose personal information records regarding an individual
2 who seeks to obtain, obtains, or has obtained an insurance product or service from a
3 licensee that is to be used primarily for personal, family, or household purposes.

4 (b) The director shall adopt regulations regarding the release of financial and
5 health information regarding an individual who seeks to obtain, obtains, or has
6 obtained an insurance product or service from a licensee that is to be used primarily
7 for personal, family, or household purposes. The regulations must be consistent with,
8 but no less restrictive than, 15 U.S.C. 6801 - 6809 (Title V, Gramm-Leach-Bliley Act,
9 P.L. 106 - 102).

10 **Sec. 21.36.164. Licensing of persons in a financial institution.** A financial
11 institution may not allow a person to transact insurance in an office of the institution
12 or on behalf of the institution, unless the person is licensed as required under
13 AS 21.27.

14 * **Sec. 46.** AS 21.36.165 is amended to read:

15 **Sec. 21.36.165. Anticoercion and antitving [FAVORED AGENT OR**
16 **INSURER; COERCION OF DEBTORS].** A person may not

17 (1) require, as a condition to the lending of money or extension of
18 credit, or a renewal of the loan or extension of credit, that the obligee of the money or
19 credit negotiate a policy or contract of insurance through any particular person or
20 group of persons;

21 (2) disapprove the insurance policy provided by a borrower for the
22 protection of property securing credit or a loan [LIEN] if disapproval is based on other
23 than reasonable standards uniformly applied and relating to the extent of coverage
24 required and the financial soundness and the services of the insurer; the standards may
25 not discriminate against a particular type of insurer [,] or call for the disapproval of a
26 policy containing coverage in addition to that required;

27 (3) unless charges are required when the person handling the
28 insurance transaction is a licensee, require a consumer [BORROWER,
29 MORTGAGOR, PURCHASER], insurer, broker, or agent to pay a separate charge for
30 handling an insurance policy required as security for a loan on real property, or to pay
31 a separate charge to substitute the insurance policy of one insurer for that of another,

1 except that interest may be charged on premium loans or [OF] premium advancements
2 in accordance with the security instrument [;

3 (4) USE OR DISCLOSE INFORMATION RESULTING FROM A
4 REQUIREMENT THAT A BORROWER, MORTGAGOR, OR PURCHASER
5 FURNISH INSURANCE OF ANY KIND ON REAL PROPERTY BEING
6 CONVEYED OR USED AS COLLATERAL SECURITY TO A LOAN, WHEN THE
7 INFORMATION IS TO THE ADVANTAGE OF THE MORTGAGEE, VENDOR,
8 OR LENDER, OR IS TO THE DETRIMENT OF THE BORROWER,
9 MORTGAGOR, PURCHASER, INSURER, AGENT, OR BROKER COMPLYING
10 WITH THE REQUIREMENT].

11 * Sec. 47. AS 21.36.165 is amended by adding new subsections to read:

12 (b) A person shall

13 (1) use separate documents for an insurance transaction, other than
14 credit insurance or flood insurance, and for a credit transaction; and

15 (2) maintain separate and distinct records relating to insurance
16 transactions, including consumer complaint information, and make the records
17 available to the director for inspection upon notice.

18 (c) A person may not include insurance premiums in a primary credit
19 transaction without the consent of the consumer.

20 (d) Nothing in this section prohibits a person from informing a consumer or
21 prospective consumer that insurance is required in order to obtain a loan or credit, that
22 loan or credit approval is contingent on the procurement of acceptable insurance by
23 the consumer, or that insurance is available from the person.

24 * Sec. 48. AS 21.36 is amended by adding new sections to read:

25 **Sec. 21.36.167. Misrepresentation in financial institution sales.** In the sale
26 of insurance by a financial institution, a person may not engage in any practice or use
27 an advertisement that may tend to mislead or deceive a consumer or cause a consumer
28 erroneously believe that

29 (1) the insurance is backed by or a return on the insurance is
30 guaranteed by the state, the federal government, the person, or the Federal Deposit
31 Insurance Corporation;

- 1 (2) the state or federal government
- 2 (A) will pay a claim under an insurance contract that is an
- 3 obligation of or was sold by the person;
- 4 (B) is responsible for the insurance sales activities of the
- 5 person; or
- 6 (C) guarantees the credit of the person;
- 7 (3) for insurance that contains investment risk, the insurance does not
- 8 contain investment risk, the principal may not be lost, or the value of the insurance
- 9 may not decline;
- 10 (4) the lending of money, extension of credit, or a renewal of a loan is
- 11 conditioned on the purchase of insurance from the person and that insurance may not
- 12 be purchased from another source.

13 **Sec. 21.36.168. Disclosures required in financial institution sales.** (a) In

14 the sale of insurance by a financial institution, a person shall disclose both orally and

15 in writing to a consumer before the initial purchase of insurance that

- 16 (1) the insurance is not a deposit or other obligation of the person;
- 17 (2) the insurance is not guaranteed by the person or the person
- 18 soliciting insurance;
- 19 (3) the insurance is not insured by the Federal Deposit Insurance
- 20 Corporation or other agency of the United States, the financial institution, or the
- 21 person;
- 22 (4) if the insurance contains risk, the insurance contains investment
- 23 risk and the insurance may lose value;
- 24 (5) the consumer is not required to negotiate a policy or contract of
- 25 insurance through any particular person or group of persons as a condition to the
- 26 lending of money or extension of credit, or a renewal of the loan or extension of
- 27 credit, except that the person may impose reasonable requirements uniformly applied
- 28 and relating to the extent of coverage required and the financial soundness and the
- 29 services of the insurer and that the standards may not discriminate against a particular
- 30 type of insurer or require disapproval of a policy containing coverage in addition to
- 31 that required.

1 (b) A person shall also provide the disclosures required in (a) of this section to
2 a consumer both orally and in writing at the time of application for an extension of
3 credit.

4 (c) If an application for insurance is made by telephone, written disclosure as
5 required in (a) of this section must be mailed to the consumer within three working
6 days.

7 (d) A person may provide the disclosures required in (a) of this section
8 electronically, if

9 (1) the consumer affirmatively consents to electronic disclosure; and

10 (2) the disclosures are provided in a format that the consumer is able to
11 access at a later time by a method such as through printing or storing the disclosures
12 electronically.

13 (e) A person shall provide the disclosures required in (a) of this section in a
14 meaningful form and in a conspicuous, simple, direct, and understandable manner that
15 is designed to call attention to the information provided.

16 (f) A person shall obtain a written acknowledgment or, in the case of an
17 electronic disclosure provided in compliance with (d) of this section, a written or
18 electronic acknowledgment, by the consumer that the consumer received the
19 disclosures as required in this section.

20 (g) This section does not require that a person provide the disclosures required
21 in this section in advertisements that are of a general nature or that describe or list the
22 services or products offered by a financial institution or on behalf of a financial
23 institution.

24 (h) In this section, "meaningful form" means

25 (1) for other than an electronic form, a form of disclosure that is
26 provided to a consumer orally and in writing;

27 (2) for an electronic form, a disclosure that a consumer cannot
28 electronically bypass before purchasing insurance.

29 **Sec. 21.36.169. Definitions for AS 21.36.164 - 21.36.169.** In AS 21.36.164 -
30 21.36.169, unless the context otherwise requires,

31 (1) "consumer" means a person who obtains, applies to obtain, or is

1 solicited to obtain insurance from or on behalf of a financial institution;

2 (2) "financial institution" means a bank holding company under
3 12 U.S.C. 1841 (Bank Holding Company Act of 1956); a credit union under 12 U.S.C.
4 1752 (Federal Credit Union Act), a bank, savings bank, savings and loan association,
5 or trust company, or any depository institution under 12 U.S.C. 1813(c)(1); and any
6 other person authorized to take federally insured deposits and make loans in the state;
7 "financial institution" includes any employee or agent of a financial institution and any
8 nondepository affiliate or subsidiary of a financial institution but only in the instances
9 when the nondepository affiliate or subsidiary is soliciting the sale or purchase of
10 insurance recommended or sponsored by, on the premises of, or in connection with a
11 product offering of the financial institution; "financial institution" does not include an
12 insurer.

13 * **Sec. 49.** AS 21.36 is amended by adding a new section to read:

14 **Sec. 21.36.355. Felony convictions involving dishonesty or breach of trust.**

15 (a) A person who has a conviction for a felony involving dishonesty or a breach of
16 trust may not engage or participate in the business of insurance without receiving prior
17 written consent by the director as required under 18 U.S.C. 1033 and 1034 (Violent
18 Crime Control and Law Enforcement Act of 1994).

19 (b) A person who fails to seek prior written consent from the director under (a)
20 of this section is in violation of this chapter.

21 (c) A person who is engaged in the business of insurance may not knowingly
22 permit the participation in the business of insurance by a person who has been
23 convicted of a felony involving dishonesty or breach of trust except as allowed under
24 (a) of this section.

25 * **Sec. 50.** AS 21.36.430(a) is amended to read:

26 (a) A person transacting [AN INSURER OFFERING] insurance in this state
27 may not (1) refuse to issue or renew insurance coverage; (2) limit the scope of
28 insurance coverage; (3) cancel an existing policy of insurance; (4) [(3)] deny a
29 covered claim; or (5) [(4)] increase the premium on an insurance policy if the refusal,
30 cancellation, denial, or increase results only from the fact that the person was a victim
31 of domestic violence or a provider of services to victims of domestic violence.

1 * **Sec. 51.** AS 21.36.430 is amended by adding a new subsection to read:

2 (c) In this section, "domestic violence" means the occurrence of one or more
3 of the following by a current or former family member, household member, intimate
4 partner, or caretaker:

5 (1) attempting to cause, causing, or threatening another person with
6 physical harm, severe emotional distress, psychological trauma, rape, or sexual
7 assault;

8 (2) engaging in a course of conduct or repeatedly committing acts
9 toward another person, including following the person without proper authority, under
10 circumstances that place the person in reasonable fear of bodily injury or physical
11 harm;

12 (3) subjecting another person to false imprisonment; or

13 (4) attempting to cause or causing damage to property so as to
14 intimidate or attempt to control the behavior of another person.

15 * **Sec. 52.** AS 21.89.080 is repealed and reenacted to read:

16 **Sec. 21.89.080. Electronic submissions.** The director may, by regulation or
17 by order, provide for the electronic submission of any information or written
18 submission required by this title and for an electronic confirmation of a required
19 submission.

20 * **Sec. 53.** AS 21.90.900(24) is repealed and reenacted to read:

21 (24) "insurance producer" has the meaning given in AS 21.27.900;

22 * **Sec. 54.** AS 21.27.150(b), 21.27.170, 21.27.405(c), 21.27.530(5), 21.27.900(14), and
23 21.27.900(16) are repealed.

24 * **Sec. 55.** The uncodified law of the State of Alaska is amended by adding a new section to
25 read:

26 **INDIRECT COURT RULE AMENDMENT.** (a) The provisions of AS 21.27.110(h),
27 as repealed and reenacted by Sec. 15 of this Act, have the effect of amending Rule 402,
28 Alaska Rules of Evidence, by making inadmissible in court, except under certain
29 circumstances, the statement of reasons for termination of an appointment under
30 AS 21.27.110.

31 (b) The provisions of AS 21.27.110(h), as repealed and reenacted by Sec. 15 of this

1 Act, that relate to admissibility of evidence in court take effect only if (a) of this section
2 receives the two-thirds majority vote of each house required by art. IV, Sec. 15, Constitution
3 of the State of Alaska.

4 * **Sec. 56.** The uncodified law of the State of Alaska is amended by adding a new section to
5 read:

6 **TRANSITION: REGULATIONS.** The director of insurance may immediately
7 proceed to adopt regulations necessary to implement the changes made by this Act. The
8 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the
9 effective date of the statutory change.

10 * **Sec. 57.** Sections 1, 9, 10, 52, and 56 of this Act take effect immediately under
11 AS 01.10.070(c).

12 * **Sec. 58.** Sections 39 and 45 - 51 of this Act take effect July 1, 2001.

13 * **Sec. 59.** Except as provided in secs. 57 and 58 of this Act, this Act takes effect January 1,
14 2002.

Proposed Amendments to CS HB 184(L&C) Work Draft

Page 30, line 29, after "refusal" add "limitation"

Page 32, after line 11, add a new section to read:

* **Sec. 58.** Section 39 of this Act takes effect July 1, 2002.

Page 32, line 12, delete "39 and"

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TOPIC: Privacy:

TITLE: GLB Privacy Deadline Looms As State Activity Intensifies

BYLINE: By Daniel J. Roy

BODY:

Five states have enacted regulations implementing the Gramm-Leach-Bliley Act's privacy requirements, while most other states have intensified efforts to meet the legislatively mandated July 1 deadline.

In the forefront, Iowa, Louisiana, New York, Washington, and by some accounts Colorado, have already passed implementing regulations, according to Reece Hirsch, a partner in the San Francisco office of Davis Wright Tremaine and chairman of the firm's e-health practice group.

GLB requires that state insurance commissioners adopt standards for regulating health plan disclosures of consumer financial and health information. Congress enacted GLB in November 1999 to remove some restrictions on mergers and other affiliations of banks and other financial services companies, including securities firms and insurance companies.

"The privacy provisions of Title V of [GLB] apply only to nonpublic personal information about individuals who obtain financial products or services for personal, family or household purposes; and not to companies or individuals obtaining products or services for business purposes," according to a research paper by Hirsch. The federal bank and securities regulators have already implemented rules to put the privacy provisions in place. The rules that govern insurers and health plans are to be enacted by states to implement GLB.

Action in Most States.

"We found that almost every state has some form of action under way," Hirsch said.

"The picture is changing week to week. While there is a lot in the works, there isn't a lot that has been finalized," Hirsch said.

Many states appear to be moving toward adoption of the National Association of Insurance Commissioner's Model "Privacy of Consumer

Financial and Health Information Regulation," according to Kris Welschmeyer, of NAIC's communications department.

NAIC estimates that 23 states are leaning toward adoption. The states include Alaska, Washington, Utah, Colorado, Wyoming, North Dakota, Nebraska, Kansas, Oklahoma, Texas, Missouri, Arkansas, Wisconsin, Mississippi, Alabama, Florida, South Carolina, West Virginia, Maryland, Pennsylvania, New York, Rhode Island, and Vermont.

The New York-based law firm LeBoeuf, Lamb, Greene & MacRae has developed a comprehensive chart, available on their Web site, that tracks what states are doing to implement GLB. It includes hyperlinks to many of the state regulations that have been considered or adopted, and is located at <http://www.insurelegal.com/20001116PrivacyStateRegChart.html>.

The model rule is a direct response to requirements for protecting health data. Critics of GLB say its privacy protections are limited because the law allows financial institutions to share information, including health data, with their affiliated companies without customer consent.

Others say it is a stopgap measure that will likely be superseded by the much larger scope of privacy regulations under the Health Insurance Portability and Accountability Act. Although final HIPAA privacy rules have been issued, new Health and Human Services Secretary Tommy G. Thompson has indicated he will make changes to the controversial regulation.

NAIC Model Rule.

Under the NAIC model, companies must obtain permission from their customers if they wish to share, sell, market, or give away health information.

The model requires the insurer to issue the privacy notice to the employer and not to all the employees, Hirsch said. There has been some debate at the state level whether the rule should require full disclosure to all health plan members.

"I think quite a few states are looking to the model for guidance," Hirsch said. "Some are adopting it as a whole, while others are looking at it as a guide."

NAIC said that nine states are retaining their own privacy rules based on the 1982 NAIC Model Act. Those states are California, Oregon, Montana, Arizona, Minnesota, Maine, New Jersey, North Carolina, and Georgia. Four other states -- Massachusetts, Connecticut, Virginia, and Illinois -- are adopting the financial protections based on the new model regulation, but are retaining the 1982 model act for health protection. Three states -- New Mexico, Ohio, and Delaware -- are undecided. NAIC has had no response from three states -- Idaho, Nevada, and New Hampshire.

Under the 1982 model, there is no delineated exception for allowing the sharing of information between affiliated companies, according to Robert

Woody, with LeBoeuf, Lamb, Greene & MacRae. Also, the 1982 model does not specifically mention health information. It speaks of information that would allow others to make judgements, Woody said.

Although the deadline on the regulation is July 1, Hirsch said it would be wise for companies to issue privacy notices 30 days earlier.

"If privacy notices are not mailed out until July 1, 2001, then nonpublic personal information may not be shared with nonaffiliated third parties until the expiration of 30 days after mailing," Hirsch said.

"Notices should be issued at least 30 days prior to that date, giving customers the required 30 days to opt out of disclosures," Hirsch said in his paper. "If Privacy Notices are not mailed out until July 1, 2001, then nonpublic personal information may not be shared with nonaffiliated third parties until the expiration of 30 days after mailing."

The new NAIC model act is available at <http://www.naic.org/regulator.htm>.

Sec. 343.30 Prohibited practices.

(a) Anticoercion and antityping rules. You may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

(1) The purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(b) Prohibition on misrepresentations generally. You may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(1) The fact that an insurance product or annuity sold or offered for sale by you or any subsidiary of the bank is not backed by the Federal government or the bank, or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;

(2) In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or

(3) In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:

(i) The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and

(ii) The consumer is free to purchase the insurance product or annuity from another source.

(c) Prohibition on domestic violence discrimination. You may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

Sec. 343.40 What you must disclose.

(a) Insurance disclosures. In connection with the initial purchase of an insurance product or annuity by a consumer from you, you must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

(1) The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank;

(2) The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank; and

(3) In the case of an insurance product or annuity that involves an

investment risk, there is investment risk associated with the product, including the possible loss of value.

(b) Credit disclosure. In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, you must disclose that the bank may not condition an extension of credit on either:

(1) The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or

(2) The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

(c) Timing and method of disclosures. (1) In general. The disclosures required by paragraph (a) of this section must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer. The disclosure required by paragraph (b) of this section must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which an insurance product or annuity is solicited, offered, or sold.

(2) Exception for transactions by mail. If a sale of an insurance product or annuity is conducted by mail, you are not required to make the oral disclosures required by paragraph (a) of this section. If you take an application for credit by mail, you are not required to make the oral disclosure required by paragraph (b).

(3) Exception for transactions by telephone. If a sale of an insurance product or annuity is conducted by telephone, you may provide the written disclosures required by paragraph (a) of this section by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a). If you take an application for credit by telephone, you may provide the written disclosure required by paragraph (b) of this section by mail, provided you mail it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

(4) Electronic form of disclosures. (i) Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), you may provide the written disclosures required by paragraph (a) and (b) of this section through electronic media instead of on paper, if the consumer affirmatively

[[Page 75845]]

consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(ii) Any disclosure required by paragraphs (a) or (b) of this section that is provided by electronic media is not required to be provided orally.

(5) Disclosures must be readily understandable. The disclosures provided shall be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, you may use the following disclosures in visual media, such as television broadcasting, ATM screens, billboards signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:

NOT A DEPOSIT
NOT FDIC-INSURED
NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
NOT GUARANTEED BY THE BANK
MAY GO DOWN IN VALUE

(6) Disclosures must be meaningful. (i) You must provide the disclosures required by paragraphs (a) and (b) of this section in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:

- (A) A plain-language heading to call attention to the disclosures;
- (B) A typeface and type size that are easy to read;
- (C) Wide margins and ample line spacing;
- (D) Boldface or italics for key words; and
- (E) Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

(ii) You have not provided the disclosures in a meaningful form if you merely state to the consumer that the required disclosures are available in printed material, but do not provide the printed material when required and do not orally disclose the information to the consumer when required.

(iii) With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

(7) Consumer acknowledgment. You must obtain from the consumer, at the time a consumer receives the disclosures required under paragraphs (a) or (b) of this section, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures. You may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form. If the disclosures required under paragraphs (a) or (b) of this section are provided in connection with a transaction that is conducted by telephone, you must:

(i) Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and

(ii) Make reasonable efforts to obtain a written acknowledgment from the consumer.

(d) Advertisements and other promotional material for insurance products or annuities. The disclosures described in paragraph (a) of this section are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

1 (1) for the period that is the longest of the following:

2 (A) the end of the current plan year;

3 (B) up to 90 days after the termination date, if the event
4 triggering the right to continuing treatment is part of an ongoing course of
5 treatment; or

6 (C) through completion of postpartum care, if the covered
7 person is pregnant on the date of termination; or

8 (2) until the end of the medically necessary treatment for the condition,
9 disease, illness, or injury if the person has a terminal condition, disease, illness, or
10 injury; in this paragraph, "terminal" means a life expectancy of less than one year.

11 (g) The requirements of this section do not apply to health care services
12 covered by Medicaid.

13 **Sec. 21.07.040. Confidentiality of managed care information.** (a)
14 Notwithstanding AS 21.86.280, medical and financial information in the possession of
15 a managed care entity regarding an applicant or a current or former person covered by
16 a managed care plan is confidential and is not subject to public disclosure.

17 (b) This section does not apply to medical information that is disclosed if

18 (1) the individual whose identity is disclosed gives oral, electronic, or
19 written consent to the disclosure;

20 (2) the information is disclosed for research

21 (A) that is subject to federal law and regulations protecting the
22 rights and welfare of research participants; or

23 (B) using health information that protects the confidentiality of
24 participants by coding or encryption of information that would otherwise
25 identify the patient;

26 (3) the information is disclosed for purposes of obtaining
27 reimbursement under health insurance;

28 (4) the information is disclosed at the written request of the covered
29 person;

30 (5) the disclosure is required by law.

31 (c) Nothing in this section may be construed to prohibit the exchange of

1 medical information between and among health care providers of an applicant or a
2 current or former person covered by a managed care plan for purposes of providing
3 health care services.

4 **Sec. 21.07.050. External health care appeals.** (a) A managed care entity
5 offering group health insurance coverage shall provide for an external appeal process
6 that meets the requirements of this section in the case of an externally appealable
7 decision for which a timely appeal is made in writing either by the managed care
8 entity or by the enrollee.

9 (b) A managed care entity may condition the use of an external appeal process
10 in the case of an externally appealable decision upon a final decision in an internal
11 appeal under AS 21.07.020, but only if the decision is made in a timely basis
12 consistent with the deadlines provided under this chapter.

13 (c) Except as provided in this subsection, the external appeal process shall be
14 conducted under a contract between the managed care entity and one or more external
15 appeal agencies that have qualified under AS 21.07.060. The managed care entity
16 shall provide

17 (1) that the selection process among external appeal agencies qualifying
18 under AS 21.07.060 does not create any incentives for external appeal agencies to
19 make a decision in a biased manner;

20 (2) for auditing a sample of decisions by external appeal agencies to
21 assure that decisions are not made in a biased manner; and

22 (3) that all costs of the process, except those incurred by the enrollee
23 or treating professional in support of the appeal, shall be paid by the managed care
24 entity and not by the enrollee.

25 (d) An external appeal process must include at least the following:

26 (1) a fair, de novo determination based on coverage provided by the
27 plan and by applying terms as defined by the plan; however, nothing in this paragraph
28 may be construed as providing for coverage of items and services for which benefits
29 are excluded under the plan or coverage;

30 (2) an external appeal agency shall determine whether the managed care
31 entity's decision is (A) in accordance with the medical needs of the patient involved,

Privacy Standards

The privacy provisions in both insurance bills (SB 138 and CS SB 138 (L&C) Work Draft) establish minimum privacy standards for insurance companies and would allow the director to adopt standards that provide greater privacy protections for consumers. This is consistent with the federal Gramm-Leach-Bliley Act (GLBA) privacy standards, which explicitly allows states to adopt privacy standards that provide greater protection to consumers' privacy. The privacy provisions in both banking bills (SB 66 and CS SB 66 (L&C)) directly set privacy standards for other financial institutions.

The following compares insurance and banking privacy provisions in the originally introduced bills and in the current version of the bills:

| | <u>Financial</u> | <u>Health</u> |
|------------------------------------|------------------|---------------|
| <u>Current Bills</u> | | |
| Banking – CS SB 66 (L&C) | Opt-out | Opt-out |
| Insurance – CS SB 138 (L&C) | Opt-out | Opt-out |
| <u>Bills Originally Introduced</u> | | |
| Banking - SB 66 | Opt-in | None |
| Insurance - SB 138 | Opt-out | Opt-in |

Current banking law sets an opt-in standard for sharing financial information. Current insurance law does not restrict sharing of consumer information.¹

Explanation of Terms

Opt-Out: means your information may be shared with others unless you state otherwise.

Opt-In: means your information may not be shared with others unless you give written permission.

Insurance Financial Information: Examples include how much premium you pay, value of your home, your name, address, phone number, birth date, occupation, income, credit information, claims made against your policy, driving history, vehicle identification and features, vehicle citations, amounts of coverage.

Insurance Health Information: Examples include medical and mental health records, payment records that indicate what type of doctors you see, types of medications you take, types of treatments you receive, your height and weight, whether you use tobacco.

Banking Financial Information: Examples include income, details on all your assets and liabilities, credit information, where and on what you spend money.

¹However, HB211 was adopted last year and will become effective 7/1/2001. It restricts sharing of financial and health information, but only for health insurers who sell managed care plans in the state. HB 211 disallows any sharing of financial information and sets an opt-in standard for sharing health information.

Amendment to Sec. 45 of CS HB 184 (L&C)

Sec. 21.36.162. Nondisclosure of personal financial and personal health information. (a) A person may not disclose personal financial or personal health information regarding an individual who seeks to obtain, obtains, or has obtained an insurance product or service and about whom the person has such information, except when, and only to the extent that the disclosure is

(1) authorized by the individual whose personal financial or personal health information is sought to be disclosed;

(2) required by federal or state statute or regulation;

(3) compelled by a subpoena, search warrant, or other order issued by a court or administrative agency of competent jurisdiction;

(4) for the performance any of the following insurance functions: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; rate making and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; or other functions that the director may approve as for necessary for the performance of the above functions that are fair and reasonable to the interest of insurance consumer;

(5) permitted without requiring authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; or

(6) required to enforce the person's rights or the rights of other persons engaged in carrying out an insurance transaction or providing an insurance product or service that an individual requests or authorizes.

(b) The director may adopt regulations to implement this section that provide no less protection of an individual's personal financial and personal health information than under (a) of this section.

(c) This section does not restrict disclosure of publicly available information.

(d) For purposes of this section

(1) "personal financial information" means any information or data that is not personal health information;

(2) "personal health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or other person that relates to

(A) the past, present or future physical, mental or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) payment for the provision of health care to an individual;

(3) "publicly available information" means any information that a person has a reasonable basis to believe is lawfully made available to the general public from

(A) federal, state or local government records;

(B) widely distributed media; or

(C) disclosures to the general public that are required to be made by federal, state or local law.

REVISED Amendment to Sec. 45 of CS HB 184 (L&C)

Sec. 21.36.162. Nondisclosure of personal financial and personal health information. (a) A person may not disclose personal financial or personal health information regarding an individual who seeks to obtain, obtains, or has obtained an insurance product or service and about whom the person has such information, except when, and only to the extent that the disclosure is

(1) authorized by the individual whose personal financial or personal health information is sought to be disclosed;

(2) required by federal or state statute or regulation;

(3) compelled by a subpoena, search warrant, or other order issued by a court or administrative agency of competent jurisdiction;

(4) for the performance any of the following insurance functions: claims administration; claims adjustment and management; detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity; underwriting; policy placement or issuance; loss control; rate making and guaranty fund functions; reinsurance and excess loss insurance; risk management; case management; disease management; quality assurance; quality improvement; performance evaluation; provider credentialing verification; utilization review; peer review activities; actuarial, scientific, medical or public policy research; grievance procedures; internal administration of compliance, managerial, and information systems; policyholder service functions; auditing; reporting; database security; administration of disputes and inquiries; external accreditation standards; the replacement of a group benefit plan or workers compensation policy or program; activities in connection with a sale, merger, transfer or exchange of all or part of a business or operating unit; or other functions that the director may approve as for necessary for the performance of the above functions that are fair and reasonable to the interest of insurance consumer;

(5) permitted without requiring authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy rules promulgated by the U.S. Department of Health and Human Services; or

(6) required to enforce the person's rights or the rights of other persons engaged in carrying out an insurance transaction or providing an insurance product or service that an individual requests or authorizes.

(b) The director may adopt regulations to implement this section that provide no less protection of an individual's personal financial and personal health information than under (a) of this section.

(c) This section does not restrict disclosure of publicly available information.

(d) **This section does not prohibit a person from disclosing personal financial information, if**

(1) the disclosure is necessary to market a financial product or service of the person, including a financial product or service that is jointly offered, endorsed or sponsored by another person under a written contract;

(2) the person receiving the information agrees in writing not to disclose or use the information other than to carry out the purposes for which the person disclosed the information; and

(3) the person disclosing the information provides written notice to the individual who is the subject of the information

(A) the information that the person collects;

(B) the information that will be disclosed; and

(C) to whom the information will be disclosed.

(e) For purposes of this section

(1) "personal financial information" means any information or data that is not personal health information;

(2) "personal health information" means any information or data except age or gender, whether oral or recorded in any form or medium, created by or derived from a health care provider or other person that relates to

(A) the past, present or future physical, mental or behavioral health or condition of an individual;

(B) the provision of health care to an individual; or

(C) payment for the provision of health care to an individual;

(3) "publicly available information" means any information that a person has a reasonable basis to believe is lawfully made available to the general public from

(A) federal, state or local government records;

(B) widely distributed media; or

(C) disclosures to the general public that are required to be made by federal, state or local law.

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE MURKOWSKI

TO: CSHB 184(L&C), Draft Version "F"

1 Page 25, line 30, through page 26, line 9:

2 Delete all material and insert:

3 **"Sec. 21.36.162. Nondisclosure of an individual's personal financial and**
4 **personal health information.** (a) A person may not disclose personal financial or
5 personal health information regarding an individual who seeks to obtain, obtains, or
6 has obtained an insurance product or service, except when and only to the extent that
7 the disclosure is

8 (1) authorized by the individual whose personal financial or personal
9 health information is sought to be disclosed;

10 (2) required by federal or state law or federal or state regulation;

11 (3) compelled by a subpoena, search warrant, or other order issued by
12 a court or administrative agency of competent jurisdiction;

13 (4) for the performance of any of the following insurance functions:
14 claims administration; claims adjustment and management; detection, investigation, or
15 reporting of actual or potential fraud, misrepresentation, or criminal activity;
16 underwriting; policy placement or issuance; loss control; rate making and guaranty
17 fund functions; reinsurance and excess loss insurance; risk management; case
18 management; disease management; quality assurance; quality improvement;
19 performance evaluation; provider credentialing verification; utilization review; peer
20 review activities; actuarial, scientific, medical, or public policy research; grievance
21 procedures; internal administration of compliance, managerial, and information
22 systems; policyholder service functions; auditing; reporting; database security;
23 administration of disputes and inquiries; external accreditation standards; the
24 replacement of a group benefit plan or workers' compensation policy or program;

1 activities in connection with a sale, merger, transfer, or exchange of all or part of a
2 business or operating unit; or other functions that the director may approve as
3 necessary for the performance of the above functions and that are fair and reasonable
4 to the interest of the insurance consumer;

5 (5) permitted without requiring authorization under federal privacy
6 rules adopted under 42 U.S.C. 300gg - 92 (Health Insurance Portability and
7 Accountability Act of 1996) by the United States Department of Health and Human
8 Services; or

9 (6) required to enforce the person's rights or the rights of other persons
10 engaged in carrying out an insurance transaction or providing an insurance product or
11 service that an individual requests or authorizes.

12 (b) The director may adopt regulations to implement this section that provide
13 not less than the protection of an individual's personal financial and personal health
14 information provided under (a) of this section.

15 (c) This section does not restrict disclosure of publicly available information.

16 (d) For purposes of this section,

17 (1) "personal financial information" means any information or data
18 about a person that is not personal health information;

19 (2) "personal health information" means any information or data
20 except age or gender, whether oral or recorded in any form or medium, created by or
21 derived from a health care provider or other person that relates to

22 (A) the past, present, or future physical, mental, or behavioral
23 health or condition of an individual;

24 (B) the provision of health care to an individual; or

25 (C) payment for the provision of health care to an individual;

26 (3) "publicly available information" means any information that a
27 person has reasonable basis to believe is lawfully made available to the general public
28 from

29 (A) federal, state, or local government records;

30 (B) widely distributed media; or

31 (C) disclosures to the general public that are required to be

1

made by federal, state, or municipal law."

A M E N D M E N T

OFFERED IN THE HOUSE

BY REPRESENTATIVE MURKOWSKI

TO: CSHB 184(L&C), Draft Version "F"

1 Page 25, line 30, through page 26, line 9:

2 Delete all material and insert:

3 **"Sec. 21.36.162. Nondisclosure of an individual's personal financial and**
4 **personal health information.** (a) A person may not disclose personal financial or
5 personal health information regarding an individual who seeks to obtain, obtains, or
6 has obtained an insurance product or service, except when and only to the extent that
7 the disclosure is

8 (1) authorized by the individual whose personal financial or personal
9 health information is sought to be disclosed;

10 (2) required by federal or state law or federal or state regulation;

11 (3) compelled by a subpoena, search warrant, or other order issued by
12 a court or administrative agency of competent jurisdiction;

13 (4) for the performance of any of the following insurance functions:
14 claims administration; claims adjustment and management; detection, investigation, or
15 reporting of actual or potential fraud, misrepresentation, or criminal activity;
16 underwriting; policy placement or issuance; loss control; rate making and guaranty
17 fund functions; reinsurance and excess loss insurance; risk management; case
18 management; disease management; quality assurance; quality improvement;
19 performance evaluation; provider credentialing verification; utilization review; peer
20 review activities; actuarial, scientific, medical, or public policy research; grievance
21 procedures; internal administration of compliance, managerial, and information
22 systems; policyholder service functions; auditing; reporting; database security;
23 administration of disputes and inquiries; external accreditation standards; the
24 replacement of a group benefit plan or workers' compensation policy or program;

1 activities in connection with a sale, merger, transfer, or exchange of all or part of a
2 business or operating unit; or other functions that the director may approve as
3 necessary for the performance of the above functions and that are fair and reasonable
4 to the interest of the insurance consumer;

5 (5) permitted without requiring authorization under federal privacy
6 rules adopted under 42 U.S.C. 300gg - 92 (Health Insurance Portability and
7 Accountability Act of 1996) by the United States Department of Health and Human
8 Services; or

9 (6) required to enforce the person's rights or the rights of other persons
10 engaged in carrying out an insurance transaction or providing an insurance product or
11 service that an individual requests or authorizes.

12 (b) The director may adopt regulations to implement this section that provide
13 not less than the protection of an individual's personal financial and personal health
14 information provided under (a) of this section.

15 (c) This section does not restrict disclosure of publicly available information.

16 (d) This section does not prohibit a person from disclosing personal financial
17 information if

18 (1) the disclosure is necessary to market a financial product or service
19 of the person, including a financial product or service that is jointly offered, endorsed,
20 or sponsored by another person under a written contract;

21 (2) the person receiving the information agrees in writing not to
22 disclose or use the information other than to carry out the purposes for which the
23 person disclosed the information; and

24 (3) the person disclosing the information provides written notice to the
25 individual who is the subject of the information and the notice includes

26 (A) the information that the person collects;

27 (B) the information that will be disclosed; and

28 (C) to whom the information will be disclosed.

29 (e) For purposes of this section,

30 (1) "personal financial information" means any information or data
31 about a person that is not personal health information;

1 (2) "personal health information" means any information or data
2 except age or gender, whether oral or recorded in any form or medium, created by or
3 derived from a health care provider or other person that relates to

4 (A) the past, present, or future physical, mental, or behavioral
5 health or condition of an individual;

6 (B) the provision of health care to an individual; or

7 (C) payment for the provision of health care to an individual;

8 (3) "publicly available information" means any information that a
9 person has reasonable basis to believe is lawfully made available to the general public
10 from

11 (A) federal, state, or local government records;

12 (B) widely distributed media; or

13 (C) disclosures to the general public that are required to be
14 made by federal, state, or municipal law."

Amendments to CS HB 184(L&C)

Page 18, after line 4, add a new section as follows

* Sec. 26, AS 21.27.360 is amended to read:

Sec. 21.27.360. Reporting and accounting for premiums and premium taxes and fees. (a) A licensee involved in the procuring or issuance of an insurance contract shall report to the insurer the exact amount of consideration charged as a premium for the contract. The amount charged shall be shown in the contract and in the records of the licensee.

(b) All money, except that made payable to the insurer, representing premium taxes and fees, premiums or return premiums received by the licensee, shall be received by the licensee as a [IN THE] fiduciary [ACCOUNT OF THE LICENSEE] and shall be promptly accounted for and paid to the person entitled to the money. [THE FIDUCIARY ACCOUNT SHALL BE LOCATED IN THIS STATE UNLESS THE LICENSEE IS LICENSED AS A NONRESIDENT UNDER AS 21.27.270 . FOR PURPOSES OF THIS SECTION, THE FIDUCIARY ACCOUNT OF THE FIRM SHALL BE CONSIDERED THE FIDUCIARY ACCOUNT OF AN INDIVIDUAL LICENSEE ACTING ON BEHALF OF THE FIRM AND SHALL BE THE RESPONSIBILITY OF THE FIRM.] Money held by the licensee as a fiduciary [DEPOSITED INTO A FIDUCIARY ACCOUNT] may not be commingled or otherwise combined with other money not held by the licensee as a fiduciary [, EXCEPT AS ALLOWED UNDER (d) OF THIS SECTION AND AS 21.27.365] .

(c) In addition to any other penalty provided by law, a person who the director has determined has acted to divert or appropriate money held as a fiduciary [ACCOUNT MONEY] for personal use shall be ordered to make restitution and shall be subject to suspension or revocation under AS 21.27.420 - 21.27.430 of all licenses and a civil penalty not to exceed \$50,000 for each violation.

(d) A licensee may only commingle premium taxes and fees, premiums, and return premiums with additional money for the purpose of advancing premiums, establishing reserves for the payment of return premiums, or reserves for receiving and transmitting premium or return premium money. [MONEY COLLECTED FOR THE PAYMENT OF PREMIUM TAXES, POLICY OR FILING FEES, LATE PAYMENT CHARGES, AND INTEREST FROM FIDUCIARY MONEY ON DEPOSIT, MAY BE COMMINGLED IN A FIDUCIARY ACCOUNT, BUT SHALL BE SEPARATELY ACCOUNTED FOR AND PERIODICALLY REMOVED FROM THE FIDUCIARY ACCOUNT].

(e) Money held by a licensee as a fiduciary may not be treated, [A LICENSEE MAY NOT TREAT MONEY REQUIRED TO BE IN A FIDUCIARY ACCOUNT] as a personal asset, as collateral for a personal or business loan, or as a personal asset or income on a financial statement, except that money held by the licensee as a [IN A] fiduciary [ACCOUNT] may be included in a financial statement of the licensee if clearly identified as assets held by the licensee as a fiduciary. [ACCOUNT ASSETS AND LIABILITIES].

(f) This section does not apply to an individual in the firm who acts solely on behalf of a firm that maintains compliance with this section [AND DEPOSITS ALL MONEY INTO THE FIRM'S FIDUCIARY ACCOUNT].

Page 30, after line 12, add a new section as follows:

* Sec. 49. AS 21.36.350 is amended to read:

Sec. 21.36.350. Regulations relating to claim settlement and premium accounting practices. (a) The director of insurance shall promulgate regulations to implement, define, and enforce AS 21.36.125.

(b) The director of insurance may promulgate regulations to implement, define, and enforce AS 21.36.360(b) and AS 21.27.360.

~~Page 30, line 29, after "refusal" add "limitation"~~

Page 31, after line 23, add a new section to read

* Sec. 55. AS 21.27.360(c), AS 21.27.365, AS 21.27.900(7) are repealed.

Page 32, after line 12, add a new section to read

* Sec 58. Sections 26, 39, 49 and 55 of this Act take effect July 1, 2002.

LESSMEIER & WINTERS
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April 9, 2001

Via Hand Delivery

Senate Labor and Commerce Committee
c/o the Honorable Randy Philips, Chair
Alaska Legislature
State Capitol, Room 103
Juneau, Alaska 99801-1182

Re: CS SB 138

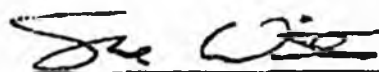
Dear Senator Phillips and Committee Members:

I represent State Farm Insurance Companies. State Farm can support the current version of CS SB 138 as set forth in the L&C work draft.

Sincerely,

LESSMEIER & WINTERS

By:



Sheldon E. Winters

SEW/sgw
0015-000/Philips-01-SEW



Alaska Independent Insurance Agents & Brokers, Inc.

April 3, 2001

The Honorable Lisa Murkowski
Alaska House of Representatives
State Capitol, Room 408
Juneau, Alaska 99801-1182

Dear Chairman Murkowski:

On behalf of the Alaska Independent insurance Agents and Brokers and the Independent Insurance Agents of America, I write you to express our support for the consumer protection provisions contained in House Bill 184, a bill scheduled to be considered by the House Labor and Commerce Committee later this week.

The enactment of the Gramm-Leach-Bliley Act (GLBA) in November 2002 was the most fundamental revision of financial services law in over a half-century, and both policymakers and private industry are now faced with the impact of this new law. While the drafters of the GLBA sought to modernize financial services regulation, they made every effort to ensure that such reform would not come to the expense of consumers. To this end, the act specifically protects the rights of the states to enact certain consumer protections, including the types of protections that have been included in House Bill 184.

We strongly support the common-sense protections contained in HB 184. Similar protections are already in place in over one-half of the states, and these provisions have afforded consumers a measure of protection while not unduly burdening private industry. Perhaps more than any other aspect of the bill, these provisions address issues that have a meaningful real-world impact on the insurance-buying public. In our view, the ultimate adoption of HB 184 will help prove that financial services modernization and effective consumer protection are not mutually exclusive goals.

For these reasons, we commend you and your colleagues for considering HB 184, and we urge you and your committee to approve the bill and the consumer protection provisions that are currently included. Naturally, if the consumer protection elements of HB 184 are modified or altered in any way, we will be forced to reconsider and reevaluate our endorsement.

Sincerely,

David Hale
President / AIIAB

Recommended Amendments to HB 184

Producer Licensing (consistent with NAIC Model)

- Add an additional exemption from licensure for employees of an insurer who perform administrative, managerial or clerical functions, which are only indirectly related to the transaction of insurance
- Allow payment of compensation without a license as long as no transaction of insurance takes place
- Help assure that Alaska meet reciprocity requirements by giving the Director the option to require a surplus line brokers maintain a bond

Recommended Amendments to HB 184 Cont...

Consumer Protections

- Clarify the definition of financial institution to exclude insurers and include credit unions
- Delete redundant privacy provisions
- Make a technical correction to the amendments made to the domestic violence anti-discrimination provision to make it consistent with the intent of legislature at the time the existing provision was adopted

FISCAL NOTE

STATE OF ALASKA
2001 LEGISLATIVE SESSION

Fiscal Note Number: 1
 Bill Version: HB 184
 (H) Publish Date: 3/14/01

Revision Date/Time (Note if correction): 02/21/2001 12:10p.m. Dept. Affected: DCED
 Title: Gram-Leach-Bliley Act & Other Insurance BRU: Insurance Operations
 Component: Insurance Operations
 Sponsor: Rules Committee
 Requester: Governor Component Number: 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

| OPERATING EXPENDITURES | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services | | | | | | |
| Travel | | | | | | |
| Contractual | | | | | | |
| Supplies | | | | | | |
| Equipment | | | | | | |
| Land & Structures | | | | | | |
| Grants & Claims | | | | | | |
| Miscellaneous | | | | | | |
| TOTAL OPERATING | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

| | | | | | | |
|-----------------------------|------------|------------|------------|------------|------------|------------|
| CAPITAL EXPENDITURES | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |
|-----------------------------|------------|------------|------------|------------|------------|------------|

| | | | | | | |
|-------------------------------|--|--|--|--|--|--|
| CHANGE IN REVENUES () | | | | | | |
|-------------------------------|--|--|--|--|--|--|

FUND SOURCE (Thousands of Dollars)

| | | | | | | |
|--------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts | | | | | | |
| 1003 GF Match | | | | | | |
| 1004 GF | | | | | | |
| 1005 GF/Program Receipts | | | | | | |
| 1037 GF/Mental Health | | | | | | |
| Other (Specify Type) | | | | | | |
| TOTAL | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 |

Estimate of any current year (FY2001) cost: 0.0

Check this box (X) if funding for this bill is included in the Governor's FY 2002 budget proposal:

POSITIONS

| | | | | | | |
|-----------|--|--|--|--|--|--|
| Full-time | | | | | | |
| Part-time | | | | | | |
| Temporary | | | | | | |

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component. It is covered by funds currently appropriated to the division in the operating budget.

Prepared by: Robert A. Lohr, Director
 Division: Insurance
 Approved by: Commissioner Deborah B. Sedwick
 Agency: Department of Community & Economic Development

Phone 907-269-7900
 Date/Time 02/21/2001 12:10p.m.
 Date 2/21/2001

For distribution information, call the Governor's Legislative Office



**Department of Community
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Division of Insurance

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March 14, 2001

The Honorable Lisa Murkowski
Chair
House Labor & Commerce Committee
State Capitol, Room 408
Juneau, AK 99801-1182

Dear Madam Chair:

RE: HB 184 "An Act relating to the business of insurance, including changes to the insurance code to implement federal financial services reforms for the business of insurance and to authorize the director of insurance to review criminal backgrounds for individuals applying to engage in the business of insurance; amending Rule 402, Alaska Rules of Evidence; and providing for an effective date."

On March 13, 2001, HB 184 was introduced by the Rules Committee at the request of Governor Knowles. It has been referred to your committee with a zero fiscal note.

Under this bill, significant changes would be made to the insurance code, AS 21, to accomplish insurance reforms necessitated by the federal Gramm-Leach-Bliley Act (GLBA) enacted in 1999. Under GLBA, specific standards are established for producer licensing, consumer privacy, consumer protections, and insurance sales. State authority to regulate insurance is affirmed by this new federal law. However, federal law may preempt that authority if states fail to regulate insurance in a manner that is at least consistent with GLBA, or if the states regulate in a manner that prevents or significantly interferes with the ability of a bank or bank affiliate to engage in insurance sales. GLBA requires states to streamline and coordinate their regulatory systems to make them faster, less burdensome and more effective. Enacting this bill into law will accomplish reforms consistent with GLBA and will continue the process of streamlining and coordinating insurance regulation.

One important goal of this bill is to amend AS 21.27, the licensing chapter of the insurance code, to provide for reciprocity in the licensing of nonresidents. This will avoid the forced creation of a national licensing organization authorized under GLBA that would take over licensing authority from the

March 14, 2001

states. It also addresses time-sensitive issues relating to consumer privacy and financial institution sales of insurance. GLBA establishes minimum privacy standard that a state must adopt. If a state fails to adopt minimum privacy standards consistent with the GLBA standards, the state risks losing their authority to enforce state consumer protection standards with respect to financial institution insurance sales.

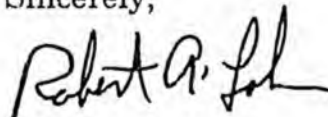
In addition to addressing the federal GLBA requirements, the bill also makes changes necessary to conform with federal laws and provides some regulatory simplifications.

Examples include provisions to:

- enable the division to obtain national criminal history record checks for any person who wants to engage in the business of insurance;
- require a person with a felony conviction involving dishonesty and breach of trust to obtain the express written consent of the director of insurance before engaging in the business of insurance, as required by and consistent with 18 U.S.C. 1033 and 1034 (Violent Crime Control and Law Enforcement Act of 1994);
- removes the current statutory requirement that an insurance firm with many branch offices license each branch office separately;
- allows multiple insurers within the insurer's holding company system or group to file a single company appointment request;
- give authority to the director to provide for the electronic submission of information and for electronic confirmation of a requested submission.

I respectfully request you to schedule HB 184 for hearing in your committee, and urge your favorable action on this bill. The Division of Insurance would be happy to meet with you and other members of the committee to brief you on the bill, and to provide any other information you may require. Thank you for considering this request.

Sincerely,



Robert A. Lohr
Director

*Dept. of Community & Economic
Development
Alaska Division of Insurance*

HB 184

**Deborah Sedwick,
Commissioner**

**Robert A. Lohr,
Director**



Mission

The Alaska Division of Insurance:

- Protects and serves the state by regulating all aspects of insurance in Alaska
- Protects and educates the consumer and enhances the insurance business environment

Gramm-Leach-Bliley Financial Services Modernization Act (GLBA)

- The Act breaks down barriers among banking, insurance and securities industries by repealing the Glass-Steagall Act, re-writing federal banking laws, and establishing a framework covering the responsibilities of federal and state regulators
- State insurance regulators' primary goal is to protect insurance consumers by taking a proactive and flexible approach to regulation

Gramm-Leach-Bliley Financial Services Modernization Act (GLBA)

- State regulators must streamline processes and become more efficient in the highly competitive world economic environment
- State regulators must work cooperatively with other state officials, federal officials, consumers and interested parties
- Simplify producer licensing, protect the privacy of consumers information and protect consumers who purchase insurance through banks

Producer Licensing

National Association of Registered Agents and Brokers (NARAB) will be enacted by November 2002, if at least 29 states do not achieve either uniformity or reciprocity for nonresident agents and brokers.

NAIC Producer Licensing Model

In October 2000, the National Association of Insurance Commissioners (NAIC) adopted the Producer License Model Act (PLMA) for states to use as a guideline for developing legislation to meet the reciprocity elements of GLBA and move toward uniformity.

Alaska Licensees

- Over 10,700 licensees
 - 2,900 residents
 - 7,800 nonresidents

• Since 1998, the Division has seen a 38% increase in the number of nonresident licensees while the trend for resident licensees has remained constant.

Producer Licensing Provisions

- Based on the NAIC Model with goal of achieving reciprocity and moving towards Uniformity
- Give licenses on a reciprocal basis, which means a nonresident applicant may receive a license upon request for licensure and payment of fee, if producer is licensed and in good standing in home state
- Issue a nonresident license for the same authority granted in the home state
- Accept home state's continuing education requirement

Producer Licensing ProvisionsContinued

- Eliminate any retaliatory provisions
- Remove all discriminatory requirements based on place of residency or operations
- Accept the National Uniform License Application

Benefits of Enacting the Producer Licensing Provisions

- Streamlined license process and elimination of duplicative requirements for licensure
- Greater efficiency and cost savings
- No retaliatory fee requirements
- Level playing field
- Collaborative effort to identify rogue agents

Alaska's Constitutional Right to Privacy

Article I, Section 22 states “The right of the people to privacy is recognized and shall not be infringed. The legislature shall implement this section.”

Consumer Privacy Provisions

Confirms the Director of Insurance's authority to adopt privacy standards that are consistent with, but no less restrictive, than the NAIC model regulation.

Summary of NAIC Privacy Model

- Protected information is: personally identifiable financial or health information
- Standards for protected financial information are consistent with GLBA (Opt-out)
- Enhanced standards for protected health information (Opt-in)

Protected Financial Information Standards

- “Opt-out” standard which means insurers may share protected financial information unless the consumer affirmatively says they do not want the information shared
- Insurers must provide notices to consumers describing their privacy policies
- Protected financial information may be shared among affiliates without restriction

Protected Health Information Standards

- “Opt-in” standard means insurers may not share protected health information without explicit permission from the consumer
- Exceptions to this standard allow insurers to perform day-to-day operations
- Unlike the financial standards, insurers are not required to provide notices describing their privacy policies

Protected Health Information Standards...continued

- Standards do not apply to insurers who are in compliance with the U.S. DHHS regulations implementing HIPAA (effective 2002)
- Sharing among both affiliates and non-affiliates is restricted

Why have stronger privacy standards for health information?

- GLBA standard is geared toward banks and securities firms not the insurance industry
- Much larger volume of health information
- Greater sensitivity of health information compared to financial information
- Greater sharing of information among banks, securities firms and insurers who are now, with passage of GLBA, allowed to affiliate

Why adopt the NAIC Privacy Model?

- Preserves insurance industry's ability to transact insurance while protecting consumers
- Broad support from industry, consumer groups and others
- Makes a strong statement that state regulation of insurance can work effectively to protect consumers while allowing the insurance industry to remain competitive in a changing financial services marketplace

Consumer Protections in Financial Institution Sales of Insurance

- Establishes consumer protection standards consistent with Section 104 (often referred to as the “13 safe harbors”) and 305 of GLBA
- Expands applicability beyond depository institutions as provided in GLBA to all financial institutions that may transact insurance in Alaska
- Four major areas of protection relating to licensing, misrepresentations, disclosure, anti-tying and anti-coercion

Why adopt consumer protections in financial institution sales of insurance?

- Provides important protections to Alaskans that may purchase insurance through a financial institution
- Avoids possible federal preemption and enforcement of these protections in Alaska
- Makes a strong statement that state regulation of insurance can work effectively to protect consumers, while allowing the insurance industry to remain competitive in a changing financial services marketplace

Two Other GLBA-Related Provisions

- Requires that a person with a felony conviction involving dishonesty or breach of trust obtain consent of director before transacting insurance as required by Federal Law (1033 and 1034)
- Removes barriers in current law to allow for electronic submissions