



**HB**

**1 2 3**

# ALASKA STATE HOUSE OF REPRESENTATIVES

716 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Room 610



Phone (907)-269-0265  
Fax# (907)-269-0264

## Representative Tom Anderson

### FACSIMILE

To: Legislative Legal Fax: 2029

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From: Josh Applebee Date: 2/8/2005

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Re: Amendments to HB 123

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CC:

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Urgent     For Review     Please Comment     Please Reply     Please Recycle

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Good morning

Attached please find two amendments to HB 123 24-LS0360F. Please add Amendment #1 and make the changes from Amendment #2 and provide in final form to Room 408.

Thank you in advance.

Josh Applebee  
House Labor & Commerce Committee

Adopted

Proposed Amendment to HB 123 #1

Page 2, lines 12 and 13

After "shall calculate" insert and implement then put a period after "adjustments"

The full sentence will read: If the review indicates that the fines, penalties and fee collections are not approximately equal to the costs for the relevant occupations, the department shall calculate and implement fee adjustments.

## Conceptual Amendment #2

Rep. Anderson proposed an amendment to adjust the sunset dates of each board to the date recommended by Legislative Audit:

Barbers & Hairdressers	-	2011
Social Work Examiners	-	2010
Professional Counselors	-	2010
Psychologists	-	2010
Veterinary Examiners	-	2009
Pharmacy	-	2010



# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 123  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Occupations Fee and RDU Occupational Licensing (117)  
Extension of Boards Component Occupational Licensing  
 Sponsor Labor and Commerce  
 Requester House Labor and Commerce Component No. 2360

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	333.7	333.7	333.7	333.7	
Travel	0.0	36.5	36.5	36.5	36.5	
Contractual	0.0	115.6	115.6	115.6	115.6	
Supplies	0.0	0.4	0.4	0.4	0.4	
Equipment	0.0	0.0	0.0	0.0	0.0	
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES (1156)</b>	<b>0.0</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>0.0</b>
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other 1156 - Receipt Supported Services	0.0	486.2	486.2	486.2	486.2	0.0
<b>TOTAL</b>	<b>0.0</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 486.2  
 Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB 123 allows fines and penalties collected by various occupations to be included with fee collections for the purpose of determining whether revenue collected approximately equals the total costs of regulation for an occupation or board.

The bill also extends the following Boards to June 30, 2009, Barbers and Hairdressers; Social Workers; Pharmacy; Professional Counselors, Psychology, and Veterinary. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Boards to conclude their affairs. FY 2006 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2006 budget. The direct costs by board are shown on the attached page.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
 Division: Occupational Licensing Date/Time 2/3/05 6:14 PM  
 Approved by: Edgar Blatchford, Commissioner Date 2/3/2005  
 Agency: Commerce, Community and Economic Development

FISCAL NOTE

STATE OF ALASKA  
2005 LEGISLATIVE SESSION

BILL NO. HB 123

ANALYSIS CONTINUATION

DIRECT Expenses

	Barbers and Hairdressers	Social Workers	Pharmacy	Professional Counselors	Psychology	Veterinary	TOTAL
Personal Svcs	122,077.11	33,827.27	73,370.00	33,902.01	37,247.84	33,271.49	333,695.72
Travel	5,724.95	2,785.15	12,807.18	4,309.65	7,425.37	2,856.80	36,489.10
Contractual	34,760.13	8,247.53	34,472.41	7,356.23	23,623.41	7,138.79	115,598.60
Commodities	172.03	14.84	57.61	14.83	12.48	153.47	425.26
Equipment	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	162,734.22	44,874.89	120,707.20	46,162.72	68,309.10	43,420.55	486,208.68

The costs above reflect the FY04 Direct costs by Board and are included in the FY05 Budget and the Governor's FY06 operating budget request.

Summary of Agencies Under Sunset Review  
**June 30, 2005**

Board Name	Extend	Date	Length	Financially Solvent	Legislative Recommendations	Other Recommendations		
						Appointments	Fee Changes	Other
Board of Public Accountancy	Yes	2009	4 years	Yes				✓
Board of Registration for Architects, Engineers and Land Surveyors	Yes	2009	4 years	Yes	✓			✓
Board of Barbers and Hairdressers	Yes	2011	6 years	Yes	✓			
Board of Social Work Examiners	Yes	2010	5 years	Yes				
Board of Professional Counselors	Yes	2010	5 years	Yes	✓			
Board of Marital and Family Therapy	Yes	2010	5 years	No	✓	✓	✓	
Board of Psychologists and Psychological Associate Examiners	Yes	2010	5 years	No		✓	✓	
Board of Veterinary Examiners	Yes	2009	4 years	Yes				✓
Board of Dental Examiners	Yes	2011	6 years	Yes				
Board of Pharmacy	Yes	2010	5 years	No			✓	✓
Suicide Prevention Council	Yes	2009	4 years	N/A		✓		✓
Alaska Seismic Hazards Safety Commission	No			N/A	✓			✓

Summary of Agencies Under Sunset Review  
**June 30, 2004**

Board Name	Extend	Date	Length	Financially Solvent	Legislative Recommendations	Other Recommendations		
						Appointments	Fee Changes	Other
Board of Real Estate Appraisers	Yes	2008	4 years	Yes				
Board of Dispensing Opticians	No	N/A	N/A	No			✓	✓

Good day Legislators,

The Board of Veterinary Examiners is pleased that the Legislative Audit Review Committee has concluded that the Veterinary Board serves an important role to the citizens of Alaska. Extension of the Veterinary Board's regulatory oversight of veterinary activities serves the public interest by helping to ensure that properly credentialed, qualified, medical professionals are practicing in Alaska. The Board has a strong interest in maintaining fair and effective licensing and oversight that also assures those who are properly credentialed the ability to work within their chosen field with minimal hurdles, expenses and delays while also ensuring that the public is protected from poor quality or dangerous medicine and fraud by suitable standards of practice.

The current members of the Veterinary Board serve as an effective and efficient group. The Board has taken steps to keep costs down and will continue to do so in the future. Recent costs to the State are the lowest they have been in years. The Board recognizes the importance of competent veterinary medicine to the public health, animal welfare, agriculture and bio-security. Extension of the termination date will allow the board to continue operating in the public interest while exercising appropriate regulatory oversight of veterinary professionals. The Board of Veterinary Examiners recommends extension of the Board's termination date and welcomes the continued opportunity and privilege to serve.

I welcome the opportunity to be of assistance or to answer questions.

Thank you

Dr. Steven M. Torrence, Chair, Alaska Board of Veterinary Examiners

smtdvm@gci.net  
907 789-7551 office  
907 789-9205 home

# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 99801-1182

### SPONSOR STATEMENT FOR HB 123 BY: Representative Tom Anderson

**TITLE: " An Act relating to occupational licensing fees and receipts; extending the termination dates of the Boards of Barbers and Hairdressers, Social Work Examiners, Pharmacy, Professional Counselors, Psychologist and Psychological Associate Examiners, and Veterinary Examiners; relating to an exemption that allows one bill to continue more than one board, commission, or agency program; and providing for an effective date."**

HB 123 extends the sunset for the boards of Barbers and Hairdressers, Social Work Examiners, Pharmacy, Professional Counselors, Psychologists and Psychological Associate Examiners and Veterinary Examiners. Each of these boards have been recommended by Legislative Audit for extension.

Additionally, HB 123 allows fines and penalties collected by various occupations to be included with fee collections for the purpose of determining whether revenue collected approximately equals the total costs of regulation for an occupation or board. This change codifies current practice and is included by request of the Division of Occupational Licensing

I would ask for your support on HB 123.

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 123  
 ( ) Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Occupations: Fee and Extension of Boards RDU Occupational Licensing (117)  
 Component Occupational Licensing  
 Sponsor Labor and Commerce  
 Requester House Labor and Commerce Component No. 2360

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Contractual	0.0	115.6	115.6	115.6	115.6	
Supplies	0.0	0.4	0.4	0.4	0.4	
Equipment	0.0	0.0	0.0	0.0	0.0	
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>0.0</b>

CAPITAL EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011

CHANGE IN REVENUES (1156)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
	0.0	486.2	486.2	486.2	486.2	0.0

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1003 GF Match						
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1037 GF/Mental Health						
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<b>TOTAL</b>	<b>0.0</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>486.2</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 486.2

Check this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

HB 123 allows fines and penalties collected by various occupations to be included with fee collections for the purpose of determining whether revenue collected approximately equals the total costs of regulation for an occupation or board.

The bill also extends the following Boards to June 30, 2009: Barbers and Hairdressers; Social Workers; Pharmacy; Professional Counselors; Psychology; and Veterinary. In accordance with AS 08.03.020, funding is extended one year following the termination date allowing the Boards to conclude their affairs. FY 2006 funding is included in the Operating Budget request. The costs shown for subsequent fiscal years reflect the direct costs included in the FY 2006 budget. The direct costs by board are shown on the attached page.

Prepared by: Jennifer Strickler, Administrative Manager Phone (907) 465-2144  
 Division: Occupational Licensing Date/Time 2/3/05 6:14 PM  
 Approved by: Edgar Blatchford, Commissioner Date 2/3/2005  
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FISCAL NOTE

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2005 LEGISLATIVE SESSION

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Commodities	172.03	14.84	57.61	14.83	12.48	153.47	425.26
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	162,734.22	44,874.89	120,707.20	46,162.72	68,309.10	43,420.55	486,208.68

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# Alaska State Legislature

## House of Representatives



Official Business

State Capitol  
Juneau, AK 99801-1182

### Sectional Analysis for HB 123 BY: Representative Tom Anderson

- Section 1-4. Amends the uncodified law of the State of Alaska to allow fines and penalties collected by various occupations to be included with fee collections for the purpose of determining whether revenue collected approximately equals the total costs of regulation for an occupation or board.
- Section 5. Extends the sunset of the Board of Barbers and Hairdressers to June 30, 2009.
- Section 6. Extends the sunset of the Board of Social Work Examiners to June 30, 2009.
- Section 7. Extends the sunset of the Board of Pharmacy to June 30, 2009.
- Section 8. Extends the sunset of the Board of Professional Counselors to June 30, 2009.
- Section 9. Extends the sunset of the Board of Psychologist and Psychological Associate Examiners to June 30, 2009.
- Section 10. Extends the sunset of the Board of Veterinary Examiners to June 30, 2009.
- Sections 11-12. Further amends statute to allow fines and penalties collected by various occupations to be included with fee collections for the purpose of determining whether revenue collected approximately equals the total costs of regulation for an occupation or board.
- Section 13. Allows the grouping of these five sunset extensions into one bill.

# Alaska State Legislature

## House of Representatives



Official Business

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### ATTACHMENT DOCUMENT FOR HB 123 BY: Representative Tom Anderson

Attached please find the Report Conclusions from the Audit Reports as published by Pat Davidson and Legislative Audit.

1. Board of Barbers and Hairdressers
2. Board of Social Work Examiners
3. Board of Pharmacy
4. Board of Professional Counselors
5. Board of Psychologist and Psychological Associate Examiners
6. Board of Veterinary Examiners

## REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Barbers and Hairdressers (BBH) should be extended. BBH is effectively regulating the various professions under its purview – barbers, hairdressers, estheticians, manicurists, body piercers, and tattooists. The board is safeguarding the public interest by ensuring individuals have met the minimum educational and experience requirements before being licensed.

BBH serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner. The board continues to make changes to regulations to improve the effectiveness of its oversight. Since the last sunset review, BBH has developed a new set of regulations related to tattooists and body piercers.

Under Alaska Statute 08.03.010(c)(4), the Board of Barbers and Hairdressers will be terminated on June 30, 2005. If this termination date is not extended, the board has a one-year period to administratively conclude its affairs. We recommend the Legislature extend the board's termination date to June 30, 2011.

Implementation of our recommendation would require the legislature to exercise some discretion permitted by state law. Alaska Statute 08.03.020(c) provides for the following:

*A board scheduled for termination ... may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period ... [emphasis added]*

Two factors influence our recommendation that the legislature extend the board to June 30, 2011. First, the board has operated effectively and in the public's interest over the past four years. Secondly, this extension would work towards smoothing out the number of boards and commissions that come under sunset in a particular year. Typically, there are four to six boards and/or commissions scheduled for a legislative sunset review; however, in 2005 there are 12 entities scheduled for sunset. Nonstandard extension dates will allow for a more even distribution of organizations going through the sunset process in any given year.

## REPORT CONCLUSIONS

In addition to developing our conclusion regarding extending the Board of Social Work Examiners' (BSWE) termination date, we also analyzed the operating costs of the board. Such analysis was done to evaluate possible cost savings that might be generated by consolidation of behavioral health boards along the lines suggested in the 2002 letter of intent. Further discussion of our conclusions follows.

### The termination date of the Board of Social Work Examiners should be extended

In our opinion, the termination date for the Board of Social Work Examiners should be extended. The board is operating in an efficient and effective manner and should continue to regulate clinical, master, and baccalaureate social workers. BSWE is serving the public interest by promoting the competence and integrity of those who provide services to the public as licensed social workers.

BSWE has demonstrated a capability of conducting its business in a satisfactory manner. The board continues to propose changes to regulations to improve the effectiveness of the board and ensure that social workers are licensed in the State of Alaska.

Alaska Statute 08.03.010(c)(6) requires BSWE be terminated on June 30, 2005. If not extended by the legislature, under AS 08.03.020, the board will have a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2010.

Implementation of our recommendation would require the legislature to exercise some discretion permitted by state law. Alaska Statute 08.03.020(c) provides for the following:

*A board scheduled for termination... may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period .. [emphasis added]*

Two factors influence our recommendation that the legislature extend the board to June 30, 2010. First, the board has operated effectively and in the public's interest over the past four years. Secondly, this extension would work towards smoothing out the number of boards and commissions that come under sunset in a particular year. Typically, there are four to six boards and/or commissions scheduled for a legislative sunset review; however, in 2005 there are 12 boards scheduled for sunset. Nonstandard extension dates will allow for a more even distribution of organizations going through the sunset process in any given year.

## REPORT CONCLUSIONS

In our opinion, the termination date for the Board of Pharmacy should be extended. The board is safeguarding the public interest by ensuring the competence of individuals who hold themselves out to the public as pharmacists, pharmacist interns, and pharmacist technicians through reasonable licensing and regulatory requirements. The board also has a role in the regulation of pharmacies, drug rooms,<sup>1</sup> and wholesale distributors.

The board adopted regulatory changes that have improved the board's oversight process and promoted more effective regulation of licensed pharmacists and pharmacies.

Alaska Statute 08.03.010(c)(1) requires the Board of Pharmacy be terminated on June 30, 2005. Under AS 08.03.020, the board has a one-year period to administratively conclude its affairs. We recommend the Legislature extend the board's termination date to June 30, 2010.

Implementation of our recommendation would require the legislature to exercise some discretion permitted by state law. Alaska Statute 08.03.020(c) provides for the following:

*"A board scheduled for termination ... may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period..."* [emphasis added]

A five-year extension would work towards smoothing out the number of boards and commissions that come under sunset in a particular year. Typically, there are four to six boards and/or commissions scheduled for a legislative sunset review. For 2005, however, there were 12 entities scheduled for sunset. Nonstandard extension dates will allow for a more even distribution of organizations going through the sunset process in any given year.

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<sup>1</sup> The term drug room refers to a situation, which requires licensure from the Board of Pharmacy, where an institutional facility that does not maintain a pharmacy but prepares and administers prescription drugs from bulk supplies for patients receiving treatment within the facility.

## REPORT CONCLUSIONS

In addition to developing our conclusion regarding extending the termination date for the Board of Professional Counselors (BPC), we also analyzed the operating costs and other factors related to the operations of the board. Various nonfinancial factors were considered in order to assess the advisability of consolidating BPC with other behavioral health boards along the lines suggested in the 2002 letter of intent. Further discussion of our conclusions follows.

### BPC should be consolidated with the Board of Marital and Family Therapy

When the legislature first created BPC there was extensive discussion, within referral committees, regarding the placement of professional counselors under the already existing Board of Marital and Family Therapy (BMFT). Eventually, it was decided to create a separate Board of Professional Counselors – in part because of concern the one time “start-up” costs involved in regulation should be borne entirely by counselors rather than part of the costs paid by marital and family therapists. BPC has successfully come through the board’s start-up period. Now circumstances are such, primarily because of BMFT-related factors, that we find it advisable to consolidate the two boards. The basis of our position is as follows:

1. Number of BMFT licensees has significantly declined. The number of professionals licensed by BMFT is steadily declining. Currently, there is less than half the number of licensees BMFT had in 1995. In the past three years only six new licenses have been issued for therapists.
2. Some BPC licensees also hold licenses with BMFT. Fourteen professional counselors also hold a license as a marital and family therapist.
3. Scope of practice and educational requirements are similar for therapists and counselors. As defined in state law, the areas of practice for the professionals regulated by both boards are similar. Both professionals are defined as engaging in diagnosis and treatment of mental and emotional disorders that are referenced in the standard diagnostic nomenclature. Both are charged with making diagnoses to treat such disorders whether cognitive, affective, or behavioral.

Educational requirements for licensing as a marital and family therapist or as professional counselor are similar. BMFT licensees are required to have more specialized systemic training for group and family counseling.

## REPORT CONCLUSIONS

In addition to developing our conclusion regarding extending the Board of Psychologist and Psychological Associate Examiners (BPPA) termination date, we also analyzed the operating costs of the board. Such analysis was done to evaluate possible cost savings that might be generated by consolidation of behavioral health boards along the lines suggested in the 2002 letter of intent. Further discussion of our conclusions follows.

### The Board of Psychologist and Psychological Associate Examiners should be extended

In our opinion, BPPA is operating in an efficient and effective manner and should continue to regulate the psychology profession. We believe the board is safeguarding the public interest by ensuring the competence and integrity of those who hold themselves out to the public as psychologists and psychological associates. BPPA serves a public purpose and has demonstrated an ability to conduct its business in a satisfactory manner.

Alaska Statute 08.03.010(c)(18) requires the Board of Psychologist and Psychological Associate Examiners be terminated on June 30, 2005. If the legislature takes no action, under AS 08.03.020, BPPA will have a one-year period to administratively conclude its affairs. We recommend the legislature extend the board's termination date to June 30, 2010.

Implementation of our recommendation would require the legislature to exercise some discretion permitted by state law. Alaska Statute 08.03.020(c) provides for the following:

*A board scheduled for termination... may be continued or reestablished by the legislature for a period not to exceed four years unless the board is continued or reestablished for a longer period... [emphasis added]*

Two factors influence our recommendation that the legislature extend the board to June 30, 2010. First, the board has operated effectively and in the public's interest over the past four years. Secondly, this extension would work towards smoothing out the number of boards and commissions that come under sunset in a particular year. Typically, there are four to six boards and/or commissions scheduled for a legislative sunset review; however, in 2005 there are 12 boards scheduled for sunset. Nonstandard extension dates will allow for a more even distribution of organizations going through the sunset process in any given year.

### Board consolidation provides minimal savings over current BPPA costs

We analyzed various aspects of consolidating all licensing boards related to behavioral health. From the perspective of efficiency and effectiveness, the most tangible benefit of consolidation for BPPA would be a minor cost savings for each licensee.

November 4, 2004

Members of the Legislative Budget  
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes, the attached report is submitted for your review.

DEPARTMENT OF COMMERCE, COMMUNITY,  
AND ECONOMIC DEVELOPMENT  
BOARD OF VETERINARY EXAMINERS

October 29, 2004

Audit Control Number

08-20036-05

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 08.03.010(c)(21), the Board of Veterinary Examiners is scheduled to terminate on June 30, 2005. If the legislature takes no action to extend the termination date, the board would be allowed one year in which to conclude its administrative operations. We recommend that the legislature extend the board's termination date to June 30, 2009.

The sunset review was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA  
Legislative Auditor

## FINDINGS AND RECOMMENDATIONS

### Recommendation No. 1

The Board of Veterinary Examiners (BVE) should ensure the completeness and timeliness of its required annual reports.

Under AS 08.01.070(10), BVE is required to submit:

*"... an annual performance report to the department [Commerce, Community, and Economic Development] stating the board's accomplishments, activities, and needs."*

Over the years, the appearance and contents of these reports, required of all professional licensing boards, have become more standardized. While much of the report involves statistics and information maintained and generated by the Division of Occupational Licensing, the board is responsible for significant narrative segments of the each year's report.

Annual reports for FY 01, FY 02, and FY 03 were submitted on time to the department. However, pertinent standard information was not included in several of the reports. Noted omissions included budget reports, investigative reports, continuing education enforcement reports, and perhaps most importantly, BVE's operating goals and objectives for the upcoming year(s). Text stating that these items were to be "added later" was included for the omitted sections, but the reports were never updated.

Such information is critical to monitoring and assessing BVE operations. Setting out specified goals and objectives establishes standards by which the board, the licensees, the general public, and the legislature can better understand and evaluate the operations of the board. Such reports can highlight issues that need to be addressed by the legislature or by the board in regulation.

The FY 04 annual report does include all the essential elements. Accordingly, we recommend BVE take steps to ensure that each annual report is complete and timely, in order to meet the intended purpose of both the general licensing reporting statute and the board's specific reporting statute.

**HB**

**147**



## Committee Changes to Hb 147

Discussions from the Committee and public testimony prompted the removal of the following parts of HB 147 24-GH1083\A:

Section 28: Page 15, line 6 – Page 17, line 25

Section 29: Page 17, line 26 – Page 18, line 3

Section 30: Page 18 lines 4 – 20

Section 33: Page 19 lines 12 – 15; lines 20 – 28

In addition, a new Section 3 was added into CSHB 147(L&C) on Page 2, line 8 – Page 3, line 21 and a new Section 24 on Page 25 lines 24 – 29. This amendment addresses the limitations on the use of Owner Controlled Insurance Programs (OCIP) and Contractor Controlled Insurance Programs (CCIP) to the construction of large (\$50,000,000.00+) projects of public or private nature over a defined period of time at a specified location or region.

All of the abovementioned changes have been completed with the input and consent of the Division of Insurance (the bill's sponsor).

24-GH1083\G  
Bullock  
3/22/05

**CS FOR HOUSE BILL NO. 147(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered:

Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the regulation of insurance, insurance licensing, surplus lines,  
2 insurer deposits, owner controlled and contractor controlled insurance programs, health  
3 discount plans, third-party administrators, and self-funded multiple employer welfare  
4 arrangements; and providing for an effective date."

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

6 \* Section 1. AS 21.09.160 is amended to read:

7       **Sec. 21.09.160. Notice of suspension or revocation and effect upon agent's**  
8 **authority.** (a) Upon suspending or revoking an insurer's certificate of authority the  
9 director shall immediately give notice to the insurer and [TO ITS AGENTS OF  
10 RECORD IN THIS STATE IN THE DIRECTOR'S OFFICE. THE DIRECTOR] shall  
11 also publish notice of the revocation in one or more newspapers of general circulation  
12 in this state.

13       (b) The suspension or revocation shall automatically suspend or revoke, as the  
14 case may be, the authority of all its agents and managing general agents to act as

1 agents or managing general agents of the insurer in this state, and the insurer  
2 [DIRECTOR] shall so state in the notice to agents and managing general agents  
3 provided for in (c) [(a)] of this section.

4 \* **Sec. 2.** AS 21.09.160 is amended by adding a new subsection to read:

5 (c) Upon notification of suspension or revocation of an insurer's certificate of  
6 authority, the insurer shall immediately give notice of the suspension or revocation to  
7 its agents and managing general agents operating in this state.

8 \* **Sec. 3.** AS 21.12 is amended by adding a new section to read:

9 **Sec. 21.12.140. Limitation on owner controlled and contractor controlled**  
10 **insurance programs.** (a) An owner controlled insurance program or a contractor  
11 controlled insurance program must be approved by the director and shall be allowed  
12 only for a major construction project. Owner controlled and contractor controlled  
13 insurance programs are limited to property insurance as defined in AS 21.12.060 and  
14 casualty insurance as defined in AS 21.12.070.

15 (b) In this section, an owner controlled or contractor controlled insured  
16 program does not include

- 17 (1) builder's risk or course of construction insurance;
- 18 (2) insurance relating to the transportation of cargo or other property;
- 19 (3) insurance covering one or more affiliates, subsidiaries, partners, or  
20 joint venture partners of a person; or
- 21 (4) insurance policies endorsed to name one or more persons as  
22 additional insureds.

23 (c) In this section,

24 (1) "contractor" means a person who undertakes the performance of a  
25 construction project for a project owner, its agent, or its representative;

26 (2) "contractor controlled insurance program" means an insurance  
27 program where one or more insurance policies are placed by a contractor, its agent, its  
28 representative, or its broker for the purpose of insuring the contractor and one or more  
29 of the following:

- 30 (A) the project owner;
- 31 (B) a subcontractor;

- 1 (C) an architect;  
2 (D) an engineer; or  
3 (E) a person performing professional services;

4 (3) "major construction project" means the process of constructing a  
5 structure, building, facility, or roadway or major renovation of more than 50 percent of  
6 an existing structure, building, facility, or roadway under a contract cost of more than  
7 \$50,000,000 of a definite term at a geographically defined project site;

8 (4) "owner controlled insurance program" means an insurance program  
9 where one or more insurance policies are placed by a project owner, its agent, its  
10 representative, or its broker for the purpose of insuring the project owner and one or  
11 more of the following:

- 12 (A) the contractor;  
13 (B) a subcontractor;  
14 (C) an architect;  
15 (D) an engineer; or  
16 (E) a person performing professional services;

17 (5) "project owner" means a person who, in the course of the person's  
18 business, engages the service of a contractor for the purpose of working on a  
19 construction project;

20 (6) "subcontractor" means a person to whom a contractor sublets all or  
21 part of a contractor's initial undertaking.

22 \* **Sec. 4.** AS 21.24.040(a) is amended to read:

23 (a) Deposits made in this state under this title shall be made through the office  
24 of the director [IN SAFE DEPOSIT OR] under custodial arrangements as required or  
25 approved by the director consistent with the purposes of the deposit, with an  
26 established safe deposit institution, bank, or trust company located in this state  
27 selected by the insurer with the director's approval.

28 \* **Sec. 5.** AS 21.24.040(c) is amended to read:

29 (c) If of convenience to the insurer in the buying, selling, and exchange of  
30 securities making up [COMPRISING] its deposit, and in the collection of interest and  
31 other income currently accruing on the securities [THEREON], the insurer may, with

1 the director's advance written approval, deposit a portion of the securities under  
2 custodial arrangements with an established bank or trust company located outside this  
3 state, if receipts representing all the securities are issued by the custodial bank or trust  
4 company and are held in [SAFE DEPOSIT OR] custody subject to the requirements of  
5 (a) [AND (b)] of this section.

6 \* Sec. 6. AS 21.24.130(d) is amended to read:

7 (d) If the insurer is subject to delinquency proceedings as defined in AS 21.78,  
8 upon the order of a court of competent jurisdiction, the director shall yield the assets  
9 and securities held on deposit under AS 21.09.090(b) to the receiver, conservator,  
10 rehabilitator, or liquidator of the insurer, or to any other properly appointed official or  
11 officials who succeed to the management and control of the insurer's assets. The  
12 director may release the deposit directly to the guaranty fund of which the  
13 insurer is a member if the right to receive all or a portion of the deposit is  
14 assigned to the guaranty fund.

15 \* Sec. 7. AS 21.27.010(c) is amended to read:

16 (c) A third-party administrator [PERSON WHO FOR A RESIDENT OF  
17 THIS STATE, OR FOR A RESIDENT OF ANOTHER JURISDICTION FROM A  
18 PLACE OF BUSINESS IN THIS STATE, PERFORMS ADMINISTRATIVE  
19 FUNCTIONS, INCLUDING CLAIMS ADMINISTRATION AND PAYMENT,  
20 MARKETING ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING,  
21 PREMIUM BILLING, COVERAGE VERIFICATION, UNDERWRITING  
22 AUTHORITY, OR CERTIFICATE ISSUANCE ONLY IN REGARD TO LIFE  
23 INSURANCE, HEALTH INSURANCE, OR ANNUITIES] is not required to be  
24 licensed as a managing general agent if the third-party administrator [PERSON]

25 (1) is registered under AS 21.27.630 - 21.27.660 [THIS CHAPTER  
26 AS A THIRD-PARTY ADMINISTRATOR]; or

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

29 \* Sec. 8. AS 21.27.100 is repealed and reenacted to read:

30 **Sec. 21.27.100. Appointment of insurance producer, managing general**  
31 **agent, and reinsurance intermediary manager; acts of agent.** (a) An appointment

1 is required to be made in accordance with this section when one or more of the  
2 following has occurred:

3 (1) an admitted insurer appoints a managing general agent in this state  
4 or relative to a subject resident, located, or to be performed in this state;

5 (2) a managing general agent appoints an insurance producer as its  
6 subagent in this state or relative to subjects resident, located, or to be performed in this  
7 state;

8 (3) a domestic reinsurer appoints a reinsurance intermediary manager;

9 (4) a reinsurance intermediary manager appoints an insurance producer  
10 as its subagent in this state.

11 (b) An admitted insurer shall appoint an insurance producer as its agent in this  
12 state or relative to a subject resident, located, or to be performed in this state not later  
13 than 30 days after the date that a written agency contract is executed or the first  
14 insurance application is submitted to the admitted insurer by the licensed insurance  
15 producer.

16 (c) An individual in a firm who acts solely on behalf of a firm that is  
17 appointed as an agent or a managing general agent on behalf of an admitted insurer  
18 under this section may not be required to also have an appointment under this section  
19 if the individual in the firm is licensed with that firm for a specific class of authority.

20 (d) The authorized or apparently authorized acts on behalf of an appointing  
21 insurer of an insurance producer appointed under this section are considered the acts  
22 of that insurer.

23 (e) An insurer and managing general agent shall maintain a current list of all  
24 appointments made or required to be made under this section that identifies the  
25 licensee's name, licensee's mailing address, license number, and effective date of  
26 appointment.

27 (f) An insurance producer shall maintain a list of all appointments made or  
28 required to be made under this section that identifies the insurer's name, insurer's  
29 mailing address, and effective date of appointment.

30 (g) An insurer, managing general agent, or insurance producer shall reply in  
31 writing within three working days to an inquiry of the director regarding an

1 appointment.

2 \* **Sec. 9.** AS 21.27.110 is repealed and reenacted to read:

3 **Sec. 21.27.110. Term of appointment.** (a) An appointment under  
4 AS 21.27.100 continues in force until the appointment is terminated in writing.

5 (b) If an insurer, reinsurer, or authorized representative discovers information  
6 showing that the appointee whose appointment was terminated has engaged in an  
7 activity identified in AS 21.27.410 during the period of the appointment, the insurer,  
8 reinsurer, or authorized representative shall, on a form or in a format prescribed by the  
9 director, promptly notify the director.

10 (c) Within 15 days after providing notification in accordance with (b) of this  
11 section, the insurer, reinsurer, or authorized representative shall mail a copy of the  
12 notification to the appointee at the last address on record with the insurer, reinsurer, or  
13 authorized representative. The notice must be provided by certified mail, return  
14 receipt requested, postage prepaid, or by overnight delivery using a nationally  
15 recognized mail carrier.

16 (d) Within 30 days after the appointee receives notification in accordance with  
17 (c) of this section, the appointee may file written comments concerning the substance  
18 of the notification with the director and shall provide a copy of the written comments  
19 to the insurer, reinsurer, or authorized representative. The written comments filed  
20 with the director must be included with each report distributed or disclosed concerning  
21 a reason about the termination of the appointment.

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

25 (f) A notice of termination submitted to the director under this section must  
26 include a statement of the reasons for the termination. A statement of the reasons for  
27 termination is confidential and not subject to inspection and copying under  
28 AS 40.25.110. A statement of reasons for the termination may not be admitted as  
29 evidence in a civil action or an administrative proceeding against an insurer, reinsurer,  
30 or authorized representative by or on behalf of a person affected by the termination,  
31 except when the action or proceeding involves perjury, unsworn falsification, fraud, or

1 failure to comply with this subsection.

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

7 \* Sec. 10. AS 21.27.380(a) is amended to read:

8 (a) Except as provided in this title, the director may renew a license biennially  
9 on a date set by the director if the licensee continues to be qualified under this chapter  
10 and, on or before the close of business of the renewal date, meets all renewal  
11 requirements established by regulation and pays the renewal license fees set under  
12 AS 21.06.250 for each license to the director. A licensee is responsible for knowing  
13 the date that a license lapses and for renewing a license before expiration. The  
14 director shall notify the licensee of the license renewal [MAIL A RENEWAL  
15 NOTICE TO THE LICENSEE'S CURRENT ADDRESS ON FILE WITH THE  
16 DIRECTOR] 30 days before the renewal date.

17 \* Sec. 11. AS 21.27.630(b) is amended to read:

18 (b) A third-party administrator may not transact business for a kind or class of  
19 authority [INSURANCE] for which the person is not registered.

20 \* Sec. 12. AS 21.27.630(c) is amended to read:

21 (c) Except as otherwise provided in this chapter, a third-party  
22 administrator [A PERSON WHO PERFORMS ADMINISTRATIVE FUNCTIONS,  
23 INCLUDING CLAIMS ADMINISTRATION AND PAYMENT, MARKETING  
24 ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING, PREMIUM  
25 BILLING, COVERAGE VERIFICATION, UNDERWRITING AUTHORITY, OR  
26 CERTIFICATE ISSUANCE IN REGARD TO INSURANCE AS A THIRD-PARTY  
27 ADMINISTRATOR] shall be registered under AS 21.27.630 - 21.27.660 [AS A  
28 THIRD-PARTY ADMINISTRATOR] unless the third-party administrator  
29 [PERSON] only investigates and adjusts claims and is licensed under this chapter as  
30 an independent adjuster.

31 \* Sec. 13. AS 21.27.630 is amended by adding new subsections to read:

1 (k) An insurer that holds a certificate of authority issued by the director and is  
2 in good standing under this title is not required to be registered as a third-party  
3 administrator in this state.

4 (l) A person that is not required to be registered as a third-party administrator  
5 under (e) - (k) of this section must file a certification with the director that the person  
6 meets the requirements for exemption.

7 \* Sec. 14. AS 21.27.650(a) is amended to read:

8 (a) An insurer may not transact business with a third-party administrator  
9 unless

10 (1) the insurer holds a certificate of authority in this state, if required  
11 under this title;

12 (2) the third-party administrator is registered under this chapter or the  
13 third-party administrator has filed a certification with the director certifying that  
14 [. WHEN] the third-party administrator is operating only for a foreign insurer other  
15 than a self-funded multiple employer welfare arrangement regulated under  
16 AS 21.85 and [,] is registered as a third-party administrator by the third-party  
17 administrator's resident insurance regulator in a state that the director has determined  
18 has enacted provisions substantially similar to those contained in AS 21.27.630 -  
19 21.27.650 and that is accredited by the National Association of Insurance  
20 Commissioners;

21 (3) the third-party administrator provides the director on January 1,  
22 April 1, July 1, and October 1 of each year

23 (A) a list of current employees, identifying those transacting  
24 business in this state or upon a subject resident, located or to be performed in  
25 this state;

26 (B) a list of current insurers under contract; and

27 (C) other information the director may require;

28 (4) a written contract is in effect between the parties that establishes  
29 the responsibilities of each party, indicates both parties' share of responsibility for a  
30 particular function, and specifies the division of responsibilities;

31 (5) there is in effect a written contract between the insurer and third-

1 party administrator that contains the following provisions:

2 (A) the insurer may terminate the contract for cause upon  
3 written notice sent by certified mail to the third-party administrator and may  
4 suspend the underwriting authority of the third-party administrator during a  
5 dispute regarding the cause for termination; but the insurer must fulfill all  
6 lawful obligations with respect to policies affected by the written agreement,  
7 regardless of any dispute between the insurer and the third-party administrator;

8 (B) the third-party administrator shall render accounts to the  
9 insurer detailing all transactions and remit all money due under the contract to  
10 the insurer at least monthly;

11 (C) all money collected for the account of an insurer shall be  
12 held by the third-party administrator as a fiduciary;

13 (D) all payments on behalf of the insurer shall be held by the  
14 third-party administrator as a fiduciary;

15 (E) the third-party administrator may not retain more than three  
16 months estimated claims payments and allocated loss adjustment expenses;

17 (F) the third-party administrator shall maintain separate records  
18 for each insurer in a form usable by the insurer; the insurer or its authorized  
19 representative shall have the right to audit and the right to copy all accounts  
20 and records related to the insurer's business; the director, in addition to other  
21 authority granted in this title, shall have access to all books, bank accounts, and  
22 records of the third-party administrator in a form usable to the director; any  
23 trade secrets contained in books and records reviewed by the director,  
24 including the identity and addresses of policyholders and certificate holders,  
25 shall be kept confidential, except that the director may use the information in a  
26 proceeding instituted against the third-party administrator or the insurer;

27 (G) the contract may not be assigned in whole or in part by the  
28 third-party administrator;

29 (H) if the contract permits the third-party administrator to do  
30 underwriting, the contract must include the following:

31 (i) the third-party administrator's maximum annual

1 premium volume;

2 (ii) the rating system and basis of the rates to be  
3 charged;

4 (iii) the types of risks that may be written;

5 (iv) maximum limits of liability;

6 (v) applicable exclusions;

7 (vi) territorial limitations;

8 (vii) policy cancellation provisions;

9 (viii) the maximum policy term; and

10 (ix) that the insurer shall have the right to cancel or not  
11 renew a policy of insurance subject to applicable state law;

12 (I) if the contract permits the third-party administrator to  
13 administer claims on behalf of the insurer, the contract must include the  
14 following:

15 (i) written settlement authority must be provided by the  
16 insurer and may be terminated for cause upon the insurer's written  
17 notice sent by certified mail to the third-party administrator or upon the  
18 termination of the contract, but the insurer may suspend the settlement  
19 authority during a dispute regarding the cause of termination;

20 (ii) claims shall be reported to the insurer within 30  
21 days;

22 (iii) a copy of the claim file shall be sent to the insurer  
23 upon request or as soon as it becomes known that the claim has the  
24 potential to exceed an amount determined by the director or exceeds the  
25 limit set by the insurer, whichever is less, involves a coverage dispute,  
26 may exceed the third-party administrator's claims settlement authority,  
27 is open for more than six months, involves extra contractual  
28 allegations, or is closed by payment in excess of an amount set by the  
29 director or an amount set by the insurer, whichever is less;

30 (iv) each party to the contract shall comply with unfair  
31 claims settlement statutes and regulations;

1 (v) transmission of electronic data must occur at least  
2 monthly if electronic claim files are in existence; and

3 (i) claim files shall be the sole property of the insurer;  
4 upon an order of liquidation of the insurer, the third-party administrator  
5 shall have reasonable access to and the right to copy the files on a  
6 timely basis; and

7 (J) the contract may not provide for commissions, fees, or  
8 charges contingent upon savings obtained in the adjustment, settlement, and  
9 payment of losses covered by the insurer's obligations; but a third-party  
10 administrator may receive performance-based compensation for providing  
11 hospital or other auditing services or may receive compensation based on  
12 premiums or charges collected or the number of claims paid or processed.

13 \* Sec. 15. AS 21.27.650 is amended by adding a new subsection to read:

14 (q) The director may, without advance notice or hearing, immediately suspend  
15 by order the registration of a third-party administrator if the director finds that one or  
16 more of the following circumstances exist:

17 (1) the third-party administrator is insolvent or impaired;

18 (2) a proceeding for bankruptcy, receivership, conservatorship, or  
19 rehabilitation, or another delinquency proceeding regarding the third-party  
20 administrator has been commenced in any state or by a governmental agency of  
21 another jurisdiction;

22 (3) the third-party administrator is in an unsound condition, or is in a  
23 condition or using methods or practices that render its further transaction of insurance  
24 injurious to policy holders or the public.

25 \* Sec. 16. AS 21.27 is amended by adding a new section to article 4 to read:

26 **Sec. 21.27.660. Definitions.** In AS 21.27.630 - 21.27.660,

27 (1) "insurer" includes the Comprehensive Health Insurance  
28 Association created under AS 21.55.010 and a self-funded multiple employer welfare  
29 arrangement regulated under AS 21.85;

30 (2) "transact" has the meaning given in AS 21.90.900.

31 \* Sec. 17. AS 21.27.900 is amended by adding a new paragraph to read:

1 (33) "appointment" means an act by a person evidencing a grant of  
2 authority to another to act on the grantor's behalf.

3 \* Sec. 18. AS 21.34.040(d) is amended to read:

4 (d) A nonadmitted insurer may be eligible to provide coverage in this state if it  
5 furnishes to the director a copy of its current annual statement that has been certified  
6 by the insurer. Except in the case of an alien insurer, the [THE] statement shall be  
7 provided not [NO] more than six months after the close of the period reported upon  
8 and that is either filed with and approved by the regulatory authority in the domicile of  
9 the nonadmitted insurer, or certified by an accounting or auditing firm licensed in the  
10 jurisdiction of the insurer's domicile. An alien insurer shall provide the statement  
11 not later than nine months after the close of the reporting period. In the case of  
12 an insurance exchange, the statement may be an aggregate combined statement of all  
13 underwriting syndicates operating during the period reported upon.

14 \* Sec. 19. AS 21.34.100(a) is amended to read:

15 (a) When surplus lines insurance is placed, the surplus lines broker shall  
16 promptly deliver to the named insured or the producing broker the policy or, if the  
17 policy is not then available, a [CERTIFICATE,] cover note, binder, or other evidence  
18 of insurance. The [CERTIFICATE,] cover note, binder, or other evidence of  
19 insurance for the named insured shall be executed by the surplus lines broker and must  
20 contain a summary of all material facts that would regularly be included in the policy,  
21 the description and location of the subject of insurance, a general description of the  
22 coverages of the insurance, the premium and rate charged and taxes to be collected  
23 from the insured, the name and address of the insured, the name of each surplus lines  
24 insurer and the percentage of the entire risk assumed by each, the name of the surplus  
25 lines broker, and the license number of the surplus lines broker.

26 \* Sec. 20. AS 21.34.100(f) is amended to read:

27 (f) A producing broker or other licensee may issue to a person, other than  
28 the named insured, a certificate [EVERY CERTIFICATE ISSUED BY THE  
29 PRODUCING BROKER OR OTHER LICENSEE] as evidence of insurance  
30 negotiated, placed, or procured under this chapter. The certificate must bear the  
31 name of the surplus lines broker, which may not be covered, concealed, or obscured

1 by the producing broker, and the following legend in at least 10-point type: "This is  
2 evidence of insurance procured and developed under the Alaska Surplus Lines Law,  
3 AS 21.34. It is not covered by the Alaska Insurance Guaranty Association Act,  
4 AS 21.80."

5 \* Sec. 21. AS 21.36.030(a) is amended to read:

6 (a) A person may not make, issue, circulate, broadcast, or have made, issued,  
7 circulated, or broadcast an estimate, circular, statement, illustration, comparison,  
8 assertion, or other written, electronic, or oral presentation that

9 (1) misrepresents the benefits, advantages, conditions, sponsorship,  
10 source, or terms of an insurance policy;

11 (2) misrepresents the dividends or share of the surplus to be received  
12 on an insurance policy;

13 (3) misrepresents an insurance policy as being a share or shares of  
14 stock;

15 (4) makes a false or misleading statement as to the dividends or shares  
16 of the surplus previously paid on an insurance policy;

17 (5) misrepresents or makes a misleading statement as to the financial  
18 condition of an insurer or as to the legal reserve system upon which a life insurer  
19 operates;

20 (6) uses a name or title of an insurance policy or class of insurance  
21 policies misrepresenting its true nature;

22 (7) is a misrepresentation for the purpose of inducing, or that tends to  
23 induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy;

24 (8) is a misrepresentation for the purpose of effecting or tending to  
25 effect a pledge or assignment of or loan against an insurance policy;

26 (9) appears to be an actual policy for a named individual when it is  
27 merely an advertisement;

28 (10) does not clearly designate the name of the insurer providing the  
29 coverage or about which the statements are made; or

30 (11) is in any other way misleading, false, or deceptive.

31 \* Sec. 22. AS 21.36.030(a) is amended to read:

1 (a) A person may not make, issue, circulate, broadcast, or have made, issued,  
2 circulated, or broadcast an estimate, circular, statement, illustration, comparison,  
3 assertion, or other written, electronic, or oral presentation that

4 (1) misrepresents the benefits, advantages, conditions, sponsorship,  
5 source, or terms of an insurance policy or a health discount plan;

6 (2) misrepresents the dividends or share of the surplus to be received  
7 on an insurance policy;

8 (3) misrepresents an insurance policy as being a share or shares of  
9 stock;

10 (4) makes a false or misleading statement as to the dividends or shares  
11 of the surplus previously paid on an insurance policy;

12 (5) misrepresents or makes a misleading statement as to the financial  
13 condition of an insurer or as to the legal reserve system upon which a life insurer  
14 operates;

15 (6) uses a name or title of an insurance policy or class of insurance  
16 policies misrepresenting its true nature;

17 (7) is a misrepresentation for the purpose of inducing, or that tends to  
18 induce the lapse, forfeiture, exchange, conversion, or surrender of an insurance policy;

19 (8) is a misrepresentation for the purpose of effecting or tending to  
20 effect a pledge or assignment of or loan against an insurance policy;

21 (9) appears to be an actual policy for a named individual when it is  
22 merely an advertisement;

23 (10) does not clearly designate the name of the insurer providing the  
24 coverage or about which the statements are made; [OR]

25 (11) is in any other way misleading, false, or deceptive;

26 (12) misrepresents a health discount plan as a form or type of  
27 insurance;

28 (13) describes a health discount plan using common insurance  
29 terminology; or

30 (14) states or implies that a health discount plan is underwritten  
31 by or associated with an insurer.

1 \* **Sec. 23.** AS 21.36 is amended by adding a new section to read:

2 **Sec. 21.36.155. Health discount plans.** (a) A person may not sell, market,  
3 promote, advertise, or otherwise distribute a health discount plan unless

4 (1) each advertisement, policy, document, information, statement, or  
5 other communication regarding the health discount plan and the plan itself contain a  
6 statement, in bold and prominent type, that the health discount plan is not insurance;

7 (2) the discounts offered under the health discount plan are specifically  
8 authorized by a contract with each provider of the services or supplies listed in  
9 conjunction with the plan;

10 (3) the health discount plan states the name, address, and telephone  
11 number of the administrator of the plan;

12 (4) the person makes readily available to the consumer a complete,  
13 accurate, and up-to-date list of providers participating in the plan that offer discounted  
14 health care services or supplies in the consumer's local area and the discounts offered  
15 by the providers;

16 (5) the person provides the consumer the right to cancel the health  
17 discount plan within 30 days after purchase of the plan; and

18 (6) the person provides the consumer with a full refund of all payments  
19 made within 30 days after notification of cancellation of the plan under (5) of this  
20 subsection.

21 (b) The director may adopt regulations to implement this section and to  
22 establish additional requirements intended to prohibit unfair or deceptive practices  
23 relating to health discount plans.

24 \* **Sec. 24.** AS 21.36.190 is amended by adding a new subsection to read:

25 (f) Except as provided in AS 21.12.140, an insurer, whether an authorized or  
26 unauthorized insurer may not underwrite an owner controlled insurance program or  
27 contractor controlled insurance program. In this subsection, "owner controlled  
28 insurance program" and "contractor controlled insurance program" have the meanings  
29 given in AS 21.12.140.

30 \* **Sec. 25.** AS 21.36.195 is amended to read:

31 **Sec. 21.36.195. Surplus lines brokers and insurance producers; prohibited**

1 acts. A surplus lines broker or an insurance producer may not fail to provide evidence  
2 of insurance, [AFFIDAVITS,] filings, or reports, or fail to maintain the records, or fail  
3 to pay the taxes and fees, required under AS 21.34.

4 \* Sec. 26. AS 21.51 is amended by adding a new section to read:

5 **Sec. 21.51.405. Rate requirements.** Rates charged for a health insurance  
6 policy may not be excessive, inadequate, or unfairly discriminatory.

7 \* Sec. 27. AS 21.55.500(16) is amended to read:

8 (16) "plan administrator" means an [THE] eligible entity that is  
9 licensed as a third-party administrator under AS 21.27 and is selected by the  
10 board and approved by the director to administer a state plan;

11 \* Sec. 28. AS 21.66.080(a) is amended to read:

12 (a) Every company, on or before March 1 of each year, shall furnish the  
13 director or the director's designee a sworn statement of assets and liabilities, and of  
14 all title premiums received by it during the preceding calendar year, setting out, among  
15 other things, the amounts that have been set aside and held by it in an account required  
16 under AS 21.18.073. The reporting format for a given year is the most recently  
17 approved National Association of Insurance Commissioners Annual Financial  
18 Statement blank form and instructions, supplemented for additional information as  
19 required by the director. The director may require the statement to be filed on  
20 electronic media. The statement must also show all unpaid losses and claims upon  
21 title insurance policies of which the title insurance company has received due notice in  
22 writing from or on behalf of the insured. With the filing of the statement, the title  
23 insurance company shall pay a filing fee set under AS 21.06.250.

24 \* Sec. 29. AS 21.66.085(b) is amended to read:

25 (b) A quarterly financial statement, if required, is due 45 [60] days after the  
26 end of the quarter to which it applies.

27 \* Sec. 30. AS 21.90.900(42) is amended to read:

28 (42) "third-party administrator" means a person who, for residents of  
29 this state, or for residents of another jurisdiction from a place of business in this state,  
30 performs administrative functions including claims administration and payment,  
31 marketing administrative functions, premium accounting, premium billing, coverage

1 verification, underwriting authority, or certificate issuance in connection with life  
2 insurance, annuities, or health insurance offered or provided by an insurer, or in  
3 connection with coverage offered or provided by a self-funded multiple employer  
4 welfare arrangement regulated under AS 21.85 or the Comprehensive Health  
5 Insurance Association created under AS 21.55 [REGARD TO LIFE INSURANCE,  
6 HEALTH INSURANCE, OR ANNUITIES];

7 \* Sec. 31. AS 21.90.900(43) is amended to read:

8 (43) "transact," with respect to insurance or the provision of coverage  
9 for medical care, includes

10 (A) solicitation and inducement;

11 (B) preliminary negotiations;

12 (C) effectuation of a contract of insurance or the provision of  
13 coverage for medical care;

14 (D) transaction of matters subsequent to effectuation of the  
15 contract of insurance or the provision of coverage for medical care and  
16 arising out of it;

17 \* Sec. 32. AS 21.90.900 is amended by adding a new paragraph to read:

18 (45) "health discount plan" means a card, program, device,  
19 arrangement, contract, or mechanism that purports to offer discounts or access to  
20 discounts on health care service, or supplies and that is not insurance or that does not  
21 provide coverage for services or benefits regulated under AS 21.86 or AS 21.87.

22 \* Sec. 33. AS 21.24.040(b); AS 21.27.330(b), and 21.27.650(p) are repealed.

23 \* Sec. 34. The uncodified law of the State of Alaska is amended by adding a new section to  
24 read:

25 TRANSITION: REGULATIONS. The director of insurance may proceed to adopt  
26 regulations to implement the changes made by secs. 22, 23, and 32 of this Act. The  
27 regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the  
28 effective date of secs. 22, 23, and 32 of this Act.

29 \* Sec. 35. Sections 22, 23, and 32 of this Act take effect July 1, 2005.

30 \* Sec. 36. Except as provided in sec. 35 of this Act, this Act takes effect immediately under  
31 AS 01.10.070(c).

# FISCAL NOTE

**STATE OF ALASKA**  
**2005 LEGISLATIVE SESSION**

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: CSHB 147(L&C)  
 () Publish Date: \_\_\_\_\_

Revision Date/Time (Note if correction): \_\_\_\_\_ Dept. Affected: Commerce  
 Title Omnibus Insurance RDU Insurance (116)  
 Component Insurance  
 Sponsor Rules by request of the Governor  
 Requester House Labor & Commerce Component No. 354

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

OPERATING EXPENDITURES	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>						
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<b>CHANGE IN REVENUES ( )</b>						
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type--Do not abbreviate)						
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2005) cost: 0.0  
 Mark this box (X) if funding for this bill is included in the Governor's FY 2006 budget proposal:

**POSITIONS**

Full-time						
Part-time						
Temporary						

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

This legislation does not have a fiscal impact on the operations of the division since there are no union health trust sections in the current version.

Prepared by: Linda S. Hall, Director Phone 907 269 7900  
 Division Insurance Date/Time 3/29/05 5:58 PM  
 Approved by: Edgar Blatchford, Commissioner Date 3/29/2005  
 Agency Commerce, Community, and Economic Development

## Section Analysis of HB 147/SB 108

Sec.	Statute	Change	Purpose or Effect
1	21.09.160	Amended	Removes requirement that the director provide specific notice to agents appointed with an insurer of the suspension or revocation of the insurer's certificate of authority; clarifies automatic suspension or revocation of authority of a managing general agent of an insurer whose certificate of authority has been suspended or revoked.
2	21.09.160(c)	Added	Requires an insurer to notify its agents and managing general agents of the insurer's suspension or revocation.
3.	21.24.040(a)	Amended	Removes never used option for how deposits may be made by deleting references to a safe deposit box.
4.	21.24.040(c)	Amended	Removes never used option for how deposits may be made by deleting references to a safe deposit box.
5.	21.24.130(d)	Amended	Provides public protection by permitting the director to release an insurer's statutory deposits to a guaranty fund of which the insurer is a member, if a right to receive all or a portion of the deposit is assigned to the guaranty fund.
6	21.27.010(c)	Amended	Removes reference to the functions of a third party administrator since those are defined in AS 21.90.900; changes reference to the specific third party administrator statutes.
7	21.27.100	Amended	Eliminates requirement for insurer or managing general agents to file appointments with the division; requires the insurer and producer to maintain a listing of agents/managing general agents and to provide the list upon request of the director.
8	21.27.110	Amended	Eliminates requirement for an insurer or reinsurer to file termination of appointments with the division since appointments will no longer be filed with the division; however, an insurer or reinsurer will be required to file notice of termination when the termination is for cause.
9	21.27.380(a)	Amended	Allows the director to notify a licensee of renewal by means other than mail.
10	21.27.630(b)	Amended	Replaces the term "class of insurance" with the defined term "class of authority."
11	21.27.630(c)	Amended	Removes reference to the functions of a third party administrator since those are defined in AS 21.90.900.
12	21.27.630(k) and (l)	Added	Removes the requirement of an admitted insurer to file and obtain a separate third party administrator registration; adds a requirement for a third party administrator who qualifies for exemption to file a certification with the director.
13	21.27.650(a)	Amended	Includes a requirement for a person who meets an exemption

			provision under the chapter to file a certification with the division.
14	21.27.660	New	Clarifies that the Comprehensive Health Insurance Association is considered an insurer for the purposes of a person who acts as a third party administrator on behalf of that association.
15	21.27.650(q)	Added	Authorizes the director to immediately suspend a third party administrator's registration, without advance notice or hearing, if the administrator is insolvent, in bankruptcy, in receivership or other delinquency proceeding or is using methods or practices injurious to policy holders or the public.
16.	21.27.900(33)	New	Defines appointment
17.	21.34.040(d)	Amended	Specifies the timing for financial reporting for alien insurers to coincide with their filing dates for stockholder reports; eliminates duplication.
18.	21.34.100(a)	Amended	Makes minor changes to surplus lines filing insurance placement requirements; reflects industry practices.
19.	21.34.100(f)	Amended	Makes minor changes to surplus lines filing insurance placement requirements; reflects industry practices.
20.	21.36.030(a)	Amended	Expands provision prohibiting misrepresentation and false advertising to include electronic communications.
21.	21.36.030(a)	Amended	Adds reference to health discount plans to give the director authority to regulate trade practices of health discount plans that are not otherwise regulated under AS 21; specifies that misleading references to health discount plans are considered unfair trade practices.
22.	21.36.155	New	Adds provision to give the director authority to regulate trade practices of health discount plans that are not otherwise regulated under AS 21 and establishes guidelines for regulation of these products.
23.	21.36.195	Amended	Makes minor changes to surplus lines filing insurance placement requirements; reflects industry practices.
24.	21.51.405	New	Requires that rates for health insurance policies not be excessive, inadequate or unfairly discriminatory. The change makes the standards applicable to individual health insurance rates the same as those that apply to other types of insurance and brings Alaska law in line with other states.
25.	21.55.500(16)	Amended	Clarifies that the plan administrator for the Comprehensive Health Insurance Association must be registered as a third party administrator.
26.	21.66.080(a)	Amended	Allows the director to designate the location for filing of financial statements for title insurers to be consistent with other insurers.
27.	21.66.085(b)	Amended	Changes the due date for financial statements for title insurers to be consistent with other insurers.

28.	21.85.200 - .230	New	Provides for division oversight of certain self-funded governmental plans that are exempt from coverage under the state's group plan.
29.	21.85.500	New	Defines self-funded governmental plans.
30.	21.89.120	New	Clarifies the director's authority to adopt regulations regarding the regulation of motor vehicle service contracts and guaranteed automobile protection products.
31.	21.90.900(42)	Amended	Expands definition of third party administrators to include administrators for the Comprehensive Health Insurance Association or for self-funded employer plans subject to AS 21.85.
32.	21.90.900(43)	Amended	Expands definition of transact to apply in the context of providing coverage for medical care.
33.	21.90.900(45) - (47)	New	Adds definitions for guaranteed automobile protection, health discount plan and motor vehicle service contract.
34.	21.24.040(b); 21.27.330(b); 21.27.650(p)	Repealed	Removes reference to use of safe deposit boxes; eliminates requirement for firms to file and pay a fee for branch offices; and removes provision that defines transact with respect to operating requirements for third party administrators as it has been moved to a definition section at the end of the article pertaining to third party administrators.
35.	Uncodified Law	Amended	Allows regulations for implementation for certain sections but not before those sections are effective.
36.	Uncodified Law	Amended	Provides revisors instructions regarding title of section 21.85 and restructuring of section into three articles.
37.	Effective Date		Makes certain sections effective July 1, 2005.
38.	Effective Date		Makes all other sections effective immediately.

HB 147			
	TRUST	MEWA	INSURER
Certificate of Authority		X	X
Deposit		200,000	300,000
Capital & Surplus	30% Claim Liability	0	Up to 5.2 Millio.,
Risk Based Capital Analysis			X
Reserves	Statute 21.18	Statute 21.18	Statute 21.18
Audited Annual Statement	Traditional	Yes - 21 pages	Yes - 120 pages
Non-Audited Quarterly	X	X	X
Biographical Affidavits		X	X
Premium Tax		X	X
Fees			\$2,350
Fidelity Bond	10% of Claim Liability	ERISA	X

## HOUSE BILL 147

### A. FILING REQUIREMENTS

1. Contribution Rates : Adequate to pay claims
2. Plan Description : To participants so know what is covered
3. Administrative Services : Qualified handling of claims
4. Financial Audit : Solvency Analysis
5. Actuarial Opinion : Reserves for claims, Stop Loss Coverage for plan protection, recommendations for financial condition
6. Number of employees & dependents covered

### B. ADDITIONAL REQUIREMENTS

1. Scope of Insurance Code
2. Director Authority for Hearings and Orders
3. Managed Care – Internal and External Review/Judgement such as utilization or pre-authorization
4. Records
5. Reserve requirements
6. Trade Practices
7. Group Life
8. Mandates
9. Group Health – Federal Requirements such as HIPPA
10. Rehabilitation & Liquidation
11. Definitions



Sec. ~~39.30.090~~ Procurement of group insurance.

(a) The Department of Administration may obtain a policy or policies of group insurance covering state employees, persons entitled to coverage under AS 14.25.168 , AS 22.25.090 , AS 39.35.535 or former AS 39.37.145, employees of other participating governmental units, or persons entitled to coverage under AS 23.15.136 , subject to the following conditions:

(1) A group insurance policy shall provide one or more of the following benefits: life insurance, accidental death and dismemberment insurance, weekly indemnity insurance, hospital expense insurance, surgical expense insurance, dental expense insurance, audiovisual insurance, or other medical care insurance.

(2) Each eligible employee of the state, the spouse and the unmarried children chiefly dependent on the eligible employee for support, and each eligible employee of another participating governmental unit shall be covered by the group policy, unless exempt under regulations adopted by the commissioner of administration.

(3) A governmental unit may participate under a group policy if

(A) its governing body adopts a resolution authorizing participation, and payment of required premiums;

(B) a certified copy of the resolution is filed with the Department of Administration; and

(C) the commissioner of administration approves the participation in writing.

(4) In procuring a policy of group health or group life insurance as provided under this section or excess loss insurance as provided in AS 39.30.091, the Department of Administration shall comply with the dual choice requirements of AS 21.86.310 , and shall obtain the insurance policy from an insurer authorized to transact business in the state under AS 21.09, a hospital or medical service corporation authorized to transact business in this state under AS 21.87, or a health maintenance organization authorized to operate in this state under AS 21.86. An excess loss insurance policy may be obtained from a life or health insurer authorized to transact business in this state under AS 21.09 or from a hospital or medical service corporation authorized to transact business in this state under AS 21.87.

(5) The Department of Administration shall make available bid specifications for desired insurance benefits or for administration of benefit claims and payments to (A) all insurance carriers authorized to transact business in this state under AS 21.09 and all hospital or medical service corporations authorized to transact business under AS 21.87 who are qualified to provide the desired benefits; and (B) to insurance carriers authorized to transact business in this state under AS 21.09, hospital or medical service corporations authorized to transact business under AS 21.87, and third-party administrators licensed to transact business in this state and qualified to provide administrative services. The specifications shall be made available at least once every five years. The lowest responsible bid submitted by an insurance carrier, hospital or medical service corporation, or third-party administrator with adequate servicing facilities shall govern selection of a carrier, hospital or medical service corporation, or third-party administrator under this section or the selection of an insurance carrier or a hospital or medical service corporation to provide excess loss insurance as provided in AS 39.30.091 .

(6) If the aggregate of dividends payable under the group insurance policy exceeds the governmental unit's share of the premium, the excess shall be applied by the governmental unit for the sole benefit of the employees.

4

(7) A person receiving benefits under AS 14.25.110 , AS 22.25, AS 39.35, or former AS 39.37 may continue the life insurance coverage that was in effect under this section at the time of termination of employment with the state or participating governmental unit.

(8) A person electing to have insurance under (7) of this subsection shall pay the cost of this insurance.

(9) For each permanent part-time employee electing coverage under this section, the state shall contribute one-half the state contribution rate for permanent full-time state employees, and the permanent part-time employee shall contribute the other one-half.

(10) A person receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37 may obtain auditory, visual, and dental insurance for that person and eligible dependents under this section. The level of coverage for persons over 65 shall be the same as that available before reaching age 65 except that the benefits payable shall be supplemental to any benefits provided under the federal old age, survivors, and disability insurance program. A person electing to have insurance under this paragraph shall pay the cost of the insurance. The commissioner of administration shall adopt regulations implementing this paragraph.

(11) A person receiving benefits under AS 14.25, AS 22.25, AS 39.35, or former AS 39.37 may obtain long-term care insurance for that person and eligible dependents under this section. A person who elects insurance under this paragraph shall pay the cost of the insurance premium. The commissioner of administration shall adopt regulations to implement this paragraph.

(12) Each licensee holding a current operating agreement for a vending facility under AS 23.15.010 - 23.15.210 shall be covered by the group policy that applies to governmental units other than the state.

(b) In this section

(1) "eligible employee" means

(A) an employee who has served in permanent full-time or part-time employment with the same governmental unit for 30 days or more, except an emergency or temporary employee;

(B) an elected or appointed official of a governmental unit, effective upon taking the oath of office; and

(C) a contractual employee of the legislative branch of state government under AS 24.10.060 (f) if the employee's personal services contract provides that the employee is entitled to coverage;

(2) "governmental unit" means the state, a municipality, school district, or other political subdivision of the state, and the North Pacific Fishery Management Council;

(3) "insurance", "insurance carrier" and "insurance policy" include health care services, health care service contractors and contracts, and health maintenance organizations.

Sec. 39.30.091. Authorization for self-insurance and excess loss insurance.

Notwithstanding AS 21.86.310 or AS 39.30.090 ~~◀~~, the Department of Administration may provide, by means of self-insurance, one or more of the benefits listed in AS 39.30.090 ~~◀~~(a)(1) for state employees eligible for the benefits by law or under a collective bargaining agreement and for persons receiving



**Josh Applebee**

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**From:** Frank's ACS [f1r2a3n4kp1@alaska.net]  
**Sent:** Monday, March 21, 2005 1:05 AM  
**To:** Rep. Tom Anderson  
**Subject:** Comment on HB 147

**Members of the Committee:**

I am a trustee of the ASEA/AFSCME Local 52 Health Benefits Trust, but am writing as a member of ASEA Local 52. By profession, I am a bank examiner with the Division of Banking, Securities, and Corporations with 27 years experience at both the federal and state levels.

I examine the two Alaska state chartered trust companies that are responsible for over \$4 billion of trust assets which means I know a few things about trusts and fiduciary responsibilities.

HB 147 as it pertains to self-funded governmental plans is just plain over-regulation. The ASEA/AFSCME Local 52 HBT is subject to its members will through the direct election of the trustees. Moreover, enforcement of its fiduciary responsibility is under the jurisdiction of the Alaska Superior Court.

The trustees are subject to civil law and a fiduciary standard commonly called "the reasonable prudent man." However, this standard is not that of an average individual on the street acting in a prudent manner. Case law has established it as the standard of an experienced fiduciary discharging the customary duties of a trustee. It is a significantly higher standard and is enforceable in a court of law. This, in addition to the direct election of trustees by the members of ASEA/AFSCME Local 52, ensures that the trustees faithfully fulfill their duties to the highest standard of fiduciary conduct.

The trustees of ASEA/AFSCME Local 52 HBT are actually held to a higher standard than the health plans managed by insurance companies that are regulated by the Division of Insurance.

My other point is that this legislation unfairly targets one segment of State of Alaska employees those employees not covered by a health benefit plan administered by the State of Alaska. They are being held to a standard that the State of Alaska does not have to follow. The state employees in the plan administered by the State of Alaska cannot obtain the information specified in HB 147 from the State of Alaska.

The Filing Requirements and Minimum Standards are already being done. They are currently being done in fulfillment of the trustees' fiduciary responsibilities. They are being done more efficiently and at less cost to the trust than HB 147 would require. Moreover, all of that information is available to members of ASEA/AFSCME Local 52 by the trustees. The State of Alaska does not make that information available to the state employees covered by its health benefit. HB 147 establishes a double standard just plain old hypocrisy.

Unfortunately, the provisions of HB 147 that pertain to self-funded governmental plans were not introduced to correct or even prevent abuses by the trustees of their fiduciary obligation. They are the result of internal power struggles within ASEA/AFSCME Local 52. How such partisan interests ever made it into legislation is beyond me.

I urge you to delete those portions of HB 147 relating to self-funded governmental plans and let them continue to discharge their fiduciary responsibilities in an effective manner under the jurisdiction of the Superior Court.

## Josh Applebee

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**From:** Suegee [Suegee@alaska.net]  
**Sent:** Saturday, March 19, 2005 12:31 PM  
**To:** Rep. Tom Anderson  
**Subject:** HB147, comments

Hello Representative Anderson: I am a current GGU employee represented by ASEA Local 52, and receive health benefits through the ASEA Local 52 Health Benefits Trust (Trust). I ask the committee members to consider my statements during your efforts for the Committee substitute for HB147, proposed legislation that will negatively impact the Trust.

12/2003 - The ASEA Executive Board sent a letter to the Division of Insurance expressing their concerns with the Trust.

02/2004 - The ASEA Biennial convention passed Resolution 14: "the union formally request the State of Alaska regulate the ASEA health benefits trust under state insurance laws."

05/2004 - The ASEA members elected representatives to the ASEA Contract Negotiating Committee (CNC) which negotiated the Tentative Agreement (TA) for FY2005 through 2007, with no changes impacting the Trust.

08/2004 - The ASEA membership ratified the 3 year TA which included the Trust.

01/05 - The Trust conducted a Pittman survey containing the following question: "How satisfied are you with the services you have received from the Health Trust?" 75% of ASEA members voted they were satisfied.

In committee hearing 03/18/05, Div. of Ins., Dir. Linda Hall cited a letter received in 12/2003 expressing member concerns with the Trust. As in all organizations, issues mutate and as indicated in the time-line above, the ASEA Local 52 membership has exhibited its support of the Trust through membership election of the CNC, in voting to ratify the TA, and in response to the Pittman survey.

The proposed regulations will negatively impact the Trust with expensive administrative costs which will NOT provide for an improved health plan nor expanded healthcare services, and will result in additional payroll health care deductions to the ASEA membership.

The proposed regulations appear to have no safeguards for the confidentiality of sensitive Trust information that could be available to the Division of Insurance; this situation could have a negative impact on the collective bargaining process.

The timelines contained in the proposed bill may be difficult if not impossible for the Trust to comply with, as the legislative budget process will not have been completed in time for the Trust to respond to the timelines for financial information required for the next Fiscal Year health plan.

Coping with the rise in health care is difficult enough without this additional administrative burden that may be placed on the Trust, and ultimately with ASEA members. I feel the Trust is doing a great job. The Trustees are ASEA members and are elected by ASEA members, and have exhibited a high fiduciary duty. The Trustees continue to seek ways to improve the health plan for its members and beneficiaries, as well as member understanding of their health plan. I believe the Trustees have been and will continue to be very responsive to the membership in fulfilling their fiduciary duty to ALL ASEA members, including the beneficiaries (dependents, spouses) of the Trust.

As indicated by Dir. Hall, no matter what health plan is in place there will always be complaints. As we all know, you cannot please ALL of the people ALL of the time. The Trust has worked very diligently to educate the ASEA members on their health coverage and the Pittman survey is a positive indicator of those efforts.

Thank you for the opportunity to comment. I do appreciate the challenging and often

contentious work of the legislators and their staff.

Sue Layton  
ASEA Local 52  
267 S. Klevin #B  
Anchorage, AK 99508  
907-563-5736

## Josh Applebee

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**From:** Sarah McNair [sarah\_mcnair@commerce.state.ak.us]  
**Sent:** Monday, March 21, 2005 11:25 AM  
**To:** Linda S Hall  
**Subject:** OCIP draft

My main concern is that they want to place this in chapter 12. Chapter 12 contains definitions of lines of business, property, casualty, inland marine, health, etc. It is not used to define ways that policies are issued under these broad categories. I think the section that is numbered 21.12.140 should be placed in chapter 36. To be sure that the required approval also includes any rate or form filing approval, the proposed 21.12.140(a), should include language to the effect that "rates and forms used by the OCIP are subject to the requirements of AS 21.39 and AS 21.42." The whole thing needs to be drafted in statute style, which hopefully will be done by a legislative drafter.

Just another thought, if we really want to "approve" rates for an OCIP, we need to clearly state that if the proposed changed in HB216 pass. If an OCIP include GL, then the GL portion would be subject to file and use and the WC portion prior approval. If we want this, then my suggestion is to add language in (a) to the effect that "rates and forms used by the OCIP are subject to the prior approval filing requirements of AS 21.39 and AS 21.42" or add language to HB216 that puts OCIPs in the prior approval sections of 21.39 and 21.42.

I also think it would be a good idea to include the term "wrap-up" so we don't end up in a situation where we are arguing over what it is called.

21.12.140(b)(6) says a construction project is the process of constructing... AND includes major renovations. Is the use of "and" intentional? This defines a construction project to have to include both new construction and major renovation and doesn't allow it to be just one of these. If the intent is to allow a construction project to be just a major renovation or new construction without also doing major renovations, then I think "and" should be replaced by "or".

**Josh Applebee**

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**From:** J.M. Walsh & Co. [jmw Walshco@gci.net]  
**Sent:** Monday, March 21, 2005 1:02 PM  
**To:** Josh Applebee; Mike Combs  
**Cc:** Alice Federenko; John Sweeney; Mike Combs; Cheryl Combs  
**Subject:** March 21, 2005 ~ RE: Committee Substitute for HB147

Josh,

Can I have you fax a copy of the CS for HB147, when its available, to Mike Combs, c/o Combs Insurance,

Phone (907) 357-8242

**FAX (907) 357-8248**

Thanks,

John Walsh

3/28/2005

# ALASKA STATE HOUSE OF REPRESENTATIVES

716 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Room 610



Phone (907)-269-0265  
Fax# (907)-269-0264

## Representative Tom Anderson

### FACSIMILE

To: Legislative Legal Fax: 2029

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From: Josh Applebee Date: 3/23/2005

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Re: HB 147

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CC:

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Urgent       For Review       Please Comment       Please Reply       Please Recycle

---

Good Afternoon,

Please include this in the Committee Substitute for HB 147 Version 23-GH1083G incorporating the attached change. We are in Room 408. Thanks!

-Josh Applebee  
465-4954

# ALASKA STATE HOUSE OF REPRESENTATIVES

716 W. 4<sup>th</sup> Ave  
Anchorage, AK 99501  
Room 610



Phone (907)-269-0265  
Fax# (907)-269-0264

## Representative Tom Anderson

### FACSIMILE

*Attn: Don Bullock*

To: Legislative Legal Fax: 2029  
From: Josh Applebee *(Signature)* Date: 3/21/2005  
Re: HB 147  
CC:

Urgent       For Review       Please Comment       Please Reply       Please Recycle

Good Afternoon,

Please prepare a Committee Substitute for HB 147 incorporating the attached change to AS 21.12.140. We are in Room 408. Thanks!

-Josh Applebee  
465-4954



Alaska Independent  
Insurance Agents & Brokers, Inc.

March 14, 2005

Representative Tom Anderson, Chairman  
Labor & Commerce Committee  
24<sup>th</sup> Legislative, 1<sup>st</sup> Session  
Alaska State Capitol  
Juneau, AK 99801-1182

House Bill 147 – Alaska Statutes Section 21 Insurance

Dear Representative Anderson,

Enclosed is a proposed amendment to this legislation addressing limitations on the use of Owner Controlled Insurance Programs (OCIP) and Contractor Controlled Insurance Programs (CCIP) to the construction of large (\$50,000,000.00 +) projects of public or private nature over a defined period of time at a specific location or region.

OCIP and CCIP's have been designed in the past to provide for uniformity of insurance coverage limits and forms for a specific large construction project involving an array of various industry trades. Examples that are often described as OCIP and CCIP projects include the Trans Alaska Pipeline, Hoover Dam, and the Sears Tower in Chicago.

There are large employers in Alaska that are proceeding with or contemplating the use of OCIP and CCIP's for the maintenance and repairs of their existing facilities.

There are several problems with using this insurance method for maintenance and repair programs:

(1). The removal of any insurance clients out of the already fragile Alaska insurance market may lead to further deterioration of that competitive arena. The total volume of insurance business in Alaska is so small that any reduction in the available insurance risks would lead to additional insurance markets exiting the state.

(2). Any loss of the current insurance market will adversely affect the remaining clients overall bottom line cost. Fewer insurance markets leads to higher costs for the rest of the clients not involved with the OCIP and CCIP.

(3). OCIP and CCIP include all owners, contractors, and sub-contractors for all aspects of the construction project. All employers are defined and included on the insurance program. No dual employer situations exist, and the insurance provided is the sole source and remedy for the public and employee exposures. This is not so clear when the OCIP and CCIP form of insurance is used for maintenance or repairs of existing facilities.

Employees of XYZ sub-contractor may have several locations and jobs throughout the state for operations during the year, but only a small portion is performed on an OCIP facility. XYZ sub-contractor would provide workers compensation benefits to their employees during travel exposures around the state, but the OCIP or CCIP program might only provide benefits for the employee while actually present at the maintenance site. If the employee is being sent to the OCIP site by XYZ sub-contractor but not included for benefits until they actually arrive at the maintenance site, who is responsible for the travel exposure? This could lead to a lot of unnecessary litigation to determine the employer/employee status at the time and place of injury.

This proposed language amendment is designed to clarify when an OCIP or CCIP may be used, and would be subject to the Division of Insurance oversight and approval.

Please give this amendment your consideration. Thank you.

Sincerely,

Michael F. Combs, CIC  
Legislative Committee  
Alaska Independent Insurance Agents & Brokers, Inc.



Alaska Independent  
Insurance Agents & Brokers, Inc.

March 14, 2005

Representative Tom Anderson, Chairman  
Labor & Commerce Committee  
24<sup>th</sup> Legislative, 1<sup>st</sup> Session  
Alaska State Capitol  
Juneau, AK 99801-1182

House Bill 147 - Alaska Statutes Section 21 Insurance

Dear Representative Anderson,

Enclosed is a proposed amendment to this legislation addressing limitations on the use of Owner Controlled Insurance Programs (OCIP) and Contractor Controlled Insurance Programs (CCIP) to the construction of large (\$50,000,000.00 +) projects of public or private nature over a defined period of time at a specific location or region.

OCIP and CCIP's have been designed in the past to provide for uniformity of insurance coverage limits and forms for a specific large construction project involving an array of various industry trades. Examples that are often described as OCIP and CCIP projects include the Trans Alaska Pipeline, Hoover Dam, and the Sears Tower in Chicago.

There are large employers in Alaska that are proceeding with or contemplating the use of OCIP and CCIP's for the maintenance and repairs of their existing facilities.

There are several problems with using this insurance method for maintenance and repair programs:

(1). The removal of any insurance clients out of the already fragile Alaska insurance market may lead to further deterioration of that competitive arena. The total volume of insurance business in Alaska is so small that any reduction in the available insurance risks would lead to additional insurance markets exiting the state.

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(2). Any loss of the current insurance market will adversely affect the remaining clients overall bottom line cost. Fewer insurance markets leads to higher costs for the rest of the clients not involved with the OCIP and CCIP.

(3). OCIP and CCIP include all owners, contractors, and sub-contractors for all aspects of the construction project. All employers are defined and included on the insurance program. No dual employer situations exist, and the insurance provided is the sole source and remedy for the public and employee exposures. This is not so clear when the OCIP and CCIP form of insurance is used for maintenance or repairs of existing facilities.

Employees of XYZ sub-contractor may have several locations and jobs throughout the state for operations during the year, but only a small portion is performed on an OCIP facility. XYZ sub-contractor would provide workers compensation benefits to their employees during travel exposures around the state, but the OCIP or CCIP program might only provide benefits for the employee while actually present at the maintenance site. If the employee is being sent to the OCIP site by XYZ sub-contractor but not included for benefits until they actually arrive at the maintenance site, who is responsible for the travel exposure? This could lead to a lot of unnecessary litigation to determine the employer/employee status at the time and place of injury.

This proposed language amendment is designed to clarify when an OCIP or CCIP may be used, and would be subject to the Division of Insurance oversight and approval

Please give this amendment your consideration. Thank you.

Sincerely,



Michael F. Combs, CIC  
Legislative Committee  
Alaska Independent Insurance Agents & Brokers, Inc

Add a new Section, AS 21.12.140, as follows:

Section 21.12.140. LIMITATION ON OWNER CONTROLLED INSURANCE PROGRAMS AND CONTRACTOR CONTROLLED INSURANCE PROGRAMS.

- (a) Owner Controlled Insurance Programs and Contractor Controlled Insurance Programs must be approved by the Director, are limited to property insurance and casualty insurance as those terms are defined in AS 21.12.060 and AS 21.12.070, respectively, and shall be allowed only for construction projects.
- (b) As used herein, the following terms shall have the following meanings:
  - (1) "Owner Controlled Insurance Program" means an insurance program where one or more insurance policies are placed by a project owner, its agent, representative or broker, with such policy or policies insuring the project owner, and one or more of the following persons: The contractor, one or more subcontractors, or an architect, engineer or other person performing professional services.
  - (2) "Contractor Controlled Insurance Program" means an insurance program where one or more insurance policies are placed by a contractor, its agent, representative or broker, with such policy or policies insuring the contractor and one or more of the following persons: The project owner, one or more subcontractors, an architect, engineer or other person performing professional services.
  - (3) "Project owner" means a person who, in the course of the person's business, engages the service of a contractor for the purpose of performing a construction project.
  - (4) "Contractor" means a person who undertakes the performance of a construction project for a project owner, its agent or representative.

- (5) "Subcontractor" means a person to whom a contractor sublets all or a part of the contractor's initial undertaking.
  - (6) "Construction project" means the process of constructing a structure, building, facility or roadway pursuant to a contract cost in excess of \$50,000,000.00 of a definite term at a defined geographical project site, and includes major renovations involving the replacement of more than fifty percent (50%) of existing structures, buildings, facilities or roadways. Construction project shall not include the operation, maintenance or repair of structures, buildings, facilities, or roadways, even if such activities include minor construction activities.
- (c) Notwithstanding (a) or (b) of this section, the following shall not constitute an Owner Controlled Insurance Program or a Contractor Controlled Insurance Program:
- (1) Builder's Risk or Course of Construction Insurance;
  - (2) Insurance relating to the transportation of cargo or other property;
  - (3) Insurance covering one or more affiliates, subsidiaries, partners or joint venture partners of a person; or
  - (4) Insurance policies endorsed to name one or more persons as additional insureds.

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Add a new subsection (f) to AS 21.36.190 ("Fictitious groups"), as follows:

- (f) An insurer, whether an authorized or unauthorized insurer, may not underwrite Owner Controlled Insurance Programs or Contractor Controlled Insurance Programs except as set forth in AS 21.12.140.



**DIVISION OF INSURANCE**

*Frank H. Murkowski, Governor*

March 8, 2005

Mr. Richard Campbell  
144 N. Binkley  
Soldotna, AK 99669

Dear Mr. Campbell:

Thank you for your input on HB 147. You were concerned that the bill would subject your city's health care program to State jurisdiction.

Section 28 of the bill would apply to self-funded governmental plans that are currently exempt from the Division of Insurance's jurisdiction (a group policy covering state employees and their dependants under Alaska Statute (AS) 39.30.90 and regulations adopted thereunder). Currently, 2 AAC 39.900 allows an exemption from coverage under a group policy for "bargaining units of the executive branch of the state" i.e., state employee union health trusts. Therefore, section 28 would only apply to the five state employee union health trusts since these are the only "bargaining units of the executive branch of the state" exempt under 2 AAC 39.900.

Section 28 of HB 147 would **not** apply to political subdivisions because a political subdivision is not a bargaining unit of the executive branch of the state. Therefore, the provisions in Article 2 (AS 21.85) of the bill would not be applicable to municipalities, school districts, or other political subdivisions that self-fund their health plans.

Also, note that under AS 39.30.090, the state may obtain a policy of insurance covering "participating" political subdivisions approved by the Commissioner. A political subdivision that self-funds its health plan is clearly not participating in a health insurance policy purchased by the state and therefore AS 39.30.090 would not apply and since AS 39.30.090 does not apply, Section 28 of HB 147 would not apply to such self-funded political subdivisions.

Please feel free to contact me with any additional questions you may have.

Sincerely,

Linda S. Hall  
Director

LH/KC/go4635.1  
030805a

Thank you, Mr. Chairman; I'm Chris Pace, a state employee. My comments are against sections 28 and 29 and the fiscal note.

One of the positive reasons I like working for the state is that we benefit from a self-funded government health plan sponsored by our union, Alaska State Employees Association. We enjoy more health benefits from our precious health care dollars because we've been successful in keeping our administrative overhead costs down.

HB 147 would reverse that. This bill would result in administrative overhead expense that I don't want or need. My health plan is already being regulated as a trust under Alaska Statute Title 13, and through our contract and letter of agreement by the Division of Retirement and Benefits.

I hear about other bills aimed at keeping health care costs down. The worker's comp bill would pay doctors and hospitals at 1999 rates to keep health care costs down. The PERS and TERS bills are partly to keep future state and municipal employee health care costs down. Legislation to cap medical malpractice awards is aimed at keeping doctor's insurance costs and rising health care costs down. But HB 147 will do the opposite and drive my state employee health care cost up.

It won't provide any additional money for doctor visits, prescriptions or dental care. It would only move money out of state employee paychecks and into the pockets of actuaries, accountants and bond brokers.

I know the legislature is always cautious when it comes to adding new laws that increase the financial burden and regulatory costs on the private sector in Alaska. Well, here is a bill that would increase health care costs for thousands of state employees, and yet the fiscal note only includes funding for one additional regulatory official at the Division of Insurance. Shouldn't the fiscal note also include funding to pay the union health plans for more actuaries, or for buying the huge fidelity bond that would be required?

Those added costs weren't factored into the contracts we just negotiated with the state. Your health plan the one for the commissioners, directors, legislators and your legislative staff, isn't going to be burdened with these new costs - only the union plans will have to pay. That's not a level playing field. I'm just afraid that the tab for these additional regulatory costs is going end up on the backs of state government employees.

So, I urge you to either not pass this bill - HB 147 - or else to fix it here in committee and remove sections 28, 29 and the fiscal note. Again, thank you.

# Alaska Public Employees Association/AFT (AFL-CIO)

State Headquarters/Juneau Field Office

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# APEA/AFT



March 16, 2005

The Honorable Tom Anderson,  
Alaska State Representative and  
Chair, House Labor & Commerce Committee  
State Capitol Room 408  
Juneau, AK 99801

RE: Opposition to HB 147 - Insurance

Dear Representative Anderson:

APEA/AFT wishes to express strong concerns about several sections of HB 147, which is currently before your committee.

The legislation impacts just a small number of our members but is both significant and negative in its impact. We represent approximately 300 school district employees in the Juneau School District, who work in maintenance, nursing, para-educators, and administrative clerks. Like many Alaskans, they have seen their health benefits costs increase to prohibitive levels.

The Juneau Education Support Staff (JESS) worked long hours with the school administration to reduce and control the staggering costs of the employees' health insurance program. Between 2002 and 2004, our Blue Cross health insurance premiums increased \$268.00 per employee per month, from \$500 to \$768. Last spring, we signed a contract to form our own health insurance trust. We have worked during the past year to finally establish that trust, and succeeded in reducing the monthly contribution rate to \$685 per employee, more than \$75.00 below the existing plan cost and saving substantial amounts of money to both the employees and the school district.

Unfortunately, provisions within HB 147 will pertain to our new trust and will result in the imposition of large fees and unanticipated costs to the trust. The new fees and costs do not improve or enhance our health insurance plans. Our members have taken the initiative to help bring their medical insurance costs down, thus helping both the state and the school districts, but if HB 147 passes as currently written, our members will be punished for their efforts and successful reduction of health insurance costs. We ask that you exempt our small group from excessive, costly and unnecessary requirement.

Thank you for giving us this opportunity to bring the issue to your attention. Please feel free to contact me should you need additional information.

Sincerely,



Pete Ford

Southeast Regional Manager

Cc: Members of the House Labor and Commerce Committee

*Anchorage Field Office*

3310 Arctic Blvd., Suite 200, Anchorage, Alaska 99503

*Fairbanks Field Office*

825 College Road, Fairbanks, Alaska 99701

## Statement of Opposition to HB 147 from Willis of Alaska

We are opposed to HB 147 because we believe the proposed legislation in Section 28 regarding Division oversight of certain governmental self-funded plans would cause many of our clients to incur a large expense of time and money, for a purpose that is not readily apparent to us.

The cost of healthcare has risen dramatically over the last 5 years, and is continuing to rise at a double digit pace. In Alaska, there are few options for employers when it comes to funding health benefits. Many have chosen a self-funded plan because it affords them more choice in designing a plan and serves as an efficient method for funding health benefits. If this bill becomes law, it will make the self-funded plan a much less attractive and would shift market share over to one of a handful of fully insured carriers writing business in Alaska. This means less competition in the healthcare market and higher costs for the State of Alaska and its employees.

## Section Analysis of HB 147/SB 108

Sec.	Statute	Change	Purpose or Effect
1	21.09.160	Amended	Removes requirement that the director provide specific notice to agents appointed with an insurer of the suspension or revocation of the insurer's certificate of authority; clarifies automatic suspension or revocation of authority of a managing general agent of an insurer whose certificate of authority has been suspended or revoked.
2	21.09.160(c)	Added	Requires an insurer to notify its agents and managing general agents of the insurer's suspension or revocation.
3.	21.24.040(a)	Amended	Removes never used option for how deposits may be made by deleting references to a safe deposit box.
4.	21.24.040(c)	Amended	Removes never used option for how deposits may be made by deleting references to a safe deposit box.
5.	21.24.130(d)	Amended	Provides public protection by permitting the director to release an insurer's statutory deposits to a guaranty fund of which the insurer is a member, if a right to receive all or a portion of the deposit is assigned to the guaranty fund.
6	21.27.610(c)	Amended	Removes reference to the functions of a third party administrator since those are defined in AS 21.90.900; changes reference to the specific third party administrator statutes.
7	21.27.100	Amended	Eliminates requirement for insurer or managing general agents to file appointments with the division; requires the insurer and producer to maintain a listing of agents/managing general agents and to provide the list upon request of the director.
8	21.27.110	Amended	Eliminates requirement for an insurer or reinsurer to file termination of appointments with the division since appointments will no longer be filed with the division; however, an insurer or reinsurer will be required to file notice of termination when the termination is for cause.
9	21.27.380(a)	Amended	Allows the director to notify a licensee of renewal by means other than mail.
10	21.27.630(b)	Amended	Replaces the term "class of insurance" with the defined term "class of authority."
11	21.27.630(c)	Amended	Removes reference to the functions of a third party administrator since those are defined in AS 21.90.900.
12	21.27.630(k) and (l)	Added	Removes the requirement of an admitted insurer to file and obtain a separate third party administrator registration; adds a requirement for a third party administrator who qualifies for exemption to file a certification with the director.
13	21.27.650(a)	Amended	Includes a requirement for a person who needs an exemption

			provision under the chapter to file a certification with the division.
14	21.27.660	New	Clarifies that the Comprehensive Health Insurance Association is considered an insurer for the purposes of a person who acts as a third party administrator on behalf of that association.
15	21.27.650(q)	Added	Authorizes the director to immediately suspend a third party administrator's registration, without advance notice or hearing, if the administrator is insolvent, in bankruptcy, in receivership or other delinquency proceeding or is using methods or practices injurious to policy holders or the public.
16.	21.27.900(33)	New	Defines appointment
17.	21.34.040(d)	Amended	Specifies the timing for financial reporting for alien insurers to coincide with their filing dates for stockholder reports; eliminates duplication.
18.	21.34.100(a)	Amended	Makes minor changes to surplus lines filing insurance placement requirements; reflects industry practices.
19.	21.34.100(f)	Amended	Makes minor changes to surplus lines filing insurance placement requirements; reflects industry practices.
20.	21.36.030(a)	Amended	Expands provision prohibiting misrepresentation and false advertising to include electronic communications.
21.	21.36.030(a)	Amended	Adds reference to health discount plans to give the director authority to regulate trade practices of health discount plans that are not otherwise regulated under AS 21; specifies that misleading references to health discount plans are considered unfair trade practices.
22.	21.36.155	New	Adds provision to give the director authority to regulate trade practices of health discount plans that are not otherwise regulated under AS 21 and establishes guidelines for regulation of these products.
23.	21.36.195	Amended	Makes minor changes to surplus lines filing insurance placement requirements; reflects industry practices.
24.	21.51.405	New	Requires that rates for health insurance policies not be excessive, inadequate or unfairly discriminatory. The change makes the standards applicable to individual health insurance rates the same as those that apply to other types of insurance and brings Alaska law in line with other states.
25.	21.55.500(16)	Amended	Clarifies that the plan administrator for the Comprehensive Health Insurance Association must be registered as a third party administrator.
26.	21.66.080(a)	Amended	Allows the director to designate the location for filing of financial statements for title insurers to be consistent with other insurers.
27.	21.66.085(b)	Amended	Changes the due date for financial statements for title insurers to be consistent with other insurers.

28.	21.85.200 - .230	New	Provides for division oversight of certain self-funded governmental plans that are exempt from coverage under the state's group plan.
29.	21.85.500	New	Defines self-funded governmental plans.
30.	21.85.120	New	Clarifies the director's authority to adopt regulations regarding the regulation of motor vehicle service contracts and guaranteed automobile protection products.
31.	21.90.900(42)	Amended	Expands definition of third party administrators to include administrators for the Comprehensive Health Insurance Association or for self-funded employer plans subject to AS 21.85.
32.	21.90.900(43)	Amended	Expands definition of transact to apply in the context of providing coverage for medical care.
33.	21.90.900(45) - (47)	New	Adds definitions for guaranteed automobile protection, health discount plan and motor vehicle service contract.
34.	21.24.040(b), 21.27.330(b); 21.27.650(p)	Repealed	Removes reference to use of safe deposit boxes; eliminates requirement for firms to file and pay a fee for branch offices; and removes provision that defines transact with respect to operating requirements for third party administrators as it has been moved to a definition section at the end of the article pertaining to third party administrators.
35.	Uncodified Law	Amended	Allows regulations for implementation of certain sections but not before those sections are effective.
36.	Uncodified Law	Amended	Provides revisors instructions regarding title of section 21.85 and restructuring of section into three articles.
37.	Effective Date		Makes certain sections effective July 1, 2005.
38.	Effective Date		Makes all other sections effective immediately.

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24-GH1083A

**HOUSE BILL NO. 147**

**IN THE LEGISLATURE OF THE STATE OF ALASKA**

**TWENTY-FOURTH LEGISLATURE - FIRST SESSION**

**BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**Introduced: 2/14/05**

**Referred: Labor and Commerce, Finance**

**A BILL**

**FOR AN ACT ENTITLED**

1 "An Act relating to the regulation of insurance, insurance licensing, surplus lines,  
2 insurer deposits, motor vehicle service contracts, guaranteed automobile protection  
3 products, health discount plans, third-party administrators, self-funded multiple  
4 employer welfare arrangements, and self-funded governmental plans; and providing for  
5 an effective date."

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

7 \* Section 1. AS 21.09.160 is amended to read:

8           **Sec. 21.09.160. Notice of suspension or revocation and effect upon agent's**  
9           **authority.** (a) Upon suspending or revoking an insurer's certificate of authority the  
10           director shall immediately give notice to the insurer and [TO ITS AGENTS OF  
11           RECORD IN THIS STATE IN THE DIRECTOR'S OFFICE. THE DIRECTOR] shall  
12           also publish notice of the revocation in one or more newspapers of general circulation  
13           in this state.

1 (b) The suspension or revocation shall automatically suspend or revoke, as the  
 2 case may be, the authority of all its agents and managing general agents to act as  
 3 agents or managing general agents of the insurer in this state, and the insurer  
 4 [DIRECTOR] shall so state in the notice to agents and managing general agents  
 5 provided for in (c) [(a)] of this section.

6 \* Sec. 2. AS 21.09.160 is amended by adding a new subsection to read:

7 (c) Upon notification of suspension or revocation of an insurer's certificate of  
 8 authority, the insurer shall immediately give notice of the suspension or revocation to  
 9 its agents and managing general agents operating in this state.

10 \* Sec. 3. AS 21.24.040(a) is amended to read:

11 (a) Deposits made in this state under this title shall be made through the office  
 12 of the director [IN SAFE DEPOSIT OR] under custodial arrangements as required or  
 13 approved by the director consistent with the purposes of the deposit, with an  
 14 established safe deposit institution, bank, or trust company located in this state  
 15 selected by the insurer with the director's approval.

16 \* Sec. 4. AS 21.24.040(c) is amended to read:

17 (c) If of convenience to the insurer in the buying, selling, and exchange of  
 18 securities comprising its deposit, and in the collection of interest and other income  
 19 currently accruing thereon, the insurer may, with the director's advance written  
 20 approval, deposit a portion of the securities under custodial arrangements with an  
 21 established bank or trust company located outside this state, if receipts representing all  
 22 the securities are issued by the custodial bank or trust company and are held in [SAFE  
 23 DEPOSIT OR] custody subject to the requirements of (a) [AND (b)] of this section. ] New use

24 \* Sec. 5. AS 21.24.130(d) is amended to read:

25 (d) If the insurer is subject to delinquency proceedings as defined in AS 21.78,  
 26 upon the order of a court of competent jurisdiction the director shall yield the assets  
 27 and securities held on deposit under AS 21.09.090(b) to the receiver, conservator,  
 28 rehabilitator, or liquidator of the insurer, or to any other properly designated official or  
 29 officials who succeed to the management and control of the insurer's assets The  
 30 director may release the deposit directly to the guaranty fund of which the  
 31 insurer is a member if the right to receive all or a portion of the deposit is ]

1           assigned to the guaranty fund.

2       \* Sec. 6. AS 21.27.010(c) is amended to read:

3                   (c) A third-party administrator [PERSON WHO FOR A RESIDENT OF  
4           THIS STATE, OR FOR A RESIDENT OF ANOTHER JURISDICTION FROM A  
5           PLACE OF BUSINESS IN THIS STATE, PERFORMS ADMINISTRATIVE  
6           FUNCTIONS, INCLUDING CLAIMS ADMINISTRATION AND PAYMENT,  
7           MARKETING ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING,  
8           PREMIUM BILLING, COVERAGE VERIFICATION, UNDERWRITING  
9           AUTHORITY, OR CERTIFICATE ISSUANCE ONLY IN REGARD TO LIFE  
10          INSURANCE, HEALTH INSURANCE, OR ANNUITIES] is not required to be  
11          licensed as a managing general agent if the third-party administrator [PERSON]

12                   (1) is registered under AS 21.27.630 - 21.27.660 [THIS CHAPTER  
13          AS A THIRD-PARTY ADMINISTRATOR]; or

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

16       \* Sec. 7. AS 21.27.100 is repealed and reenacted to read:

17                   **Sec. 21.27.100. Appointment of insurance producer, managing general  
18           agent, and reinsurance intermediary manager; acts of agent.** (a) An appointment  
19           is required to be made in accordance with this section when one or more of the  
20           following has occurred:

21                   (1) an admitted insurer appoints a managing general agent in this state  
22           or relative to a subject resident, located, or to be performed in this state;

23                   (2) a managing general agent appoints an insurance producer as its  
24           subagent in this state or relative to subjects resident, located, or to be performed in this  
25           state;

26                   (3) a domestic reinsurer appoints a reinsurance intermediary manager;

27                   (4) a reinsurance intermediary manager appoints an insurance producer  
28           as its subagent in this state.

29                   (b) An admitted insurer shall appoint an insurance producer as its agent in this  
30           state or relative to a subject resident, located, or to be performed in this state not later  
31           than 30 days after the date that a written agency contract is executed or the first

1 insurance application is submitted to the admitted insurer by the licensed insurance  
2 producer.

3 (c) An individual in a firm who acts solely on behalf of a firm that is  
4 appointed as an agent or a managing general agent on behalf of an admitted insurer  
5 under this section may not be required to also have an appointment under this section  
6 if the individual in the firm is licensed with that firm for a specific class of authority.

7 (d) The authorized or apparently authorized acts on behalf of an appointing  
8 insurer of an insurance producer appointed under this section are considered the acts  
9 of that insurer.

10 (e) An insurer and managing general agent shall maintain a current list of all  
11 appointments made or required to be made under this section that identifies the  
12 licensee's name, licensee's mailing address, license number, and effective date of  
13 appointment.

14 (f) An insurance producer shall maintain a list of all appointments made or  
15 required to be made under this section that identifies the insurer's name, insurer's  
16 mailing address, and effective date of appointment.

17 (g) An insurer, managing general agent, or insurance producer shall reply in  
18 writing within three business working days to an inquiry of the director regarding an  
19 appointment.

20 \* Sec. 8. AS 21.27.110 is repealed and reenacted to read:

21 **Sec. 21.27.110. Term of appointment.** (a) An appointment under  
22 AS 21.27.100 continues in force until the appointment is terminated in writing.

23 (b) If an insurer, reinsurer, or authorized representative discovers information  
24 showing that the appointee whose appointment was terminated has engaged in an  
25 activity identified in AS 21.27.410 during the period of the appointment, the insurer,  
26 reinsurer, or authorized representative shall, on a form or in a format prescribed by the  
27 director, promptly notify the director.

28 (c) Within 15 days after providing notification in accordance with (b) of this  
29 section, the insurer, reinsurer, or authorized representative shall mail a copy of the  
30 notification to the appointee at the last address on record with the insurer, reinsurer, or  
31 authorized representative. The notice must be provided by certified mail, return

1 receipt requested, postage prepaid, or by overnight delivery using a nationally  
2 recognized mail carrier.

3 (d) Within 30 days after the appointee receives notification in accordance with  
4 (c) of this section, the appointee may file written comments concerning the substance  
5 of the notification with the director and must provide a copy of the written comments  
6 to the insurer, reinsurer, or authorized representative. The written comments filed  
7 with the director must be included with each report distributed or disclosed concerning  
8 a reason about the termination of the appointment.

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

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

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

25 \* Sec. 9. AS 21.27.380(a) is amended to read:

26 (a) Except as provided in this title, the director may renew a license biennially  
27 on a date set by the director if the licensee continues to be qualified under this chapter  
28 and on or before the close of business of the renewal date, meets all renewal  
29 requirements established by regulation and pays the renewal license fees set under  
30 AS 21.06.250 for each license to the director. A licensee is responsible for knowing  
31 the date that a license lapses and for renewing a license before expiration. The

1 director shall notify the licensee of the license renewal [MAIL A RENEWAL  
2 NOTICE TO THE LICENSEE'S CURRENT ADDRESS ON FILE WITH THE  
3 DIRECTOR] 30 days before the renewal date.

4 \* Sec. 10. AS 21.27.630(b) is amended to read:

5 (b) A third-party administrator may not transact business for a kind or class of  
6 authority [INSURANCE] for which the person is not registered.

7 \* Sec. 11. AS 21.27.630(c) is amended to read:

8 (c) Except as otherwise provided in this chapter, a third-party  
9 administrator [A PERSON WHO PERFORMS ADMINISTRATIVE FUNCTIONS,  
10 INCLUDING CLAIMS ADMINISTRATION AND PAYMENT, MARKETING  
11 ADMINISTRATIVE FUNCTIONS, PREMIUM ACCOUNTING, PREMIUM  
12 BILLING, COVERAGE VERIFICATION, UNDERWRITING AUTHORITY, OR  
13 CERTIFICATE ISSUANCE IN REGARD TO INSURANCE AS A THIRD-PARTY  
14 ADMINISTRATOR] shall be registered under AS 21.27.630 - 21.27.660 [AS A  
15 THIRD-PARTY ADMINISTRATOR] unless the third-party administrator  
16 [PERSON] only investigates and adjusts claims and is licensed under this chapter as  
17 an independent adjuster.

18 \* Sec. 12. AS 21.27.630 is amended by adding new subsections to read:

19 (k) An insurer that holds a certificate of authority issued by the director and is  
20 in good standing under this title is not required to be registered as a third-party  
21 administrator in this state.

22 (l) A person that is not required to be registered as a third-party administrator  
23 under (e) - (k) of this section must file a certification with the director that the person  
24 meets the requirements for exemption.

25 \* Sec. 13. AS 21.27.650(a) is amended to read:

26 (a) An insurer may not transact business with a third-party administrator  
27 unless

28 (1) the insurer holds a certificate of authority in this state, if required  
29 under this title;

30 (2) the third-party administrator is registered under this chapter or the  
31 third-party administrator has filed a certification with the director certifying that

1       [, WHEN] the third-party administrator is operating only for a foreign insurer other  
 2       than a self-funded employer plan regulated under AS 21.85, and [,] is registered as  
 3       a third-party administrator by the third-party administrator's resident insurance  
 4       regulator in a state that the director has determined has enacted provisions  
 5       substantially similar to those contained in AS 21.27.630 - 21.27.650 and that is  
 6       accredited by the National Association of Insurance Commissioners;

7               (3) the third-party administrator provides the director on January 1,  
 8       April 1, July 1, and October 1 of each year

9                       (A) a list of current employees, identifying those transacting  
 10                      business in this state or upon a subject resident, located or to be performed in  
 11                      this state;

12                     (B) a list of current insurers under contract; and

13                     (C) other information the director may require;

14               (4) a written contract is in effect between the parties that establishes  
 15       the responsibilities of each party, indicates both parties' share of responsibility for a  
 16       particular function, and specifies the division of responsibilities;

17               (5) there is in effect a written contract between the insurer and third-  
 18       party administrator that contains the following provisions:

19                     (A) the insurer may terminate the contract for cause upon  
 20                      written notice sent by certified mail to the third-party administrator and may  
 21                      suspend the underwriting authority of the third-party administrator during a  
 22                      dispute regarding the cause for termination; but the insurer must fulfill all  
 23                      lawful obligations with respect to policies affected by the written agreement,  
 24                      regardless of any dispute between the insurer and the third-party administrator;

25                     (B) the third-party administrator shall render accounts to the  
 26                      insurer detailing all transactions and remit all money due under the contract to  
 27                      the insurer at least monthly;

28                     (C) all money collected for the account of an insurer shall be  
 29                      held by the third-party administrator as a fiduciary;

30                     (D) all payments on behalf of the insurer shall be held by the  
 31                      third-party administrator as a fiduciary;

1 (E) the third-party administrator may not retain more than three  
2 months estimated claims payments and allocated loss adjustment expenses;

3 (F) the third-party administrator shall maintain separate records  
4 for each insurer in a form usable by the insurer; the insurer or its authorized  
5 representative shall have the right to audit and the right to copy all accounts  
6 and records related to the insurer's business; the director, in addition to other  
7 authority granted in this title, shall have access to all books, bank accounts, and  
8 records of the third-party administrator in a form usable to the director; any  
9 trade secrets contained in books and records reviewed by the director,  
10 including the identity and addresses of policyholders and certificate holders,  
11 shall be kept confidential, except that the director may use the information in a  
12 proceeding instituted against the third-party administrator or the insurer;

13 (G) the contract may not be assigned in whole or in part by the  
14 third-party administrator;

15 (H) if the contract permits the third-party administrator to do  
16 underwriting, the contract must include the following:

17 (i) the third-party administrator's maximum annual  
18 premium volume;

19 (ii) the rating system and basis of the rates to be  
20 charged;

21 (iii) the types of risks that may be written;

22 (iv) maximum limits of liability;

23 (v) applicable exclusions;

24 (vi) territorial limitations;

25 (vii) policy cancellation provisions;

26 (viii) the maximum policy term; and

27 (ix) that the insurer shall have the right to cancel or not  
28 renew a policy of insurance subject to applicable state law;

29 (I) if the contract permits the third-party administrator to  
30 administer claims on behalf of the insurer, the contract must include the  
31 following:

1 (i) written settlement authority must be provided by the  
 2 insurer and may be terminated for cause upon the insurer's written  
 3 notice sent by certified mail to the third-party administrator or upon the  
 4 termination of the contract, but the insurer may suspend the settlement  
 5 authority during a dispute regarding the cause of termination;

6 (ii) claims shall be reported to the insurer within 30  
 7 days;

8 (iii) a copy of the claim file shall be sent to the insurer  
 9 upon request or as soon as it becomes known that the claim has the  
 10 potential to exceed an amount determined by the director or exceeds the  
 11 limit set by the insurer, whichever is less, involves a coverage dispute,  
 12 may exceed the third-party administrator's claims settlement authority,  
 13 is open for more than six months, involves extra contractual  
 14 allegations, or is closed by payment in excess of an amount set by the  
 15 director or an amount set by the insurer, whichever is less;

16 (iv) each party to the contract shall comply with unfair  
 17 claims settlement statutes and regulations;

18 (v) transmission of electronic data must occur at least  
 19 monthly if electronic claim files are in existence; and

20 (vi) claim files shall be the sole property of the insurer;  
 21 upon an order of liquidation of the insurer, the third-party administrator  
 22 shall have reasonable access to and the right to copy the files on a  
 23 timely basis; and

24 (J) the contract may not provide for commissions, fees, or  
 25 charges contingent upon savings obtained in the adjustment, settlement, and  
 26 payment of losses covered by the insurer's obligations; but a third-party  
 27 administrator may receive performance-based compensation for providing  
 28 hospital or other auditing services or may receive compensation based on  
 29 premiums or charges collected or the number of claims paid or processed.

30 \* Sec. 14. AS 21.27 is amended by adding a new section to article 4 to read:

31 **Sec. 21.27.660. Definitions.** In A 21.27.630 - 21.27.660,

1 (1) "insurer" includes the Comprehensive Health Insurance  
 2 Association created under AS 21.55.010 and a self-funded employer plan regulated  
 3 under AS 21.85;

4 (2) "transact" has the meaning given in AS 21.90.900.

5 \* Sec. 15. AS 21.27.650 is amended by adding a new subsection to read:

6 (q) The director may, without advance notice or hearing, immediately suspend  
 7 by order the registration of a third-party administrator if the director finds that one or  
 8 more of the following circumstances exist:

9 (1) the third-party administrator is insolvent or impaired;

10 (2) a proceeding for bankruptcy, receivership, conservatorship,  
 11 rehabilitation, or other delinquency proceeding regarding the third-party administrator  
 12 has been commenced in any state or by a governmental agency of another jurisdiction;

13 (3) the third-party administrator is in an unsound condition, or is in a  
 14 condition or using methods or practices that render its further transaction of insurance  
 15 injurious to policy holders or the public.

16 \* Sec. 16. AS 21.27.900 is amended by adding a new paragraph to read:

17 (33) "appointment" means an act by a person evidencing a grant of  
 18 authority to another to act on the grantor's behalf.

19 \* Sec. 17. AS 21.34.040(d) is amended to read:

20 (d) A nonadmitted insurer may be eligible to provide coverage in this state if it  
 21 furnishes to the director a copy of its current annual statement that has been certified  
 22 by the insurer. Except in the case of an alien insurer, the [The] statement shall be  
 23 provided no more than six months after the close of the period reported upon and that  
 24 is either filed with and approved by the regulatory authority in the domicile of the  
 25 nonadmitted insurer, or certified by an accounting or auditing firm licensed in the  
 26 jurisdiction of the insurer's domicile. An alien insurer shall provide the statement  
 27 no later than nine months after the close of the reporting period. In the case of an  
 28 insurance exchange, the statement may be an aggregate combined statement of all  
 29 underwriting syndicates operating during the period reported upon.

30 \* Sec. 18. AS 21.34.100(a) is amended to read:

31 (a) When surplus lines insurance is placed, the surplus lines broker shall