

STATE OF ALASKA

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

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BULLETIN 95-07

TO: All Licensees, Insurance Companies, and Interested Parties

PURPOSE: This bulletin provides information regarding the changes to the Alaska Insurance Code (Alaska Stat. 21) made by the enactment of HCS CSSB 53(L&C) am H (Chapter 62, SLA 95) this year. A copy of this new law may be obtained from any of the Legislative Information Offices in its various locations in Alaska. Further information about those locations may be obtained by calling (907) 465-4648 in Juneau or (907) 258-8111 in Anchorage. This bulletin is for informational purposes only and is not intended to be an exhaustive or interpretive analysis of statutory changes to the insurance code. A summary of what each of the sections of the bill does follows.

Sections 1 and 2 amend Alaska Statute (AS) 06.20.260(a) and AS 06.20.287(a) by updating terminology addressing credit insurance.

Section 3 extends the scope of the insurance code to include risk retention groups and purchasing groups to the extent allowed by federal law.

Sections 4 and 15 amend AS 21.03.060 and AS 21.09.250 to update the provisions with current licensing terminology.

Section 5 adds a new subsection at AS 21.06.080(e) to increase the authority of the director to take actions to protect Alaska insurance consumers in response to a natural catastrophe or declared disaster.

Section 6 amends AS 21.06.120 to give the director discretion to accept an examination report of an insurer from a state not accredited by the National Association of Insurance Commissioners (NAIC) and authority to require additional examination supervision if another state is performing a substandard examination of an insurance company.

Section 7 amends AS 21.06.150(g) by giving the director discretion to close an insurer examination hearing to the public if necessary to protect a person against unwarranted injury or if it is in the public interest.

Sections 8 and 9 amend AS 21.09.110, the provision setting forth requirements for an insurer applying for a certificate of authority, by removing the requirement that an insurer submit specimen copies of its policy forms and rates with its application and by requiring instead that

specimen forms and rates be submitted by the insurer in accordance with new provisions at AS 21.39.0400) and AS 21.42.120(g).

Section 10 amends AS 21.09.130, the provision addressing continuance, expiration, reinstatement, and amendment of an insurer's certificate of authority, by providing for a one-year suspension of the certificate in the event an insurer fails to file forms or pay fees that are necessary to maintain a certificate.

Section 11 adds AS 21.09.135, which creates a mechanism for a nondomestic admitted insurer to voluntarily surrender its certificate of authority if conditions under that section are met.

Section 12 amends AS 21.09.200(f) to require that annual statement filings be submitted on electronic media acceptable to the NAIC; provide for waiver of the filing requirement in a limited circumstance; and extend the filing requirements to all insurers licensed in Alaska.

Section 13 adds a new subsection to AS 21.09.205. Under subsection (d), an insurer required to file a quarterly financial statement must also file the statement with the NAIC. The subsection also provides for waiver of the NAIC filing in a limited circumstance and includes a penalty provision for noncompliance.

Section 14 adds three new subsections to AS 21.09.210: subsection (k) provides for a monetary refund or premium tax credit in the event of an insurer's overpayment of tax; subsection (l) prevents marketing of a premium tax credit by prohibiting the transfer or carryover of the credit in a receivership or reinsurance transaction; and subsection (m) defines "premium tax credit."

Section 16 adds three new sections to AS 21.09. The first provision, AS 21.09.290, addressing risk retention groups, implements section 3 of this bill as it relates to risk retention groups formed in this state. Licensing requirements are listed in (a) of this section; the items that must be submitted with an application for a certificate of authority are listed in (b); a requirement that a risk retention group give the division advance notice of a "material change or revision" to its plan of operation or feasibility study is stated in (c); and "liability" and "personal risk liability" are defined for purposes of the section in (d).

The second provision in section 16 is AS 21.09.300. It addresses a domestic insurer's need to disclose "material" transactions. Certain material transactions, as defined in the statute, must be timely disclosed in a report containing particularized information and filed with the division. The report is generally confidential and not subject to subpoena, although limited provision is made for its publication after giving an insurer notice and opportunity to be heard. Exemption from subpoena requirements and the related amendment of Alaska Rule of Civil Procedure 45, which pertains to subpoenas, are addressed in section 114 of the bill.

AS 21.09.310, the third provision in section 16, regulates United States branches of alien insurers using Alaska as a state of entry to transact the business of insurance. This statute sets requirements that the alien insurer must meet to secure and maintain a certificate of authority, as well as setting requirements for operating a branch using Alaska as its state of entry. The requirements are much like those for domestic insurers. The statute also contains detailed

provisions requiring a branch to maintain a trust account in the United States for the benefit of policyholders and creditors. The failure of a trustee to comply with requirements of the insurance code is cause for liquidation of the branch or administrative action against the branch's certificate of authority.

Sections 17 and 18 of the bill amend AS 21.12.020, a financial accounting provision that allows a domestic ceding insurer credit for certain reinsurance transactions. The alternate conditions imposed upon the assuming insurer as a basis for allowing the credit under AS 21.12.020(a) are modified. The director's authority to establish requirements for reinsurance agreements under AS 21.12.020(g) is expressly extended to all types of insurance.

Section 19 corrects a drafting error in the existing statute by changing the reference in AS 21.14.040(l) from "AS 21.14.030(b)" to "AS 21.14.030(a)."

Sections 20 and 21 amend AS 21.18.060, which addresses the unearned premium reserve required of an insurer. The amendment deletes a table in AS 21.18.060(b) previously used as an alternative method of computing the unearned premium reserve and a corresponding reference to the table in AS 21.18.060(c).

Section 22 amends AS 21.18.090, a provision establishing the method for determining an insurer's loss reserves, by deleting an outdated method for determining loss reserves on liability and workers' compensation policies and by establishing new criteria, including allowance for accounting recognition of determined and estimated future payments.

Sections 23, 24, 25, and 26 amend AS 21.18.110, the provision addressing life insurance reserve liabilities, by clarifying circumstances under which the director may accept a valuation of reserves for a foreign insurer; by providing for an exemption by regulation for contents of an actuarial opinion pertaining to asset evaluation; and by clarifying an actuary's obligation to prepare a memorandum in support of the required actuarial opinion and to provide it upon request of the director.

Section 27 amends AS 21.21.230, a provision addressing accounts insured by a savings and loan entity, by updating terminology to reflect a correct reference to the FDIC.

Section 28 amends AS 21.21.250(a), which authorizes miscellaneous investments by an insurer, by clarifying what is known as the "basket clause"--a mechanism allowing an insurer to invest a limited amount in investments not expressly permitted by AS 21.21 but not prohibited by law.

Section 29 amends AS 21.21.370(a), a provision regulating investments by a domestic insurer in medium grade and lower grade obligations (bonds), to clarify these investment limitations.

Sections 30, 31, 32, 33, 34, and 35 amend provisions of AS 21.22, Alaska's insurance holding company act. Language pertaining to an exemption from the filing requirement in AS 21.22.010 is clarified; a new subsection at AS 21.22.030(d) is added to grant the director authority to retain professional services, at the acquirer's expense, for reviewing a proposed acquisition; and

amendments are made to the requirements under AS 21.22.060(b), (c), (d), and (k) for registration of an insurer that is a member of an insurance holding company.

Sections 36 through 50 revise many provisions of AS 21.27, the licensing chapter of the insurance code. New provisions at AS 21.27.020(f), (g), and (h) establish continuing education requirements for licensees and provide authority for regulations to implement the training. AS 21.27.025(a) is amended to include within the notification requirement the obligation of a licensee to notify the director within 30 days of a change of name or a licensing disciplinary action in another jurisdiction. AS 21.27.060, the provision requiring testing of license applicants, is amended to exempt from examination certain limited licenses and by removing a condition on reciprocity requiring that the applicant be in good standing with a state accredited by the NAIC. AS 21.27.360 is amended to require that fiduciary accounts are located in Alaska except for nonresident licensees. A new provision at AS 21.27.420(c) recognizes the director's authority to issue conditional or restricted licenses with the consent of the applicant or licensee. AS 21.27.620(j), AS 21.27.690(e), and 21.27.760(j) are amended to give the director authority to sue for damages caused by a managing general agent, reinsurance intermediary broker, or a reinsurance intermediary manager.

Sections 51, 52, 53, and 54 contain amendments to AS 21.34, the surplus lines chapter of the insurance code. AS 21.34.040(c) is amended to expand eligibility of those nonadmitted insurers eligible to transact business in Alaska to include individual unincorporated underwriters, and incorporated underwriters, as long as the incorporated members are engaged only in the business of underwriting. AS 21.34.080(c) is amended to require a producing broker to prepare an affidavit evidencing the giving of requisite notice to an insured concerning the insurer not being subject to regulatory supervision in Alaska, and the fact that losses of the insurer will not be covered by the guaranty fund in the event of insolvency.

AS 21.34.110 is amended to give a surplus lines broker an alternative method, through the producing broker's affidavit, to discharge the duty to notify an insured, and AS 21.34.190(a) is modified so that calculations for determining a surplus lines broker's filing fee will be based on the calendar year rather than quarterly.

Several sections modify AS 21.36, the unfair trade practices chapter of the insurance code. AS 21.36.120(d), 21.36.160, and 21.36.360(n) are updated with current licensing terminology by sections 55, 56, and 65. Insurance producers are added to those persons required to provide evidence of compliance with provisions of AS 21.34 in an amendment to AS 21.36.195 in section 57. The provision addressing premium increases on automobile insurance is amended and moved from AS 21.36.420 to AS 21.36.305 by sections 58 and 61. Sections 59 and 60 add a new subsection concerning personal automobile insurance to AS 21.36.290, a provision addressing the duration of an insurance policy.

Sections 62 through 67 amend AS 21.36.360, the law prohibiting fraudulent or criminal insurance acts. Amendments include: updating language to reflect current license terminology, adding references to risk retention groups and purchasing groups as appropriate, and including forgery and alteration of a certificate of insurance or other documents relating to insurance as a fraudulent insurance act. Under AS 21.36.360(q), the forgery and alteration prohibitions are

listed as criminal acts subject to prosecution under AS 11.46 of the criminal code. Section 68 amends AS 21.36.380, dealing with insurance claim forms, to state that claim misrepresentations "may be prosecuted under state law."

Insurance rate and policy filings are addressed in sections 69 through 77 of the bill. New provisions in AS 21.39.040 and AS 21.39.055 concern an insurer's filing of a rating system and cancellation of a previously-approved rate. A reference to "joint insurance arrangements" is removed from AS 21.39.155(a), the law requiring an insurer to participate in an assigned risk pool.

New subsections are added to AS 21.42.120 that exempt consumer credit insurance from filing requirements; that allow for filings pending approval of an insurer's certificate of authority; and that grant the director authority to adopt regulations regarding format and content of policy filings.

A new subsection is added to AS 21.42.345, the provision mandating health insurance coverage for newly born or adopted children, clarifying that the offer of coverage applies regardless of the marital status of the covered person. Health maintenance organizations (HMOs) are added to the list of entities that may offer coverage under AS 21.42.353. The mandated coverage for nurse midwife services under AS 21.42.355 is extended to HMO enrollee contracts and fraternal benefit society certificates if maternity benefits are otherwise provided. HMOs are added to the list of entities in AS 21.42.375(a) that must offer coverage for mammograms if the policy or contract covers a mastectomy, and in AS 21.42.380 that must offer treatment of phenylketonuria.

Sections 78 and 79 amend AS 21.56.180, which sets fair marketing standards for a small employer health insurer, to incorporate current licensing terminology.

Sections 80 through 94 make major revisions to AS 21.57, which regulates credit insurance. References to "credit life insurance and credit disability insurance" are changed to the combined term "consumer credit insurance," and the scope of AS 21.57 is broadened significantly to include credit insurance on all loans except those secured by a first mortgage for the purchase of or construction on real property or loans or other credit transactions exceeding \$30,000. AS 21.57.030 is repealed and reenacted to allow for consumer credit insurance to be written separately or combined in a package with other types of consumer credit insurance.

AS 21.57.040 describes the amount of consumer credit insurance that may be written in different situations; AS 21.57.050 explains effective dates, duration of coverage, and provision for refund; AS 21.57.055 describes the manner, content, and time for disclosures that must be made to debtors prior to purchase of credit insurance; AS 21.57.060 lists required provisions for policies and certificates of insurance; and AS 21.57.070 establishes requirements and consequences for delivery of evidence of insurance. AS 21.57.080 sets requirements for filing of forms and rates with the director; AS 21.57.090 provides for revision of rates and premium refunds; AS 21.57.125 provides for delegation of insurer statutory duties to creditors licensed under AS 21.27; AS 21.57.150 increases penalties on persons violating provisions of AS 21.57; and AS 21.57.160 adds new definitions.

Section 95 adds AS 21.69.645, which provides a mechanism for redomestication by an insurer, and AS 21.69.648, which provides a mechanism for an insurer voluntarily surrendering its certificate of authority.

Sections 96, 104, and 105 are new solvency provisions allowing the division to monitor financial condition by giving the director discretion to require the filing of quarterly financial statements by a benevolent association under AS 21.72.125, a fraternal benefit society under AS 21.84.340, and an HMO under AS 21.86.080.

Sections 97, 98, and 99 amend AS 21.75) the chapter regulating activities of reciprocal insurers, by adding a new provision at AS 21.75.135 that gives the director authority to require a reciprocal insurer's attorney-in-fact to file a quarterly financial statement, thereby allowing for better monitoring of financial condition; and by amending AS 21.75.170 to give greater flexibility to small reciprocal insurers in the areas of subscriber's advisory committee special meetings and membership on that committee.

Sections 100 and 101 amend AS 21.78.130(g) and AS 21.78.271(a) to update the provisions with current licensing terminology.

Insurance guaranty association provisions are amended by sections 102 and 103. AS 21.79.900(6) clarifies those entities that are not included within the definition of "member insurer" for the Alaska Life and Disability Insurance Guaranty Association, and AS 21.80.020(b) is added to exclude risk retention groups from the Alaska Insurance Guaranty Association (for property and casualty insurance).

Section 106 amends AS 21.89.030 to allow an insurer the alternative of making claim payments by electronic funds transfer. Section 107 contains three new provisions: (1) AS 21.89.080 gives the director broad authority to adopt regulations and otherwise regulate the use of electronic data for filings with the division; (2) AS 21.89.090 provides registration requirements, penalties, and authority to adopt regulations affecting risk retention groups and purchasing groups; and (3) AS 21.89.100 adds a new law formalizing an insured's right to independent counsel--at the insurer's expense--in the event of a conflict of interest between an insured's interest and that of an insurer.

Sections 108 and 109 contain technical amendments to the definitions of "Managing general agent" and "person" in AS 21.90.900(26) and 21.90.900(28), respectively.

Sections 110 and 111 contain changes to provisions outside AS 21 that relate to activity by the division of insurance. AS 28.20.580 is amended to exclude certain reciprocal insurers formed under AS 21.75 from the assigned risk plan for motor vehicle coverages, and AS 39.25.110 is amended by including in the exempt service an actuary and assistant actuary employed by the division.

Sections 112 and 113 repeal AS 21.18.110(b)(3), AS 21.27.650(f)(3), AS 21.36.420, AS 21.57.110, and AS 21.57.170.

Finally, sections 115, 116, 117, and 118 are provisions addressing transition and effective dates for the bill by making it applicable to an insurance policy entered into or renewed on or after the effective date of the relevant provision of the bill. AS 21.39.155(a) and AS 28.20.580, dealing with participants in assigned risk pools, are retroactive to January 1, 1983. October 1, 1995, is the effective date for AS 06.20.260(a), AS 06.20.287(a), AS 21.57.010 - AS 21.57.090, AS 21.57.120, AS 21.57.150, AS 21.57.160, and the repeal of AS 21.57.110 and AS 21.57.170. For all other provisions of the bill, the effective date is July 1, 1995.

Dated this 17th day of July, 1995.

A handwritten signature in cursive script, appearing to read "Marianne K. Burke".

Marianne K. Burke
Director of Insurance