HOUSE BILL NO. 78

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 3/4/19
Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

"An Act relating to insurance; relating to an insurer's corporate annual disclosure; relating to insurance company holding systems; and providing for an effective date."

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

*** Section 1.** AS 21.09 is amended by adding new sections to read:

Sec. 21.09.330. Corporate governance annual disclosure scope. (a) AS 21.09.330 - 21.09.342 do not prescribe or impose a corporate governance standard or internal procedure beyond which is required under AS 10. Nothing in AS 21.09.330 - 21.09.342 limits the director's authority or the rights or obligations of a third party.

(b) AS 21.09.330 - 21.09.342 apply to an insurer domiciled in this state.

Sec. 21.09.332. Disclosure requirement. (a) An insurer, or an insurance group of which the insurer is a member, shall submit to the director not later than June 1 of each calendar year a corporate governance annual disclosure that contains the information described in AS 21.09.336(b). In the event the director makes a request under (c) of this section, and if the insurer is a member of an insurance group, the

insurer shall submit the report required by this section to the lead state insurance regulator of the insurance group, under the laws of the lead state, in accordance with the procedures set out in the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(b) The corporate governance annual disclosure must include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting to the best of that individual's belief and knowledge that

(1) the insurer has implemented the corporate governance practices required under AS 21.09.330 - 21.09.342; and

(2) a copy of the corporate governance annual disclosure has been provided to the insurer's board of directors or the appropriate committee of the board.

(c) An insurer not required to submit a corporate governance annual disclosure under (a) of this section shall submit a disclosure upon request by the director.

(d) For purposes of completing a corporate governance annual disclosure, the insurer or insurance group, depending on how the insurer or insurance group has structured its system of corporate governance, may provide information regarding corporate governance at one or all of the following:

(1) the ultimate controlling parent level;

(2) an intermediate holding company level; or

(3) the individual legal entity level.

(e) The insurer or insurance group

(1) is encouraged to make the corporate governance annual disclosure at the level at which

(A) the insurer's or insurance group's risk appetite is determined;

(B) the earnings, capital, liquidity, operations, and reputation of the insurer are overseen collectively and at which the supervision of those factors are coordinated and exercised; or

(C) legal liability for failure of general corporate governance duties would be placed;

(2) if determining the level of reporting based on the criteria under this

section, shall

(A) indicate which of the three criteria under (1) of this subsection was used to determine the level of reporting; and

(B) explain any subsequent change in the level of reporting.

(f) A review of the corporate governance annual disclosure and any additional requests for information shall be made through the lead state in accordance with the procedures set out in the most recent Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(g) An insurer providing information substantially similar to the information required under AS 21.09.330 - 21.09.342 in other documents provided to the director, including proxy statements filed in conjunction with Form B requirements under regulations of the division, or other state or federal filings provided to the division, is not required to duplicate that information in the corporate governance annual disclosure; however, the insurer or insurance group shall include in the disclosure a cross reference of the document in which the information is included.

Sec. 21.09.334. Regulations and orders. The director may, to carry out the provisions of AS 21.09.330 - 21.09.349,

(1) adopt regulations, including regulations substantially similar to the National Association of Insurance Commissioner's Corporate Governance Annual Disclosure Model Regulation; and

(2) issue orders.

Sec. 21.09.336. Contents of corporate governance annual disclosure. (a) An insurer or insurance group may have discretion in responding to a corporate governance annual disclosure inquiry if the insurer's or insurance group's disclosure contains the material necessary for the director to gain an understanding of the insurer's or insurance group's corporate governance structure, policies, and practices. The director may request additional information the director determines necessary for the director to have a clear understanding of the insurer's or insurance group's corporate governance policies, reporting or information system, or controls implementing those policies.

(b) The insurer or insurance group shall prepare the corporate governance

annual disclosure consistent with regulations adopted by the director under AS 21.09.334. An insurer or insurance group shall maintain documents and supporting information used in preparing the insurer's or insurance group's disclosure and shall make the documents and supporting information available upon examination or request by the director.

Sec. 21.09.338. Confidentiality. Documents, materials, or other information, including a corporate governance annual disclosure, in the possession or control of the division that are obtained by, created by, or disclosed to the director or any person under AS 21.09.330 - 21.09.349 are confidential and subject to the provisions of AS 21.06.060.

Sec. 21.09.340. National Association of Insurance Commissioners and third-party consultants. (a) The director may retain, at the insurer's or insurance group's expense, third-party consultants, including attorneys, actuaries, accountants, and other experts not otherwise a part of the director's staff as may be reasonably necessary to assist the director in reviewing the insurer's or insurance group's corporate governance annual disclosure and related information or the insurer's or insurance group's compliance with AS 21.09.330 - 21.09.349.

(b) A person retained under (a) of this section shall be under the direction and control of the director and shall act in a purely advisory capacity.

(c) The National Association of Insurance Commissioners and third-party consultants shall be subject to the same confidentiality standards and requirements as the director.

(d) As part of the retention process, a third-party consultant shall verify to the director in writing, with notice to the insurer or insurance group, that it is free of a conflict of interest, that it has internal procedures in place to monitor compliance with a conflict, and that it shall comply with the confidentiality standards and requirements under AS 21.09.330 - 21.09.342.

(e) A written agreement with the National Association of Insurance Commissioners, a third-party consultant, or both, governing sharing and use of information provided under AS 21.09.330 - 21.09.342 must contain all of the following provisions and expressly require the written consent of the insurer or

insurance group before making public information under AS 21.09.330 - 21.09.342:

(1) specific procedures and protocols for maintaining the confidentiality and security of corporate governance annual disclosure-related information shared with the National Association of Insurance Commissioners or a third-party consultant under AS 21.09.330 - 21.09.342;

(2) procedures and protocols for sharing by the National Association of Insurance Commissioners only with other state regulators from states in which the insurer or insurance group has domiciled insurers; the agreement must provide that the recipient agrees in writing to maintain the confidentiality of the corporate governance annual disclosure-related documents, materials, or other information and has verified in writing the legal authority to maintain confidentiality;

(3) a provision specifying that ownership of the corporate governance annual disclosure-related information shared with the National Association of Insurance Commissioners or a third-party consultant remains with the division, and the National Association of Insurance Commissioner's or third-party consultant's use of the information is subject to the direction of the director;

(4) a provision that prohibits the National Association of Insurance Commissioners or a third-party consultant from storing the information shared under AS 21.09.330 - 21.09.342 in a permanent database after the underlying analysis is completed;

(5) a provision requiring the National Association of Insurance Commissioners or a third-party consultant to provide prompt notice to the director and to the insurer or insurance group regarding any subpoena, request for disclosure, or request for production of the insurer's or insurance group's corporate governance annual disclosure-related information;

(6) a requirement that the National Association of Insurance Commissioners or a third-party consultant consent to intervention by an insurer or insurance group in any judicial or administrative action in which the National Association of Insurance Commissioners or a third-party consultant may be required to disclose confidential information about the insurer or insurance group shared with the National Association of Insurance Commissioners or a third-party consultant under

AS 21.09.330 – 21.09.342.

Sec. 21.09.342. Penalties. An insurer or insurance group shall pay $1,000 for each day the insurer or insurance group fails, without just cause, to file the corporate governance annual disclosure within the time required under AS 21.09.332(a), not to exceed $365,000. The director may reduce the penalty under this section if the insurer or insurance group demonstrates to the director that the imposition of the penalty is a financial hardship to the insurer or insurance group.

*** Sec. 2.** AS 21.22.085(a) is amended to read:

(a) Transactions involving a domestic insurer and a person in its insurance holding company system, including amendments or modifications of affiliate agreements previously filed under AS 21.22.080 that are subject to a materiality standard in (1) - (7) of this subsection, may not be entered into unless the insurer has notified the director in writing of the insurer's intention to enter into the transaction at least 30 days before the transaction, or a shorter period if allowed by the director, and the director has not disapproved the transaction within the required notice period. The notice of amendments or modifications must include the reasons for the change and the financial effect on the domestic insurer. A domestic insurer shall provide to the director notice, within 30 days after a termination of a previously filed agreement, for determination of the type of filing required, if any. The requirements in this section apply to the following transactions:

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

(A) with respect to insurers other than life insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus that pertains to policyholders, as of December 31 of the **previous** calendar year [IN WHICH THE TRANSACTION TOOK PLACE]; or

(B) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 of the **previous** calendar year [IN WHICH THE TRANSACTION TOOK PLACE];

(2) a loan or extension of credit to a person who is not an affiliate, where the insurer makes loans or extensions of credit with the agreement or

understanding that the proceeds of the transaction, in whole or in substantial part, are to be used to make a loan or extension of credit to, purchase an asset of, or make an investment in an affiliate of the insurer making the loan or extension of credit, provided the transaction is equal to or exceeds

(A) with respect to insurers other than life insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus that pertains to policyholder surplus, as of December 31 of the **previous** calendar year [IN WHICH THE TRANSACTION TOOK PLACE]; or

(B) with respect to life insurers, three percent of the insurer's admitted assets as of December 31 of the **previous** calendar year [IN WHICH THE TRANSACTION TOOK PLACE];

(3) a reinsurance agreement or modification, including

(A) a reinsurance pooling agreement;

(B) an agreement in which the reinsurance premium or change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the three years after entering into the agreement or modification, equals or exceeds five percent of surplus that pertains to policyholders as of December 31 of the **previous** calendar year [IN WHICH THE TRANSACTION TOOK PLACE], including an agreement that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates of the insurer;

(4) a management agreement, service contract, tax allocation agreement, guarantee, or cost-sharing arrangement;

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

(6) a guarantee if made by a domestic insurer, except that a guarantee that is quantifiable as to amount is not subject to the notice requirements of this subsection unless it exceeds the lesser of one-half of one percent of the insurer's admitted assets or 10 percent of surplus that pertains to policyholders as of

December 31 of the **previous** calendar year [IN WHICH THE TRANSACTION TOOK PLACE]; a guarantee that is not quantifiable as to amount is subject to the notice requirements of this subsection; and

(7) a direct or an indirect acquisition or investment in a person that controls an insurer or in an affiliate of the insurer in an amount that, together with the person's present holdings in the investment, exceeds two and one-half percent of surplus that pertains to policyholders; direct or indirect acquisitions or investments in subsidiaries authorized under this title or regulations adopted by the director or in nonsubsidiary insurance affiliates that are subject to the provisions of this chapter are exempt from this requirement.

*** Sec. 3.** AS 21.22.120(a) is amended to read:

(a) All information, documents, holding company analyses, insurer profile summaries, and copies of the information and documents obtained by or disclosed to the director or any other person in the course of an examination or investigation made under AS 21.22.110 and all information reported under AS 21.22.020(b), 21.22.060, [AND] 21.22.085 - 21.22.105, **and 21.22.177** and all preacquisition notification information received under AS 21.22.065 shall be given confidential treatment under AS 21.06.060. However, if the director, after giving the insurer and its affiliates who would be affected by publication of the information notice and opportunity to be heard, determines that the interests of policyholders, shareholders, or the public will be served by the publication of the information, the director may publish all or part of the information in the manner the director considers appropriate.

*** Sec. 4.** AS 21.22.120 is amended by adding new subsections to read:

(c) The director or any person who received documents, materials, or other information while acting under the authority of the director or with whom such documents, materials, or other information are shared under AS 21.22 may not be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to (a) of this section.

(d) The sharing of information by the director under AS 21.22 shall not constitute a delegation of regulatory authority or rulemaking. The director is solely responsible for the administration, execution, and enforcement of this chapter.

(e) A waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information may not be given as a result of disclosure to the director under this section or as a result of sharing as authorized under (b) of this section.

(f) Documents, materials, or other information in the possession or control of the National Association of Insurance Commissioners under AS 21.22

(A) shall be confidential by law;

(B) are not subject to

(i) AS 40.25.110 – 40.25.220;

(ii) subpoena; or

(iii) discovery or admissible in evidence in any private action.

*** Sec. 5.** AS 21.22 is amended by adding a new section to read:

Sec. 21.22.177. Group-wide supervision of internationally active insurance groups. (a) The director may act as the group-wide supervisor for an internationally active insurance group in accordance with this section. However, the director may otherwise acknowledge another regulatory official as the group-wide supervisor where the internationally active insurance group

(1) does not have substantial operations in the United States;

(2) has substantial insurance operations in the United States but not in this state; or

(3) has substantial insurance operations in the United States and this state, but the director has determined under (b) and (f) of this section that the other regulatory official is the appropriate group-wide supervisor; an insurance holding company system that does not otherwise qualify as an internationally active insurance group may request that the director make a determination or acknowledgement as to a group-wide supervisor under this section.

(b) In cooperation with other state, federal, and international regulatory agencies, the director shall identify a single group-wide supervisor for an internationally active insurance group. The director may determine that the director is the appropriate group-wide supervisor for an internationally active insurance group

that conducts substantial insurance operations concentrated in this state. However, the director may acknowledge that a regulatory official from another jurisdiction is the appropriate group-wide supervisor for the internationally active insurance group. The director shall consider the following factors when making a determination or acknowledgement under this subsection:

(1) the place of domicile of the insurers within the internationally active insurance group that hold the largest share of the group's written premiums. assets, or liabilities;

(2) the place of domicile or the top-tiered insurer or insurers in the insurance holding company system of the internationally active insurance group;

(3) the location of the executive offices or largest operational offices of the internationally active insurance group;

(4) whether another regulatory official is acting or is seeking to act as the group-wide supervisor under a regulatory system that the director determines to be

(A) substantially similar to the system of regulation provided under the laws of this state; or

(B) otherwise sufficient in terms of providing for group-wide supervision, enterprise risk analysis, and cooperation with other regulatory officials; and

(5) whether another regulatory official acting or seeking to act as the group-wide supervisor provides the director with reasonably reciprocal recognition and cooperation; however, a regulatory official identified under this section as the group-wide supervisor may determine that it is appropriate to acknowledge another supervisor to serve as the group-wide supervisor; the acknowledgement of the group-wide supervisor shall be made after consideration of the factors listed in this subsection, and shall be made in cooperation with, and subject to, the acknowledgement of other regulatory officials involved with supervision of members of the internationally active insurance group and in consultation with the internationally active insurance group.

(c) Notwithstanding any other provision of law, when another regulatory official is acting as the group-wide supervisor of an internationally active insurance

group, the director shall acknowledge that regulatory official as the group-wide supervisor. However, the director shall make a determination or acknowledgement as to the appropriate group-wide supervisor for the internationally active insurance group under (b) of this section in the event of a material change in the internationally active insurance group that results in

(1) the internationally active insurance group's insurers domiciled in this state holding the largest share of the group's premiums, assets, or liabilities; or

(2) this state being the place of domicile of the top-tiered insurer or insurers in the holding company system of the internationally active insurance group.

(d) The director, under AS 21.22.110, may collect from an insurer registered under AS 21.22.060 all information necessary to determine whether the director may act as the group-wide supervisor of an internationally active insurance group or if the director may acknowledge another regulatory official to act as the group-wide supervisor. Before issuing a determination that an internationally active insurance group is subject to group-wide supervision, the director shall notify the insurer registered under AS 21.22.060 and the ultimate controlling person within the internationally active insurance group. The internationally-active insurance group shall have not less than 30 days to provide the director with additional information pertinent to the pending determination. The director may publish on the division's Internet website the identity of internationally active insurance groups that the director has determined are subject to group-wide supervision by the director.

(e) If the director is the group-wide supervisor for an internationally active insurance group, the director may

(1) assess the enterprise risks within the internationally active insurance group to ensure

(A) the material financial condition and liquidity risks to members of the internationally active insurance group that are engaged in the business of insurance are identified by management; and

(B) reasonable and effective mitigation measures are in place;

(2) request from a member of an internationally active insurance group subject to the director's supervision, information necessary and appropriate to assess

enterprise risk, including information about the members of the internationally active insurance group regarding

(A) governance, risk assessment, and management;

(B) capital adequacy; and

(C) material intercompany transactions;

(3) coordinate and, through the authority of the regulatory officials of the jurisdictions where members of the internationally active insurance group are domiciled, compel development and implementation of reasonable measures designed to ensure that the internationally active insurance group is able to timely recognize and mitigate enterprise risks to members of the internationally active insurance group that are engaged in the business of insurance;

(4) communicate with other state, federal, and international regulatory agencies for members within the internationally-active insurance group and share relevant information subject to the confidentiality provisions under AS 21.22.120, through supervisory colleges under AS 21.22.115 or otherwise;

(5) enter into agreements with, or obtain documentation from, an insurer registered under AS 21.22.060, a member of the internationally active insurance group, or a state, federal, and international regulatory agency for members of the internationally active insurance group, providing the basis for, or otherwise clarifying, the director's role as group-wide supervisor, including provisions for resolving disputes with other regulatory officials; the agreements or documentation may not serve as evidence in a proceeding against an insurer or person within an insurance holding company system not domiciled or incorporated in this state or doing business in this state or is otherwise subject to jurisdiction in this state; and

(6) perform other group-wide supervision activities, consistent with the authorities and purposes set out in this subsection.

(f) If the director acknowledges that another regulatory official from a jurisdiction that is not accredited by the National Association of Insurance Commissioners is the group-wide supervisor, the director is authorized to reasonably cooperate, thorough supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor, if

(1) the director's cooperation is in compliance with the laws of this state; and

(2) the regulatory official acknowledged as the group-wide supervisor also recognizes and cooperates with the director's activities as a group-wide supervisor for other internationally active insurance groups where applicable; where such recognition and cooperation is not reasonably reciprocal, the director may refuse recognition and cooperation.

(g) The director may enter into agreements with, or obtain documentation from, an insurer registered under AS 21.22.060, an affiliate of the insurer, or other state, federal, and international regulatory agencies for members of the internationally active insurance group, that provide the basis for, or otherwise clarify, a regulatory official's role as group-wide supervisor.

(h) A registered insurer subject to this section shall be liable for and shall pay the reasonable expenses of the director's participation in the administration of this section, including the engagement of attorneys, actuaries, and other professionals, and all reasonable travel expenses.

*** Sec. 6.** AS 21.22.200 is amended by adding new paragraphs to read:

(17) "group-wide supervisor" means the regulatory official authorized to engage in conducting and coordinating group-wide supervision activities who is determined or acknowledged by the director under AS 21.22.117 to have sufficient significant contacts with the internationally active insurance group;

(18) "internationally active insurance group" means an insurance holding company system that includes an insurer registered under AS 21.22.060 and that meets the following criteria:

(A) insurers that are part of the insurance holding company system that write premiums in at least three countries;

(B) the percentage of gross premiums written outside the United States is at least 10 percent of the insurance holding company system's total gross written premiums; and

(C) based on a three-year rolling average, the total assets of the insurance holding company system are at least $50,000,000,000 or the total gross

written premiums of the insurance holding company system are at least $10,000,000,000.

*** Sec. 7.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The director of the division of insurance may adopt regulations necessary to implement the changes made by this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date of the relevant provisions of this Act.

*** Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).