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**SENATE CS FOR HOUSE BILL NO. 78(RLS)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTY-FIRST LEGISLATURE - FIRST SESSION

BY THE SENATE RULES COMMITTEE

Offered:  
Referred:

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

**A BILL**

**FOR AN ACT ENTITLED**

"An Act relating to insurance; relating to an insurer's corporate governance; relating to insurance holding companies and insurance company holding systems; amending Rule 26, Alaska Rules of Civil Procedure, and Rules 402, 409, and 501, Alaska Rules of Evidence; 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:

**Article 2. Corporate Governance Annual Disclosure.**

**Sec. 21.09.400. Corporate governance annual disclosure scope. (a)**

AS 21.09.400 - 21.09.460 do not prescribe or impose a corporate governance standard or internal procedure beyond that required under AS 10. Nothing in AS 21.09.400 - 21.09.460 limits the director's authority or the rights or obligations of a third party.

(b) AS 21.09.400 - 21.09.460 apply to an insurer domiciled in this state.

**Sec. 21.09.410. 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 21.09.430(b). In the event the director requests an insurer to submit a disclosure under (c) of this section, and the insurer is a member of an insurance group, the insurer shall submit the disclosure 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) A corporate governance annual disclosure must include a signature of the insurer or insurance group's chief executive officer or corporate secretary attesting that, to the best of that individual's belief and knowledge,

(1) the insurer has implemented the corporate governance practices required under AS 21.09.400 - 21.09.460; 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 of the director.

(d) For purposes of completing a corporate governance annual disclosure, an insurer or insurance group, depending on the insurer's or insurance group's corporate governance structure, may provide information regarding corporate governance at

(1) the ultimate controlling parent level;

(2) an intermediate holding company level;

(3) the individual legal entity level; or

(4) the ultimate controlling parent level, an intermediate holding company level, and the individual legal entity level.

(e) An 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) shall, if determining the level of reporting based on the criteria under this section,

(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 or insurance group providing information substantially similar to the information required under AS 21.09.400 - 21.09.460 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. 21.09.420. Regulations and orders.** To carry out the provisions of AS 21.09.400 - 21.09.460, the director may

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

(2) issue orders necessary to implement the provisions.

**Sec. 21.09.430. 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) An insurer or insurance group shall prepare a corporate governance annual disclosure consistent with regulations adopted by the director under AS 21.09.420. 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 of the director.

**Sec. 21.09.440. 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 21.09.400 - 21.09.460 are confidential and subject to the provisions of AS 21.06.060.

**Sec. 21.09.450. Agreements with National Association of Insurance Commissioners and third-party consultants.** (a) The director may retain, at the insurer's or insurance group's expense, and as consistent with this section, 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 21.09.400 - 21.09.460.

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

(c) As part of the retention process, a third-party consultant must verify to the director in writing, with notice to the insurer or insurance group, that the consultant is free of a conflict of interest, has internal procedures in place to monitor compliance with a conflict, and will comply with the confidentiality standards and requirements under AS 21.09.400 - 21.09.460.

(d) A written agreement with the National Association of Insurance Commissioners, a third-party consultant, or both, governing sharing and use of

1 information provided under AS 21.09.400 - 21.09.460 must contain the following  
2 provisions and expressly require the written consent of the insurer or insurance group  
3 before making information under AS 21.09.400 - 21.09.460 public:

4 (1) a provision stating that the National Association of Insurance  
5 Commissioners and third-party consultants are subject to the same confidentiality  
6 standards and requirements as the director under AS 21.22.120 and any other relevant  
7 law;

8 (2) specific procedures and protocols for maintaining the  
9 confidentiality and security of information related to corporate governance annual  
10 disclosures that is shared with the National Association of Insurance Commissioners  
11 or the third-party consultant under AS 21.09.400 - 21.09.460;

12 (3) procedures and protocols that ensure the National Association of  
13 Insurance Commissioners shares only with other state regulators from states in which  
14 the insurer or insurance group has domiciled insurers; the agreement must provide that  
15 the recipient agrees in writing to maintain the confidentiality of the documents,  
16 materials, or other information related to corporate governance annual disclosures and  
17 has verified in writing the legal authority to maintain confidentiality;

18 (4) a provision specifying that ownership of information related to  
19 corporate governance annual disclosures that is shared with the National Association  
20 of Insurance Commissioners or a third-party consultant remains with the division, and  
21 the use of the information by the National Association of Insurance Commissioners or  
22 the third-party consultant is subject to the direction of the director;

23 (5) a provision that prohibits the National Association of Insurance  
24 Commissioners or the third-party consultant from storing the information shared under  
25 AS 21.09.400 - 21.09.460 in a permanent database after the underlying analysis is  
26 completed;

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

(7) a requirement that the National Association of Insurance Commissioners or the 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 the 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 the third-party consultant under AS 21.09.400 - 21.09.460.

**Sec. 21.09.460. Penalties.** Each day an insurer or insurance group fails, without just cause, to file the corporate governance annual disclosure in the time required under AS 21.09.410(a), the insurer or insurance group shall pay \$1,000, 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

1 WHICH THE TRANSACTION TOOK PLACE]; or

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

5 (2) a loan or extension of credit to a person who is not an affiliate,  
6 where the insurer makes loans or extensions of credit with the agreement or  
7 understanding that the proceeds of the transaction, in whole or in substantial part, are  
8 to be used to make a loan or extension of credit to, purchase an asset of, or make an  
9 investment in an affiliate of the insurer making the loan or extension of credit,  
10 provided the transaction is equal to or exceeds

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

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

18 (3) a reinsurance agreement or modification, including

19 (A) a reinsurance pooling agreement;

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

30 (4) a management agreement, service contract, tax allocation  
31 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 is amended by adding a new section to read:

**Sec. 21.22.117. 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 acknowledge another regulatory official as the group-wide supervisor if 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) or (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 acknowledgment of 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 acknowledgment 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 of 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; 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 regulatory official shall consider the factors listed in this subsection when making an acknowledgment under this subsection, and shall make the acknowledgment in cooperation with, and subject to, the acknowledgment of other regulatory officials involved with supervision of members

1 of the internationally active insurance group and in consultation with the  
2 internationally active insurance group.

3 (c) Notwithstanding any other provision of law, when another regulatory  
4 official is acting as the group-wide supervisor of an internationally active insurance  
5 group, the director shall acknowledge that regulatory official as the group-wide  
6 supervisor. However, the director shall make a determination or acknowledgment of  
7 the appropriate group-wide supervisor for the internationally active insurance group  
8 under (b) of this section in the event of a material change in the internationally active  
9 insurance group that results in

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

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

15 (d) Under AS 21.22.110, the director may collect from an insurer registered  
16 under AS 21.22.060 the information necessary to determine whether the director may  
17 act as the group-wide supervisor of an internationally active insurance group or if the  
18 director may acknowledge another regulatory official to act as the group-wide  
19 supervisor. Before issuing a determination that an internationally active insurance  
20 group is subject to group-wide supervision, the director shall notify the insurer  
21 registered under AS 21.22.060 and the ultimate controlling person within the  
22 internationally active insurance group. Upon notification, the internationally active  
23 insurance group has a minimum of 30 days to provide the director with additional  
24 information pertinent to the pending determination. The director may publish on the  
25 division's Internet website the identity of internationally active insurance groups that  
26 the director has determined are subject to group-wide supervision by the director.

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

29 (1) assess the enterprise risks in the internationally active insurance  
30 group to ensure

31 (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 in 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, or 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 in 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 may reasonably cooperate, through supervisory colleges or otherwise, with group-wide supervision undertaken by the group-wide supervisor under the following conditions:

(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 recognizes and cooperates with the director's activities as a group-wide supervisor for other internationally active insurance groups, where applicable; if 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 is 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. 4.** 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 21.22.117 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. 5.** AS 21.22.120 is amended by adding new subsections to read:

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

(d) The sharing of information by the director under this chapter does 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 an applicable privilege or claim of confidentiality in the documents, materials, or information under (a) of this section 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 this chapter

(1) are confidential by law;

(2) are not subject to

(A) AS 40.25.110 - 40.25.220;

(B) subpoena; or

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

\* **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

1 system write premiums in at least three countries;

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

5 (C) based on a three-year rolling average, the total assets of the  
6 insurance holding company system are at least \$50,000,000,000 or the total gross  
7 written premiums of the insurance holding company system are at least  
8 \$10,000,000,000.

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

11 **INDIRECT COURT RULE AMENDMENT.** The provisions of secs. 3 and 5 of this  
12 Act have the effect of changing the following court rules in the manner specified:

13 (1) Rule 26, Alaska Rules of Civil Procedure, by prohibiting discovery of  
14 evidence in the possession or control of the National Association of Insurance Commissioners  
15 relating to insurance holding companies and insurance holding company systems;

16 (2) Rules 402, 409, and 501, Alaska Rules of Evidence, by

17 (A) creating a new privilege relating to insurance holding companies  
18 and insurance holding company systems that would prevent a person from being  
19 permitted or compelled to testify about confidential documents, materials, or  
20 information in a private civil action; and

21 (B) precluding admissibility of evidence

22 (i) in a private action, of documents, materials, or other  
23 information in the possession or control of the National Association of  
24 Insurance Commissioners relating to insurance holding companies and  
25 insurance holding company systems; and

26 (ii) in a proceeding against certain insurers or persons in an  
27 insurance holding company system, of agreements or documentation relating  
28 to insurance holding companies and insurance holding company systems.

29 \* **Sec. 8.** The uncodified law of the State of Alaska is amended by adding a new section to  
30 read:

31 **CONDITIONAL EFFECT.** AS 21.22.117(e)(5), enacted by sec. 3 of this Act, and

1 AS 21.22.120(c) and (f), enacted by sec. 5 of this Act, take effect only if secs. 3 and 5 of this  
2 Act receive the two-thirds majority vote of each house required by art. IV, sec. 15,  
3 Constitution of the State of Alaska.

4 \* **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).