



# ALASKA STATE LEGISLATURE

## HOUSE LABOR & COMMERCE COMMITTEE

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### **HB 372**

#### **Sectional Analysis**

*Please note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.*

#### **Sec. 1 AS 21.06.120(a) Examination of insurers**

- Subsection (a) is amended to reflect the correct references to the handbooks used throughout the country for financial and market conduct examinations. Both publications are published by the National Association of Insurance Commissioners (NAIC). Formerly, the term "Examiners' Handbook" was a sufficient description as both the financial examination and market conduct examination handbooks used the term in their title. Now, however, the "Market Conduct Examiners Handbook" is no longer published and is part of the "Market Regulation Handbook".

#### **Sec. 2 AS 21.06.140(f) Conduct of examination**

- Subsection (f) is amended to reflect the correct references to the handbooks used throughout the country for financial and market conduct examinations. Both publications are published by the National Association of Insurance Commissioners. Formerly, the term "Examiners' Handbook" was a sufficient description as both the financial examination and market conduct examination handbooks used the term in their title. Now, however, the "Market Conduct Examiners Handbook" is no longer published and is part of the "Market Regulation Handbook".

#### **Sec. 3 AS 21.06.160(a) Examination expense**

- Subsection (a) is amended to exclude managing general agents, third-party administrators, reinsurance intermediary managers, motor vehicle service contract providers, and surplus lines brokers from the requirements of paying for division personnel and overhead costs relating to an examination; such entities would still be required to pay for the division's "out-of-pocket" expenses including travel expenses and for compensation of a contract examiner, however, the entities could apply for a waiver from the director based on financial hardship.

**Sec. 4 AS 21.07.005 Utilization review and benefit determination, grievance procedures, and external review**

- A new section, AS 21.07.005 provides authority for the director to adopt regulations relating to utilization review and benefit determinations; grievance procedures; external review requirements for health care insurance; and registration and regulation of independent review organizations including the establishment of fees. These regulations are necessary to make Alaska's laws consistent with national standards and federal law. The regulations will be based on model laws developed by the National Association of Insurance Commissioners.

**Sec. 5 AS 21.07.010(a) Patient and health care provider protection**

- Subsection (a) is amended to require that contracts between a participating health care provider and a health care insurer include a provision that clearly states that the health care provider will adhere to the health care insurer's policies and procedures regarding referrals and obtaining prior authorization and providing services under a treatment plan approved by the health care insurer. Non-substantive drafting convention changes are also made.

**Sec. 6 AS 21.07.020 Required contract provisions for health care insurance policy**

- AS 21.07.020 is amended to revise and update the provisions that must be included in a health insurance policy and to comply with federal law.

**Sec. 7 AS 21.07.030(d) Choice of health care provider**

- Subsection (d) is amended to require a health care insurer to permit a covered person to designate a pediatrician where the insurer offers a health care policy that requires or provides for a designation by the covered person of a participating primary care provider.

**Sec. 8 AS 21.07.030(e) Choice of health care provider**

- Subsection (e) is amended to recognize an exception to the subsection's requirements due to a new subsection (h).

**Sec. 9 AS 21.07.030(h) Choice of health care provider**

- New subsection (h) prohibits a health care insurer that offers a health care insurance policy that provides coverage for obstetric and gynecologic care and that requires designation by a covered person of a participating primary care provider from requiring authorization or referral for a female patient to receive obstetric gynecological care from a participating provider. A health care insurer shall treat authorizations by an obstetrics and gynecology specialist as the authorization of the primary care provider.

**Sec. 10 AS 21.07.250(3) Definitions**

- Paragraph (3) is repealed and reenacted to define "emergency services" to mean medical care services or items furnished or required to evaluate and treat an emergency medical condition.

### **Sec. 11 AS 21.07.250(14) Definitions**

- Paragraph (14) is repealed and reenacted to define "utilization review" to mean a set of techniques designed to monitor the use of, or evaluate the clinical necessity, appropriateness, efficacy, or efficiency of, health care services, procedures, or settings; techniques may include ambulatory review, prospective review, second opinion certification, concurrent review, case management, discharge planning, or retrospective review.

### **Sec. 12 AS 21.07.250(15) Definitions**

- New paragraph (15) defines " emergency medical condition" to mean the sudden and, at the time, unexpected onset of a medical condition or illness that requires immediate medical attention and where failure to provide immediate medical attention would result in (A) the placing of the person's health in serious jeopardy; (B) a serious impairment to bodily functions; or (C) a serious dysfunction of any bodily organ or part.

### **Sec. 13 AS 21.09.320(b) Maintenance Records**

- Subsection (b) is amended to require that an insurer, to meet the requirements of AS 21.09.320(a), shall keep records as required by the maintenance records requirements of the insurer's domicile jurisdiction.

### **Sec. 14 AS 21.09.320(c) and (d) Maintenance of records**

- New subsection (c) requires the insurer not later than 10 business days after the date of the request to provide the records to the director or make the records available for inspection and copying. The records inspected or examined under this subsection are confidential but may be used by the director in a proceeding against the insurer.
- New subsection (d) provides that failure of the insurer to provide the information required by this section may result in a civil penalty of up to \$1,000 for each violation and, an additional civil penalty of up to \$50 for each day the information requested is not provided.

### **Sec. 15 AS 21.12.090(b) Marine, wet marine, and transportation insurance defined**

- Subsection (b) is amended to define "wet marine and transportation" insurance as that part of marine insurance that includes only (1) insurance on vessels, crafts, and hulls, and insurance of interests in or with relation to vessels, crafts, and hulls; (2) insurance of marine builder's risks, marine war risks, and contracts of marine protection and indemnity insurance; (3) insurance of freights and disbursements pertaining to a subject of insurance coming within this section; or (4) insurance of personal property and interests in personal property, in the course of exportation from or importation into any country, and in the course of transportation coastwise or on inland waters, including transportation by land, water, or air from point of origin to final destination, in respect to , appertaining to, or in connection with, any and all risks or perils of navigation, transit, or transportation, and while being prepared for and while awaiting shipment, and during delays, storage, transshipment, or reshipment incident thereto. The amendment corrects a drafting error that required all four of the paragraphs to be met to meet the definition.

### **Sec. 16 AS 21.27.020(c) General qualifications for license**

- Paragraph (c)(3) is amended to provide that a firm insurance producer, firm managing general agent, firm intermediary broker, firm reinsurance intermediary manager, firm surplus lines broker or firm independent adjuster applicant or license in designating one or more compliance officers for the firm may only designate one compliance officer for each class of authority. A non-substantive drafting convention change is also made to paragraph (c)(5).

### **Sec. 17 AS 21.27.020(f) General qualifications for license**

- Subsection (f) is amended to make clear the authority of the director to adopt regulations establishing additional education or experience requirements for continuing education providers.

### **Sec. 18 AS 21.27.025(a) Required notice of licensee**

- Subsection (a) is amended to require a licensee to report to the director in writing any administrative action taken against the licensee by a financial industry regulatory authority sanction or arbitration proceeding. Non-substantive drafting convention changes are also made.

### **Sec. 19 AS 21.27.150(a) Limited licenses**

- Subsection (a) is amended to give the director authority to issue a crop insurance limited producer license. Non-substantive drafting convention changes are also made.

### **Sec. 20 AS 21.27.380(a) License renewal, lapse, and reinstatement**

- Subsection (a) is amended to make non-substantive changes to conform the language to State Based Systems (SBS), an electronic system owned by the National Association of Insurance Commissioners for use by state regulators in support of insurance regulatory functions. SBS enables the division to more efficiently and effectively process license applications, renewals, inquiries, complaints, enforcement actions and other functions while remaining compliant with national uniformity initiatives.

### **Sec. 21 AS 21.27.380(b) License renewal, lapse, and reinstatement**

- Subsection (b) is amended to make non-substantive changes to conform the language to SBS.

### **Sec. 22 AS 21.27.380(d) License renewal, lapse, and reinstatement**

- Subsection (d) is amended to make non-substantive changes to conform the language to SBS.

### **Sec. 23 AS 21.27.640(b) Third-party administrator qualifications**

- Subsection (b) is amended to require a third-party administrator registrant to notify the director not later than 30 days after the final disposition of an administrative action taken against the registrant by a governmental agency of another state, by a governmental agency of another jurisdiction, or by a financial industry regulatory authority sanction or arbitration proceeding. The registrant must also submit to the

director documents relating to the final disposition. A non-substantive drafting convention change is also made.

#### **Sec. 24 AS 21.27.650(r) Operating requirements for third-party administrators**

- New subsection (r) requires insurers to review its books and records quarterly to determine whether a person or insurance producer has acted as the insurer's third-party administrator. If the insurer so finds, the insurer must notify the person or insurance producer and the director. The insurer and the person or insurance producer must then fully comply with AS 21.27 not later than 30 days after notification.

#### **Sec. 25 AS 21.27.690(b) Operating requirements for reinsurance intermediary brokers; actions for loss**

- Subsection (b) is amended to add the requirement that an insurer may not use a nonresident reinsurance intermediary broker who is not licensed under this chapter unless the reinsurance intermediary broker has filed a certification with the director that the reinsurance intermediary broker is operating only for a foreign insurer. Subsection (b) is also amended to add the requirement that a domestic insurer may not use an alien reinsurance intermediary broker unless the alien reinsurance intermediary broker has filed a certification with the director that the reinsurance intermediary broker is operating only for a domestic insurer.

#### **Sec. 26 AS 21.34.035(b) Health care insurance**

- Subsection (b) is amended to change references from a repealed statute (AS 21.87.190) to the correct references of AS 21.51.405 and AS 21.54.015.

#### **Sec. 27 AS 21.34.050(a) Listing eligible surplus lines insurers**

- Subsection (a) is amended to remove the authority of the director to adopt a regulation to charge fees to eligible nonadmitted insurers. This amendment is necessary to meet the requirements of the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRRA). The division has not been charging this fee since 2011 due to this federal law.

#### **Sec. 28 AS 21.34.050(c) Listing eligible surplus lines insurers**

- Subsection (c) is amended to remove references to fees charged to eligible nonadmitted insurers.

#### **Sec. 29 AS 21.34.180(a) Surplus lines tax**

- Subsection (a) is amended to add "home state" to the subsection to be consistent with the NRRRA and previous amendments to AS 21.34.

#### **Sec. 30 AS 21.36.025(b) and (c) Unfair marketing practices prohibited**

- New subsection (b) provides that a person may not sell a membership in an association or labor union for the purpose of qualifying for an individual for group insurance.
- New subsection (c) provides that a person that sells a membership in an association may not offer group insurance for purposes of selling memberships in an association or labor union.

### **Sec. 31 AS 21.36.185 Maintenance of complaint handling records**

- This section is amended to account for differences in recordkeeping requirements between this section and those in the National Association of Insurance Commissioners Health Carrier Grievance Procedure Model Act which the director will be required to adopt under section 4 of the bill.

### **Sec. 32 AS 21.36.225(a) and (b) Notice of health insurance coverage cancellation, coverage change, or premium change**

- Subsections (a) and (b) are amended by changing the term "covered individual" to "policyholder" as the intent of the provisions were not to require that every covered person under, for example, a family policy receives the notice. The intent is for the primary insured to receive the notice and in the case of a group for the policyholder to receive the notice.

### **Sec. 33 AS 21.36.360(b) Fraudulent or criminal insurance acts**

- Subsection (b) is amended to clarify that a fraudulent insurance act is committed by a person who, with intent to injure, defraud, or deceive knowingly omits material information 1) when presenting to an insurer a written or oral statement in support of a claim for payment or other benefit under an insurance policy or 2) when assisting or conspiring with another to prepare or make a written or oral statement that is submitted to an insurer in support of a claim or benefit under an insurance policy.
- Subsection (b) is also amended by adding a new paragraph (7) that would provide that a fraudulent insurance act is committed by a person who, with intent to injure, defraud, or deceive makes a written or oral statement in response to an insurer's inquiries related to another's claim for payment or other benefit under an insurance policy, knowing the statement contains false, incomplete, or misleading information, or omits information concerning a matter material to the claim. This statutory change is intended to address the situation where a person obtains insurance immediately after an accident (to avoid arrest for driving without insurance) and then claims he/she was insured at the time of the accident when the other driver's insurer inquiries about the person's coverage.

### **Sec. 34 AS 21.36.360(q) Fraudulent or criminal insurance acts**

- Subsection (q) is amended to provide for a class C felony for a fraudulent insurance act that (1) falsely makes, completes, or alters a certificate of insurance or other document relating to insurance and (2) knowingly possesses a forged certificate of insurance or other document relating to insurance. The current statute does not specify a penalty for these offences.

### **Sec. 35 AS 21.36.390(b) Notice to director**

- Subsection (b) is amended to require an insurer or licensee that has reason to believe that an insurance producer with which it is doing business is involved in violation of (1) AS 21.36.030 (Misrepresentation and false advertising of insurance policies), (2) AS 21.36.050 (Twisting prohibited), and (3) AS 21.36.360 (Fraudulent or criminal acts), to immediately send to the director a report disclosing the basis for that belief and any other information that the director may require.

### **Sec. 36 AS 21.39.040(a)(2) Rate filings**

- Paragraph (a)(2) is amended to clarify what is an acceptable effective date for a rate filing.

### **Sec. 37 AS 21.39.070(a) Deviations**

- Subsection (a) is repealed and reenacted to allow the division to consider a member's or subscriber's application for a deviation from a rating organization's class rates, schedules, rating plans, or rules respecting a kind of insurance, or class of risk with a kind of insurance, or combination as part of the regular filing process without requiring a formal order from the director. The amendment would also eliminate the requirements that casualty insurance deviations may only be a uniform percentage deviation and that deviation application copies must also be sent simultaneously to the rating organization.

### **Sec. 38 AS 21.42.160(d) Contents of policies in general**

- Subsection (d) is amended to eliminate the requirement that insurers print the year of adoption on all forms submitted to the division.

### **Sec. 39 AS 21.42.250(c) Delivery or posting of policy; notifications**

- Subsection (c) is amended to expand the applicability of the subsection to all lines of insurance rather than to just property and casualty lines. The subsection provides for an insurer providing a policy or endorsement by posting the policy or endorsement on the insurer's Internet website and clearly identifying the posted policy or endorsement purchased by the insured in the declaration page provided to the insured.

### **Sec. 40 AS 21.45.020(d) Standards provisions required; return and refund**

- Subsection (d) is amended to correct drafting errors.

### **Sec. 41 AS 21.48.010(a) Group requirements for group contracts**

- Subsection (a) is amended to clarify what constitutes a valid group for issuance of life insurance and gives the director authority to add additional requirements by regulation.

### **Sec. 42 AS 21.48.010(b) Group requirements for group contracts**

- Subsection (b) is amended to provide that this section does not apply to certain specified life insurance policies.

### **Sec. 43 AS 21.48.010(e) and (f) Group requirements for group contracts**

- New subsection (e) provides that a group life insurance policy may be issued to a group that does not meet one or more of the requirements under subsection (a) if the director finds that issuance is in the best interests of the public, results in economies of acquisition or administration, and meets other requirements established by regulation.
- New subsection (f) provides that the director must approve the issuance of a group life insurance policy under subsection (a) or (e) prior to issuance of a policy by the insurer under subsection (a) or (e).

**Sec. 44 AS 21.51.020 Scope, format of policy**

- Paragraph (3) is amended to allow a policy of health insurance to cover children of a policyholder under a specified age may not exceed 25 years. The amendment is necessary to avoid conflict with federal law.

**Sec. 45 AS 21.51.070(a) Reinstatement**

- Subsection (a) is amended to provide for an exception to the subsection for a policy offered or renewed in this state on a health care exchange and subject to federal regulation on reinstatement. The amendment is necessary to avoid conflict with federal law.

**Sec. 46 AS 21.51.405(b) Rate requirements; filings; regulations**

- Subsection (b) is amended to extend the waiting period for the effective date for individual health insurance rates from 45 days to 90 days to allow time for review and approval of the rates while also allowing sufficient time for insurers to provide the required 45 days' notice of a change in premium.

**Sec. 47 AS 21.51.500 Definitions**

- New paragraph (4) defines "health care exchange" to mean an American Health Benefit Exchange established under 42 U.S.C. 18031.

**Sec. 48 AS 21.53.068 Limitations related to producers and third-party administrators**

- This section is amended to correct a drafting error by changing "compensates" to "does not compensate".

**Sec. 49 AS 21.54.015(b) Rate requirements; filings; regulations; health care insurance restrictions**

- Subsection (b) is amended to correct the paragraph citation to AS 21.54.060 due to amendments being made to AS 21.54.060.

**Sec. 50 AS 21.54.015(c) Rate requirements; filings; regulations; health care insurance restrictions**

- Subsection (c) is amended to extend the waiting period for the effective date for large employer health care insurance plan premium rates from 45 days to 90 days to allow time for review and approval of the rates while also allowing sufficient time for insurers to provide the required 45 days' notice of a change in premium.

**Sec. 51 AS 21.54.060 Group health insurance defined**

- Paragraph (2) is amended to clarify that associations and labor unions issued group health insurance policies under this section must be "bona fide associations". A non-substantive drafting convention change is also made.
- Paragraph (3) is amended to clarify that group health insurance may be issued under a policy issued to the trustees of a fund adopted or participated in by two or more employers or by one or more labor unions or by one or more employers and one or more



labor unions or by an association as defined in paragraph (2). The requirement that the employers be in the same or related industry is deleted with respect to trusts.

- Paragraph (5) is deleted and is replaced by the new subsection (b) of AS 21.54.060.

#### **Sec. 52 AS 21.54.060(b) and (c) Group health insurance defined**

- New subsection (b) provides that a group health insurance policy may be issued to a group that does not meet one or more of the requirements under AS 21.54.060(1)– (4) and (6) if the director finds that issuance is in the best interests of the public, results in economies of acquisition or administration, and meets other requirements established by regulation. This replaces the existing authority and makes it consistent with the group life provision.
- New subsection (c) provides that an insurer must submit a form filing that complies with AS 21.42.123 (Form filing subject to prior approval) and establish that the group meets the requirements of subsection (e) in order to issue a group health insurance policy to a group under subsection (e). The director must also affirmatively find that the group meets the requirements of subsection (e) prior to the insurer issuing a group health insurance policy under this section.

#### **Sec. 53 AS 21.54.500(4) Definitions**

- Paragraph (4) repeals and reenacts the definition of "bona fide association" to the meaning given in AS 21.97.900

#### **Sec. 54 AS 21.56.110(a) Applicability**

- Subsection (a) is amended to reconcile any conflicts between AS 21.56 and federal law by adding the language "except as prohibited by federal law."

#### **Sec. 55 AS 21.56.120(e) Premium rate restrictions; disclosures; reports; confidentiality**

- Subsection (e) is amended to correct the paragraph citation to AS 21.54.060 due to amendments being made to AS 21.54.060.

#### **Sec 56 AS 21.56.250(6) Definitions**

- Paragraph (6) is amended to reflect the definition of "bona fide association" has the meaning given in AS 21.97.900.

#### **Sec. 57 AS 21.59.150(a) and (b) Provider license renewal, lapse, reinstatement.**

- Subsection (a) and (b) are amended to make non-substantive changes to conform the language to State Based Systems (SBS), an electronic system owned by the National Association of Insurance Commissioners for use by state regulators in support of insurance regulatory functions. SBS enables the division to more efficiently and effectively process license applications, renewals, inquiries, complaints, enforcement actions and other functions while remaining compliant with national uniformity initiatives.

#### **Sec. 58 AS 21.59.170(a) Return and cancellation**

- Subsection (a) is amended to correct a drafting error by deleting the word "unearned". Non-substantive drafting convention changes are also made.

### **Sec. 59 AS 21.59.170(b) Return and cancellation**

- Subsection (b) is amended to correct a drafting error by adding the word "unearned". Non-substantive drafting convention changes are also made.

### **Sec. 60 AS 21.59.180(a) Provider's financial responsibility**

- Subsection (a) is amended to correct a drafting error by deleting the words "a provider".

### **Sec. 61 AS 21.69.310(a) Meetings of stockholders or members**

- Subsection (a) is amended to remove the requirement for stockholder or member meetings to be held in the city or town of a company's principal office or place of business in this state. The amended statute reflects the reality of the Alaska domiciled insurers and of the nationwide insurance industry. Of the seven Alaska domestic insurers, one is a U.S. branch of a UK company with central administration in the UK and two other insurers are members of holding company systems that are domiciled in other states and are centrally administered there. This is common nationwide where holding company systems have insurer members domiciled in states other than where the holding company is domiciled. Significant administrative functions are often centralized at the holding company domiciled location for the whole group. The amended statute also accommodates three Alaska domestic insurers from the difficulty of always having to hold stockholder or member meetings at their principal office or place of business. These insurers have board members that are disbursed throughout the state and in other states. Annual meetings are often held in locations other than the principal office or place of business such as in Anchorage where travel to and from is easiest, or rotated to other areas of the state to make it more convenient for members to attend the meetings and to participate on the boards. These insurers are still able to request approval of the director to hold these meetings at a location that is not the principle office or place of business.

### **Sec. 62 AS 21.69.310(c) Meetings of stockholders or members**

- Subsection (c) is amended to give the director discretion to approve a date for an annual meeting later than the first six months of each calendar year upon a written request for approval for good cause. The request for approval must be made at least 30 days before the end of the six-month requirement. This amendment reflects the fact that annual meetings of Alaska insurers cannot always be held within the first six months of the calendar year due to the wide disbursement of board members and to the differing requirements for the timing of annual meetings of other states where holding companies with Alaska insurers are domiciled.

### **Sec. 63 AS 21.69.390(b) Home office and records**

- Subsection (b) is amended to delete the reference AS 21.69.390(d) as that subsection is being repealed for the reasons as stated in Sec. 67 of this Bill Analysis.

### **Sec. 64 AS 21.85.500(5) Definitions**

- Paragraph (5) is amended to change the definition of "multiple employer welfare arrangement" to conform with the meaning of the term as defined under 29 U.S.C. 1002.

### **Sec. 65 AS 21.97.020 General penalty**

- The general penalty amounts are being updated to be more consistent with other penalty provisions in AS 21 such as AS 21.27.440 and to provide a mechanism to use under section four of the bill and for market conduct enforcement. This section has not been updated for over 30 years.

### **Sec. 66 AS 21.97.900(47) Definitions for title**

- Amended to add a new paragraph (47) defines "bona fide association".

### **Sec. 67 Repeals the following provisions:**

- AS 21.06.087 (Insurance report) Repeal of this section removes the requirement that the division report annually on the impacts of tort reforms enacted in 1997 (chapter 26, SLA 1997). This report has not been updated since 2004. At this time, it would be difficult to attribute observed changes in the market to the tort reform legislation.
- AS 21.07.250(9) (Definitions) The definition of "medical emergency" is repealed as it is being replaced by the definition for "emergency medical condition".
- AS 21.54.500(4) (Definitions) The definition of "bona fide association" is no longer needed in this chapter because an updated definition of the term has been added to AS 21.97 by section 58 of the bill.
- AS 21.69.390(d) is outdated as books and records are increasingly being maintained electronically and access can be made remotely or on-site at the home office of an insurer. The division also can access a company's financial filings with the NAIC electronically. AS 21.06.140 requires examinations of domestic, foreign and Canadian insurers to be conducted at an insurer's home office or at other places where the records are kept, not at the insurer's principal place of business in the state.

### **Sec. 68 Repeals the following provisions**

- AS 21.07.050 (External health care appeals) AS 21.07.060, (Qualifications of external appeal agencies), AS 21.07.070 (Limitation on liability of reviewers), AS 21.07.250(1), (2), and (7), (Definitions). These provisions are no longer needed due to Section 4 of the bill which requires the director to adopt by regulation the National Association of Insurance Commissioners model acts.

### **Sec. 69 Repeals the following provisions**

- AS 21.27.115(8) crop insurance is removed as a line of authority due to section 16 of the bill which provides that crop insurance is a limited line of authority consistent with national uniformity licensing standards.
- AS 21.27.115(9) surety insurance is removed as a line of authority to be consistent with national uniformity licensing standards.

### **Sec. 70**

- Provides for an uncodified new section outlining the timing of when the director of insurance may adopt regulations.

**Sec. 71**

- Provides for a revisor's instruction to change the catch line of AS 21.27.380.

**Sec. 72**

- Provides that section 70 of the bill takes effect immediately under AS 01.10.070(c).

**Sec. 73**

- Provides that section 68 of the bill takes effect January 1, 2017.

**Sec. 74**

- Provides that AS 21.27.150(a)(9), enacted by section 19 of the bill, and section 69 of the bill take effect March 1, 2017.