



# LAWS OF ALASKA

1976

Source

CSHB 554 (Judiciary)

Chapter No.

202

## AN ACT

Relating to regulation of insurance holding companies; and providing for an effective date.

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

\* Section 1. AS 21 is amended by adding a new chapter to read:

#### CHAPTER 22. INSURANCE HOLDING COMPANIES.

Sec. 21.22.010. FILING REQUIREMENTS FOR ACQUISITION OF CONTROL OF OR MERGER WITH DOMESTIC INSURER. (a) Until the provisions of (b) of this section have been fulfilled, no person may:

(1) make a tender or an offer for or a request or an invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, any voting security of a domestic insurer if, after the purchase, the person would, directly or indirectly or by conversion or by exercise of any right to acquire, be in control of the insurer; or

(2) enter into an agreement to merge with or otherwise to acquire control of a domestic insurer.

(b) A statement containing the information outlined in sec. 20 of this chapter shall be filed by the person making a proposal described in (a) of this section with the director before the time copies of the proposal are first published, sent, or given to security holders of the insurer. The insurer must publish, send, or give copies of the statement to the insurer's stockholders. The proposal is subject to approval by the director as outlined in sec. 30 of this chapter.

(c) If a proposal referred to in (a) of this section is to be made by means of a registration statement under the Securities Act of 1933 or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, or under a state law requiring similar registration or disclosure, the person required to file the statement referred to in (b) of this section may use those documents in furnishing the information called for by that statement. However, the director may require the person making the proposal to produce other information the director considers necessary to carry out his duties under this chapter.

(d) If the person required to file the statement referred to in (b) of this section is a partnership, limited partnership, syndicate or other group, the director may require that the information be given with respect to each

- (1) partner of the partnership or limited partnership;
- (2) member of the syndicate or group; and
- (3) person who controls a partner or member.

(e) If any person, partner or member required to file the statement referred to in (b) of this section is a corporation, the director may require that the information be given with respect to

- (1) that corporation;
- (2) each officer and director of that corporation; and
- (3) each person who is directly or indirectly the beneficial owner of more than 10 per cent of the outstanding voting securities of that corporation.

(f) If any material change occurs in the facts set out in the statement filed with the director and sent to the insurer under this section, an amendment setting out the change, together with copies of all documents and other material relevant to the change, shall be filed with the director and sent to the insurer within two business days after the person learns of the change. The insurer shall send the amendment to its shareholders.

(g) The provisions of this section do not apply to

- (1) any offer of, request for, invitation for, agreement regarding, or acquisition of a voting security which, immediately before the consummation of the offer, request, invitation, agreement or acquisition, was not issued and outstanding; or
- (2) any offer, request, invitation, agreement or acquisition which the director by order may exempt as not having been made or entered into for the purpose and not having the effect of changing or influencing the control of the domestic insurer.

(h) For the purposes of this section, "domestic insurer" includes any person controlling a domestic insurer unless that person is either directly or through its affiliates primarily engaged in business other than the business of insurance.

Sec. 21.22.020. CONTENT OF STATEMENT FOR ACQUISITION OR MERGER FILING. The statement to be filed with the director as required in sec. 10 of this chapter shall be made under oath or affirmation and shall contain the following information:

(1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in sec. 10 of this chapter is to be effected, who will be called the "acquiring party", as follows:

(A) if the person is an individual, his principal occupation and all offices and positions held during the past five years, and all felony convictions and misdemeanor convictions involving moral turpitude during the past 10 years;

(B) if the person is not an individual,

(i) a report of the nature of its business operations during the past five years or for whatever lesser period the person and any of its predecessors have been in existence;

(ii) an informative description of the business intended to be done by the person and the person's subsidiaries; and

(iii) a list of all individuals who are or who have been selected to become directors or executive officers of the person, or who perform or will perform functions appropriate to those positions; the list shall include for each such individual the information required by (A) of this paragraph;

(2) a description of the consideration used or to be used in effecting the merger or other acquisition of control, including:

(A) the source, nature and amount;

(B) a description of any transaction in which funds were or are to be obtained for any such purpose; and

(C) the identity of persons furnishing the consideration; however, if a source of the consideration is a loan made in the lender's ordinary course of business, the director shall keep the identity of the lender confidential, if the person filing the statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for

the preceding five fiscal years or for whatever lesser period that an acquiring party and any predecessors of that acquiring party have been in existence, and similar unaudited information as of a date not earlier than 90 days before the filing of the statement;

(4) any plans or proposals which each acquiring party may have to

(A) liquidate the insurer;

(B) sell its assets or merge or consolidate it with any person; or

(C) make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in sec. 10 of this chapter which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in this chapter, and a statement as to the method by which the fairness of the proposal was determined;

(6) the amount of each class of any security referred to in sec. 10 of this chapter which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements or understandings with respect to any security referred to in sec. 10 of this chapter in which an acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies; this description shall identify the persons with whom those contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in sec. 10 of this chapter during the 12 calendar months preceding the filing of the statement, by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid;

(9) a description of any recommendations to purchase a security referred to in sec. 10 of this chapter made during the 12 calendar months preceding the filing of the statement, by an acquiring party, or by anyone based upon interviews or at the suggestion of the acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of exchange offers for, and agreements to acquire or exchange any securities referred to in sec. 10 of this chapter, and, if distributed, of additional soliciting material;

(11) the terms of any agreement, contract or understanding made with a broker-dealer as to solicitation of securities referred to in sec. 10 of this chapter for

tender, and the amount of any fees, commissions or other compensation to be paid to a broker-dealer;

(12) any additional information as the director may by order or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

Sec. 21.22.030. APPROVAL BY DIRECTOR; HEARINGS. (a) The director shall approve a merger or other acquisition of control referred to in sec. 10 of this chapter unless, after a public hearing he finds that:

(1) after the change of control, the domestic insurer referred to in sec. 10 of this chapter would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(2) the effect of the merger or other acquisitions of control would be substantially to lessen competition in insurance in this state or tend to create a monopoly in this state;

(3) the financial condition of an acquiring party is such that it might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining securityholders who are unaffiliated with the acquiring party;

(4) the terms of the offer, request, invitation, agreement or acquisition referred to in sec. 10 of this chapter are unfair and unreasonable to the securityholders of the insurer;

(5) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair and unreasonable to policyholders of the insurer and not in the public interest; or

(6) the competence, experience and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control.

(b) The purchase, merger or other acquisition of control referred to in sec. 10(a) of this chapter may not be made until the director either approves the transaction within 60 days after the statement required by sec. 10(b) of this chapter has been filed with him or he fails to disapprove the transaction within the 60-day period.

Sec. 21.22.040. MAILINGS TO SHAREHOLDERS; PAYMENT OF EXPENSES. All statements, amendments or other material filed under sec. 10 of this chapter, and all notices of public hearings held under sec. 30 of this chapter, shall be mailed by the insurer to its shareholders within five business days after the insurer has received those statements, amendments, other materials, or notices. The expenses of mailing shall be borne by the person making the filing. As

security for the payment of those expenses, the person making the filing shall file with the director an acceptable bond or other deposit in an amount to be determined by the director.

Sec. 21.22.050. JURISDICTION; CONSENT TO SERVICE OF PROCESS. The courts of this state are given jurisdiction over every person not resident, domiciled or authorized to do business in this state who files a statement with the director under this chapter, and over all actions involving that person arising out of violations of this chapter, and each person is considered to have performed acts equivalent to and constituting an appointment of the director to be his lawful attorney upon whom may be served all lawful process in any action or proceeding arising out of a violation of this chapter. Copies of all lawful process shall be transmitted by registered or certified mail by the director to the person at his last known address.

Sec. 21.22.060. REGISTRATION REQUIRED. (a) Every insurer which is authorized to do business in this state and which is a member of an insurance holding company system shall register with the director. An insurer which is subject to registration under this section shall register within 60 days after the effective date of this chapter or 15 days after it becomes subject to registration, whichever is later, unless the director for good cause shown extends the time for registration; if the time is extended, the insurer must register within the extended time.

(b) Every insurer subject to registration shall file a registration statement on a form provided by the director, which must contain current information about:

(1) the capital structure, general financial condition, ownership and management of the insurer and any person controlling the insurer;

(2) the identity of every member of the insurance holding company system;

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between the insurer and its affiliates:

(A) loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the insurer or of the insurer by its affiliates;

(B) purchases, sales, or exchanges of assets;

(C) transactions not in the ordinary course of business;

(D) guarantees or undertakings for the benefit of an affiliate which result in an actual contingent exposure of the insurer's assets to liability, other than insurance contracts entered into in the ordinary course of the insurer's business;

(E) all management and service contracts and all cost-sharing arrangements, other than cost alloca-

tion arrangements based upon generally accepted accounting principles; and

(F) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(4) other matters concerning transactions between registered insurers and any affiliates that may be included from time to time in a registration form adopted or approved by the director.

(c) The director may permit an authorized insurer which is a member of a holding company system subject to registration under the laws or regulations of its state of domicile which are in the opinion of the director substantially similar to those contained in this chapter to satisfy the requirements of (a) of this section by filing a statement in accordance with the laws of its state of domicile except that the director may at any time require a copy of that statement be filed with the director.

(d) No information need be disclosed on the registration statement filed under (b) of this section if that information is not material for the purposes of this section. Unless the director by regulation or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, or investments, involving one-half of one per cent of an insurer's admitted assets or, five per cent of the policyholder's surplus as of the 31st day of December of the calendar year in which the transaction took place are not considered material for purposes of this section.

(e) Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions on amendment forms provided by the director within 30 days after the end of the month in which it learns of each change or addition; however, subject to sec. 100 of this chapter, each registered insurer shall report all dividends and other distributions to shareholders within two business days following their declaration.

(f) The director shall terminate the registration of an insurer which demonstrates that it no longer is a member of an insurance holding company system.

(g) The director may require or allow two or more affiliated insurers subject to registration under this section to file a consolidated registration statement or consolidated reports amending their consolidated registration statement or their individual registration statements.

(h) The director may allow an insurer which is authorized to do business in this state and which is part of an insurance holding company system to register on behalf of an affiliated insurer which is required to register under (a) of this section and to file all information and material required to be filed under this section.

(i) This section does not apply to any insurer, information or transaction to the extent that the director by

regulation or order exempts the insurer, information or transaction from this section.

(j) A person may file with the director a disclaimer of affiliation with an authorized insurer or the disclaimer may be filed by the insurer or a member of an insurance holding company system. The disclaimer shall fully disclose all material relationships and bases for affiliation between that person and that insurer as well as the basis for disclaiming the affiliation. After a disclaimer has been filed, the insurer is relieved of any duty to register or report under this section which may arise out of the insurer's relationship with that person until the director disallows the disclaimer. The director shall disallow a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support the disallowance.

Sec. 21.22.070. REVIEW BY DIRECTOR. If at any time the director determines that any material transaction entered into between an insurer and any of its affiliates does not meet the standards set out in sec. 80 of this chapter, the director may, after hearings conducted in accordance with ch. 6 of this title, require the insurer and the affiliate to terminate, set aside, or modify the transaction as considered appropriate by the director to make the transaction conform to those standards. An insurer may submit a proposed material transaction to the director for review and the director may issue an opinion that the transaction meets the standard set out in sec. 80 of this chapter. The opinion shall create a rebuttable presumption that neither the insurer, director, officer, employee, nor agent committed a wilful violation of this chapter by entering into the transaction. The opinion does not prohibit the director from subsequently exercising his authority in this section.

Sec. 21.22.080. TRANSACTIONS WITH AFFILIATES. Material transactions by registered insurers with their affiliates are subject to the following standards:

- (1) the terms shall be fair and reasonable;
- (2) the books, accounts and records of each party shall be maintained so as to disclose clearly and accurately the precise nature and details of the transactions; and
- (3) the insurer's surplus as regards policyholders following any dividends or distributions to shareholder affiliates or performance under a material transaction with an affiliate shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

Sec. 21.22.090. ADEQUACY OF SURPLUS. For the purposes of this chapter, in determining whether an insurer's surplus as regards policyholders is reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs, the following factors, among others, shall be considered:

- (1) the size of the insurer as measured by its assets, capital and surplus, reserves, premium writings,

insurance in force and other appropriate criteria;

(2) the extent to which the insurer's business is diversified among the several lines of insurance;

(3) the number and size of risks insured in each line of business;

(4) the extent of the geographical dispersion of the insurer's insured risk;

(5) the nature and extent of the insurer's re-insurance program;

(6) the quality, diversification, and liquidity of the insurer's investment portfolio;

(7) the recent past and projected future trend in the size of the insurer's surplus as regards policyholders;

(8) the surplus as regards policyholders maintained by other comparable insurers;

(9) the adequacy of the insurer's reserves; and

(10) the quality and liquidity of investments in subsidiaries made under AS 21.21; the director may treat any such investment as a disallowed asset for purposes of determining the adequacy of surplus as regards policyholders whenever in his judgment the investment warrants it.

Sec. 21.22.100. DIVIDENDS AND OTHER DISTRIBUTIONS.

(a) No domestic insurer subject to registration under sec. 60 of this chapter may pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until

(1) 30 days after the director has received notice of the declaration of the dividend or distribution and has not within that period disapproved its payment; or

(2) the director has approved its payment within the 30-day period.

(b) For purposes of this section, an extraordinary dividend or distribution includes any dividend or distribution of cash or other property, the fair market value of which together with that of other dividends or distributions made within the preceding 12 months exceeds the greater of

(1) 10 per cent of the insurer's surplus as regards policyholders as of December 31 of the preceding year; or

(2) the net gain from operations of the insurer, if the insurer is a life insurer, or the net investment income, if the insurer is not a life insurer, for the 12-month period ending December 31 of the preceding year, but does not include pro rata distributions of any class of the insurer's own securities.

(c) Notwithstanding AS 21.69.490, an insurer may

declare an extraordinary dividend or distribution which is conditional upon the director's approval. A declaration confers no rights upon shareholders until

(1) the director has approved the payment of the dividend or distribution; or

(2) the director has not disapproved the payment within the 30-day period referred to in (a) of this section.

Sec. 21.22.110. EXAMINATION. (a) Subject to the limitation in (b) of this section, the director may order an insurer registered under sec. 60 of this chapter to produce records, books, or other information or papers in the possession of the insurer or its affiliates as are necessary to ascertain the financial condition or legality of conduct of the insurer. If an insurer fails to comply with the director's order, the director may examine the insurer's affiliates to obtain the information he requires.

(b) The director shall exercise his power under (a) of this section only if the examination of the insurer under AS 21.06.120 - 21.06.170 is inadequate or the interests of the policyholders of the insurer may be adversely affected.

(c) The director may retain, at the registered insurer's expense, attorneys, actuaries, accountants and other experts not otherwise a part of the director's staff as may be necessary to assist in the conduct of an examination under (a) of this section. Any persons so retained are under the direction and control of the director and shall act in a purely advisory capacity.

(d) Each registered insurer producing for examination records, books, and papers under (a) of this section is liable for and shall pay the expense of an examination in accordance with AS 21.06.160.

Sec. 21.22.120. CONFIDENTIAL TREATMENT. All information, documents 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 sec. 110 of this chapter and all information reported under sec. 60 of this chapter, shall be given confidential treatment and may not be made public by the director or any other person, except to insurance departments of other states, without the prior written consent of the insurer to which it pertains. 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, he may publish all or any part of the information in the manner he considers appropriate.

Sec. 21.22.130. REGULATIONS. The director may adopt regulations to carry out the provisions of this chapter.

Sec. 21.22.140. INJUNCTIONS. If it appears to the director that an insurer or a director, officer, employee or agent of an insurer has violated or is about to violate this chapter or a regulation adopted or an order issued by the

director under this chapter, the director may apply to the superior court in the judicial district in which the principal office of the insurer is located or if the insurer has no office in this state then to the superior court in the first judicial district for an order enjoining the insurer or a director, officer, employee or agent of the insurer from the violation, and for other relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

Sec. 21.22.150. VOTING OF SECURITIES; WHEN PROHIBITED.

(a) No security which is the subject of any agreement or arrangement regarding acquisition, or which is acquired or to be acquired, in contravention of this chapter or a regulation adopted or an order issued by the director under this chapter may be voted at a shareholders' meeting or may be counted for quorum purposes, and any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though those securities were not issued and outstanding; but no action taken at such a meeting may be invalidated by the voting of those securities, unless the action would materially affect control of the insurer or unless the courts of this state have so ordered.

(b) If an insurer or the director has reason to believe that a security of the insurer has been or is about to be acquired in contravention of this chapter or a regulation adopted or an order issued by the director under this chapter, the insurer or the director may apply to the superior court in the first judicial district or the superior court in the judicial district in which the insurer has its principal place of business to enjoin any offer, request, invitation, agreement or acquisition made in contravention of this chapter or a regulation adopted or an order issued by the director under this chapter, to enjoin the voting of any security so acquired, to void any vote of a security already cast at a meeting of shareholders, and for other relief as the nature of the case and the interests of the insurer's policyholders, creditors and shareholders or the public may require.

Sec. 21.22.160. SEQUESTRATION OF VOTING SECURITIES.

If a person has acquired or is proposing to acquire voting securities in violation of this chapter or a regulation adopted or an order issued by the director under this chapter, the insurer or the director may make an application in the superior court in the first judicial district or the superior court in the judicial district in which the insurer has its principal place of business to seize or sequester any voting securities of the insurer owned directly or indirectly by that person, and the court may issue an order with respect to those securities as may be appropriate to effectuate this chapter. For the purposes of this chapter the situs of the ownership of the securities of domestic insurers is considered to be in this state.

Sec. 21.22.170. CRIMINAL PENALTY. An insurer guilty of a wilful violation of this chapter is, upon conviction, punishable by a fine of not more than \$10,000. A person who is not an insurer and who is guilty of a wilful violation of this chapter is, upon conviction, punishable by a fine of not more than \$5,000 or, if the wilful violation involves

the deliberate perpetration of a fraud upon the director, by imprisonment for not more than two years, or by both fine and imprisonment.

Sec. 21.22.180. RECEIVERSHIP. If it appears to the director that a person has committed a violation of this chapter which so impairs the financial condition of a domestic insurer as to threaten insolvency or make the further transaction of business by it hazardous to its policyholders, creditors, shareholders, or the public, then the director may proceed as provided in ch. 78 of this title to take possession of the property of that domestic insurer and to conduct its business.

Sec. 21.22.190. REVOCATION, SUSPENSION, OR NONRENEWAL OF INSURER'S AUTHORITY. If the director finds, after giving notice and an opportunity to be heard, that a person has committed a violation of this chapter which makes the continued operation of an insurer contrary to the interests of its policyholders or the public, the director may, suspend, revoke or refuse to renew the insurer's license or authority to do business in this state for a period that he finds is required for the protection of policyholders or the public. Such a determination by the director shall be accompanied by specific findings of fact and conclusions of law.

Sec. 21.22.200. DEFINITIONS. In this chapter, unless the context requires otherwise

(1) "affiliate" or "affiliated" means a person who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the persons specified;

(2) "control", "controlling", "controlled by", and "under common control with" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person; "control" is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 per cent or more of the voting securities of any other person; this presumption may be rebutted by a showing made in the manner provided by sec. 60(j) of this chapter that control does not exist in fact; the director may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support that determination, that control exists in fact, notwithstanding the absence of a presumption to that effect;

(3) "director" means Director of the Division of Insurance of the Department of Commerce and Economic Development;

(4) "domestic insurer" has the same meaning as set out in AS 21.90.070 and, in addition, for the purposes of this chapter, includes an insurer which has been authorized to do business in this state and which, during its three preceding fiscal years taken together, or during any

lesser period of time if it has been licensed to transact its business in the State of Alaska only for a lesser period of time, has written an average of more gross premiums in the State of Alaska than it has written in its state of domicile during the same period, and the gross premiums written constitute 33 per cent or more of its total gross premiums written everywhere in the United States for the threeyear or lesser period, as reported in its three most recent annual statements;

(5) "insurance holding company system" means a system consisting of two or more affiliated persons, one or more of which is an insurer;

(6) "insurer" has the same meaning as set out in AS 21.90.040, except that it does not include agencies, authorities or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, a state or political subdivision of a state;

(7) "person" means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of these entities acting in concert, but does not include a securities broker performing no more than the usual and customary broker's function;

(8) "security holder" means one who owns any security of a specified person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of them;

(9) "subsidiary" means an affiliate controlled by a specified person directly or indirectly through one or more intermediaries;

(10) "voting security" includes any security convertible into or evidencing a right to acquire the right to vote for management and the right to vote on other matters as provided in a corporation's articles of incorporation.

\* Sec. 2. This Act takes effect on January 1, 1977.