

HOUSE BILL NO. 170

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 3/1/07

Referred: Labor and Commerce, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to annual audit reports by insurers, to custodians of insurer assets, to
2 writing workers' compensation insurance by surplus lines insurers, to reports by surplus
3 lines insurers, to the definition of 'wet marine and transportation insurance,' to false or
4 misleading financial statements concerning insurance audits, and to the membership of
5 the Alaska Life and Health Insurance Guaranty Association; and providing for an
6 effective date."

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

8 * **Section 1.** AS 21.09 is amended by adding a new section to read:

9 **Sec. 21.09.195. Registration for annual audited financial report.** The
10 director shall establish a system of registration, including grounds for revocation of
11 registration, for a certified public accountant who performs duties set out in
12 AS 21.09.200(g).

13 * **Sec. 2.** AS 21.09.200 is amended by adding new subsections to read:

1 (g) An insurer shall file with the director or the director's designee an annual
2 audited financial report for the previous year by June 1 of each year unless, under a
3 regulation adopted by the director, the director grants an exemption based on a finding
4 that filing an annual audited financial report would constitute a financial or
5 organizational hardship on the insurer. The filing date for the annual audited financial
6 report may be extended by the director upon showing that the standards established by
7 regulation have been met. If the director gives the insurer 90 days' advance notice, and
8 for good cause, the director may require an insurer to file an audited financial report
9 earlier than June 1 of each year. The annual audited financial report must be prepared
10 by a qualified independent certified public accountant registered under AS 21.09.195.

11 (h) Within 60 days after filing the annual audited financial report under (g) of
12 this section, the insurer shall file a written report on any unremediated material
13 weakness in internal control over financial reporting noted during the audit.

14 (i) For good cause, the director may require the insurer to file a report
15 describing internal control over financial reporting. An insurer shall file the report on
16 internal control by the date specified by the director.

17 (j) If the director requires the submission of additional information, the insurer
18 shall supplement the reports required by (h) and (i) of this section by the date specified
19 by the director. The reports on internal control filed with the director under (h) and (i)
20 of this section are confidential and subject to the provisions of AS 21.06.060.

21 (k) In accordance with regulations adopted by the director, an insurer shall
22 designate an audit committee to engage a qualified independent certified public
23 accountant registered under AS 21.09.195 to conduct the annual audit. The audit
24 committee shall oversee services performed by the certified public accountant. If an
25 insurer does not designate an audit committee, the entire governing board of the
26 insurer is considered to be the audit committee for purposes of this subsection.

27 (l) The certified public accountant conducting the annual audit required by (g)
28 of this section shall notify the governing board of the insurer or the audit committee in
29 writing of any determination by the certified public accountant that the insurer has
30 misstated its financial condition as reported to the director or that the insurer does not
31 meet the minimum capital requirements and surplus requirements of this title as of the

1 date of the balance sheet currently under audit. An insurer that has received a report
 2 under this subsection shall forward a copy to the director. The certified public
 3 accountant shall also forward the report to the director unless the insurer provides
 4 evidence satisfactory to the certified public accountant that the report has been
 5 forwarded to the director.

6 * **Sec. 3.** AS 21.21.410 is repealed and reenacted to read:

7 **Sec. 21.21.410. Custodian of insurer assets.** (a) The custodian for assets,
 8 securities, or investments of the insurer may be only a bank, trust company, securities
 9 firm, or clearing corporation that is properly authorized by the insurer and approved
 10 by the director.

11 (b) When securities are deposited with a clearing corporation, certificates
 12 representing securities of the same class of the same issuer may be merged and held in
 13 bulk in the name of the nominee of the clearing corporation with any other securities
 14 deposited with the clearing corporation by any person, regardless of the ownership of
 15 the securities, and certificates representing securities of small denominations may be
 16 merged into one or more certificates of larger denominations. The records of any
 17 custodian through which an insurer holds securities in a clearing corporation must
 18 show that the securities are held for the insurer and for which accounts of the insurer.
 19 Ownership of, and other interest in, the securities may be transferred by bookkeeping
 20 entry on the books of the clearing corporation without physical delivery of certificates
 21 representing the securities.

22 (c) A custodial agreement between an insurer and an institution holding the
 23 assets, securities, or investments of the insurer must be in writing and must be
 24 authorized by a resolution of the board of directors of the insurance company or of an
 25 authorized committee of the board. The terms of the custodial agreement must comply
 26 with the requirements of the director.

27 * **Sec. 4.** AS 21.34.030(a) is amended to read:

28 (a) Workers' compensation insurance may be placed in and written by a
 29 nonadmitted insurer if

30 (1) the director considers it in the best interest of the public and issues
 31 **an order** [A DIRECTIVE] to that effect;

1 (2) the insurance is written in accordance with this chapter; and

2 (3) all conditions established for writing workers' compensation
3 insurance in a nonadmitted market receive compliance.

4 * **Sec. 5.** AS 21.34.170(a) is amended to read:

5 (a) A surplus lines broker shall file with the director on or before the end of
6 each month, on forms prescribed by the director, a [VERIFIED] report of all surplus
7 lines insurance, by type of insurance as required to be reported in the annual statement
8 that must be filed with the director by admitted insurers. The report must include all
9 surplus lines insurance transactions during the preceding calendar month showing the
10 aggregate gross premiums written, the aggregate return premiums, the amount of
11 aggregate tax remitted to this state, and the amount of aggregate tax remitted to each
12 other state for which an allocation is made under AS 21.34.180.

13 * **Sec. 6.** AS 21.34.900(9) is amended to read:

14 (9) "wet marine and transportation insurance" means **one or more of**
15 **the following:**

16 (A) insurance upon, of interest in, or relating to vessels, crafts,
17 hulls, except vessels of 50 displacement tons or less;

18 (B) insurance of marine builders risks, marine war risks, and
19 contracts of marine protection and indemnity insurance;

20 (C) insurance of freight and disbursements pertaining to a
21 subject of insurance coming within this paragraph; **or** [AND]

22 (D) insurance of personal property and interests in personal
23 property, in course of exportation from or importation into a country or in the
24 course of coastal or inland water transportation, including transportation by
25 land, water, or air from point of origin to final destination in connection with
26 any and all risks or perils of navigation, transit, or transportation, and while
27 being repaired for and while awaiting shipment, and during any delays,
28 transshipment, or reshipment incident to them.

29 * **Sec. 7.** AS 21.36.060 is amended by adding new subsections to read:

30 (c) A person may not, directly or indirectly, in connection with any audit,
31 review, or communication required under AS 21.09.200

1 (1) make or cause to be made a materially false or misleading
2 statement to an accountant; or

3 (2) omit to state or cause another person to omit to state any material
4 fact necessary in order to make other statements made not misleading to an
5 accountant.

6 (d) A person may not, directly or indirectly, take any action to coerce,
7 manipulate, mislead, or fraudulently influence any accountant engaged in the
8 performance of an audit under AS 21.09.200 if that person knew or should have
9 known that the action, if successful, could result in rendering the insurer's financial
10 statement materially misleading.

11 * **Sec. 8.** AS 21.79.040(a) is amended to read:

12 (a) There is established as a nonprofit legal entity the Alaska Life and Health
13 Insurance Guaranty Association. **Each member insurer** [AN INSURER THAT
14 ISSUES AN INSURANCE POLICY DESCRIBED IN AS 21.79.020(b)] shall be a
15 member of the association as a condition of the insurer's authority to transact
16 insurance in this state. The association shall perform its functions under a plan of
17 operation established and approved under AS 21.79.080 and shall exercise its powers
18 through the Board of Governors established under AS 21.79.050. For purposes of
19 administration and assessment, the association shall maintain the following accounts:

20 (1) the health insurance account; and

21 (2) the life insurance and annuity account, including the following
22 subaccounts:

23 (A) life insurance account;

24 (B) annuity account that must include annuity contracts owned
25 by a governmental retirement benefit plan, or its trustee, qualified under 26
26 U.S.C. 401, 26 U.S.C. 403(b), or 26 U.S.C. 457 (Internal Revenue Code), but
27 that otherwise excludes unallocated annuities; **and**

28 (C) unallocated annuity account that must exclude contracts
29 owned by a governmental retirement benefit plan, or its trustee, qualified under
30 26 U.S.C. 401, 26 U.S.C. 403(b), or 26 U.S.C. 457 (Internal Revenue Code).

31 * **Sec. 9.** AS 21.79.900(10) is amended to read:

1 (10) "member insurer" means an insurer licensed to transact insurance
 2 in the state **for which coverage is provided** [THAT ISSUES A POLICY
 3 DESCRIBED] in **AS 21.79.020** [AS 21.79.020(a) AND (b)], or a subscriber contract
 4 providing benefits described in AS 21.87.120(a)(2) - (4) or 21.87.130(a)(2) and (3),
 5 and includes an insurer whose license or certificate of authority in this state may have
 6 been suspended, revoked, not renewed, or voluntarily withdrawn; "member insurer"
 7 does not include

8 (A) a health maintenance organization licensed under
 9 AS 21.86;

10 (B) a fraternal benefit society licensed under AS 21.84;

11 (C) a mandatory state pooling plan;

12 (D) a mutual assessment company or an entity that operates on
 13 an assessment basis;

14 (E) an insurance exchange licensed under AS 21.75;

15 (F) a hospital or medical service organization licensed under
 16 AS 21.87;

17 (G) an organization that has a license or certificate limited to
 18 the issuance of charitable gift annuities; or

19 (H) an entity similar to one described under (A) - (G) of this
 20 paragraph;

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

23 **TRANSITION: REGULATIONS.** The director of insurance may immediately proceed
 24 to adopt regulations under AS 21.06.090 necessary to implement this Act. The regulations
 25 take effect under AS 44.62 (Administrative Procedure Act), but not before the effective date
 26 of the statutory changes.

27 * **Sec. 11.** Section 3 of this Act takes effect January 1, 2008.

28 * **Sec. 12.** Section 10 of this Act takes effect immediately under AS 01.10.070(c).

29 * **Sec. 13.** Except as provided in secs. 11 and 12 of this Act, this Act takes effect July 1,
 30 2007.