

SENATE BILL NO. 107

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE

Introduced: 4/11/15

Referred: Labor and Commerce

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to insurance; relating to risk based capital for domestic insurers and**
2 **fraternal benefit societies, including provisions related to insurers subject to risk based**
3 **capital and action level event requirements; relating to review by the director of**
4 **insurance of an insurer's risk based capital plan; relating to confidentiality and sharing**
5 **of certain information submitted to the director of insurance; relating to evaluating an**
6 **insurance holding company and the acquisition of control of or merger with a domestic**
7 **insurer; relating to risk based capital, risk management, and own risk and solvency**
8 **assessments of insurers; clarifying provisions related to risk based capital plans; relating**
9 **to exemptions by the director of insurance for certain domestic and casualty insurers**
10 **from risk based capital requirements; relating to insurance holding companies,**
11 **including filing requirements, divestiture, content of statements, notifications, and**
12 **hearings; relating to registration requirements of insurers; relating to transactions**

1 within an insurance holding company system or transactions involving a domestic
 2 insurer; relating to management and examination of domestic insurers that are part of
 3 an insurance holding company system; adding provisions relating to participation by the
 4 director of insurance in a supervisory college; relating to civil and criminal penalties for
 5 violations by insurers and individuals; relating to provisions for risk management and
 6 own risk and solvency assessments by insurers; relating to operating requirements for
 7 controlling insurance producers; relating to producer-controlled insurers; adding and
 8 amending definitions related to insurers; and providing for an effective date."

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

10 * **Section 1.** AS 21.14.010(a) is amended to read:

11 (a) A [LIFE AND HEALTH] domestic insurer [, PROPERTY AND
 12 CASUALTY DOMESTIC INSURER, OR OTHER INSURER REQUIRED BY THE
 13 DIRECTOR] shall, on or before March 1, submit to the director a report of its risk
 14 based capital covering the previous calendar year. The report must be in a form and
 15 contain the information required by risk based capital instructions. A domestic insurer
 16 required to submit a report under this subsection shall file the report with

17 (1) the National Association of Insurance Commissioners; and

18 (2) the insurance regulatory agency in each state in which the insurer is
 19 authorized to transact business if the insurance regulatory agency has requested the
 20 report in writing from the insurer; a report requested under this paragraph **must**
 21 [SHALL] be delivered

22 (A) not later than 15 days **after** [FROM] the receipt of a request
 23 if the report has already been filed with the director; or

24 (B) at the time the report is filed with the director, if the report
 25 has not yet been filed with the director.

26 * **Sec. 2.** AS 21.14.030(b) is amended to read:

27 (b) **The** [WHEN CONDUCTING A REVIEW OF THE INSURER'S PLAN
 28 OR REVISED PLAN EXAMINING OR ANALYZING THE ASSETS,

LIABILITIES, AND OPERATIONS OF THE INSURER OR FORMULATING A CORRECTIVE ORDER WITH RESPECT TO THE INSURER, THE] director may retain an actuary, investment expert, or other consultant as may be necessary to review the insurer's risk based capital plan or revised risk based capital plan, to examine or analyze the assets, liabilities, and operations of the insurer, or to formulate a corrective order with respect to the insurer. The affected insurer or affiliated person shall pay the fees, reasonable costs, and expenses of a person retained by the director under this subsection as ordered by the director.

* **Sec. 3.** AS 21.14.040 is amended to read:

Sec. 21.14.040. Authorized control level event. If an authorized control level event occurs, the director shall take the action necessary

(1) under AS 21.14.030(a) against the insurer; or

(2) to place the insurer under regulatory control under AS 21.78 [IF, AFTER A HEARING UNDER AS 21.06.180 - 21.06.240, THE DIRECTOR DETERMINES IT TO BE IN THE BEST INTEREST OF THE POLICYHOLDERS AND CREDITORS OF THE INSURER AND OF THE PUBLIC].

* **Sec. 4.** AS 21.14.050 is amended to read:

Sec. 21.14.050. Mandatory control level event. (a) If a mandatory control level event occurs for a domestic insurer, the director shall take the action necessary to place the insurer under regulatory control under AS 21.78 or, if a fraternal benefit society, under AS 21.84.

(b) Notwithstanding (a) of this section, the director may delay taking action under AS 21.78 or, if a fraternal benefit society, under AS 21.84 for up to 90 days after the mandatory control level event occurs, if the director finds there is a reasonable expectation that the mandatory control level event may be eliminated within the 90-day period.

* **Sec. 5.** AS 21.14.050 is amended by adding a new subsection to read:

(c) Notwithstanding (a) of this section, the director may allow a property and casualty insurer that is running off its business by writing no new business and by only renewing ongoing business to the extent required by law or by contract, but continuing to collect premiums and pay claims as they come due on existing business to continue

the runoff under the director's supervision without placing the insurer under regulatory control under AS 21.78.

* **Sec. 6.** AS 21.14.060(a) is amended to read:

(a) If a plan is required under this chapter or by order of the director in response to an event described under AS 21.14.020 - 21.14.050, the plan **must** [SHALL] be a financial plan that **includes** [MUST INCLUDE]

(1) identification of the conditions that contribute to the level event;

(2) a proposal for corrective action that the insurer intends to take that would be expected to eliminate the level event;

(3) projections **of** [FOR] the insurer's financial results **for** [IN] the current year and **for at least the next four years or, if a health organization, for at least the next two years** [IN THE FOUR SUBSEQUENT YEARS AFTER THE CURRENT YEAR], with and without the proposed corrective action, including projections of statutory operating income, net income, and capital and surplus; the projections for new and renewal business must include separate projections for each major line of business and separately identify each significant income, expense, and benefit component;

(4) identification of the key assumptions affecting the insurer's projections and the sensitivity of the projections to the assumptions;

(5) identification of the quality of, and problems associated with, the insurer's business, including the insurer's assets, anticipated business growth, associated surplus strain, extraordinary exposure to risk, mix of business, and use of reinsurance in each case; and

(6) other information required by the director.

* **Sec. 7.** AS 21.14.060 is amended by adding a new subsection to read:

(f) The director may specify in a notification under (c) of this section of an unsatisfactory plan or revised plan that the notification constitutes a regulatory action level event, subject to an insurer's right to challenge the unsatisfactory determination under AS 21.14.080.

* **Sec. 8.** AS 21.14.080 is amended by adding a new subsection to read:

(b) An insurer shall request a hearing under (a) of this section within 15 days

1 after the director's notice of

2 (1) an adjusted risk based capital report under AS 21.14.010;

3 (2) an unsatisfactory risk based capital plan or revised risk based capital
4 plan;

5 (3) a regulatory action level event based on an unsatisfactory risk based
6 capital plan or revised risk based capital plan;

7 (4) the insurer's failure to adhere to its risk based capital plan or revised
8 risk based capital plan and the failure has a substantial adverse effect on the insurer's
9 ability to eliminate the company action level event in accordance with its plan or
10 revised plan; or

11 (5) a corrective order applicable to the insurer.

12 * **Sec. 9.** AS 21.14.090(a) is amended to read:

13 (a) Except as provided in AS 21.06.060 and this subsection, a report required
14 under AS 21.14.010, a plan required under AS 21.14.060, the results or report of an
15 examination or analysis of an insurer performed under this chapter, and a corrective
16 order issued by the director are confidential and may not be made public by the
17 director or another person. Information in a risk based capital report that is also
18 set out in a publicly available annual statement schedule is not confidential

19 [WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER WHO IS THE
20 SUBJECT OF THE REPORT, PLAN, ANALYSIS, OR ORDER. IF THE
21 DIRECTOR, AFTER GIVING THE INSURER AND ITS AFFILIATES WHO
22 WOULD BE AFFECTED BY PUBLICATION OF THE INFORMATION NOTICE
23 AND OPPORTUNITY TO BE HEARD, DETERMINES THAT THE INTERESTS
24 OF POLICYHOLDERS, SHAREHOLDERS, OR THE PUBLIC WILL BE SERVED
25 BY THE PUBLICATION OF THE INFORMATION, THE DIRECTOR MAY
26 PUBLISH ALL OR PART OF THE INFORMATION IN THE MANNER THE
27 DIRECTOR CONSIDERS APPROPRIATE. THIS SUBSECTION DOES NOT
28 PROHIBIT THE DIRECTOR FROM RELEASING A REPORT, PLAN,
29 ANALYSIS, OR ORDER TO AN INSURANCE REGULATORY AGENCY OF
30 ANOTHER STATE].

31 * **Sec. 10.** AS 21.14.100(b) is amended to read:

(b) If a report, plan, or revised plan has not been filed in conformance with the requirements of this chapter, the director may, as provided

(1) under AS 21.09.150, AS 21.84.535, AS 21.86.190, or AS 21.87.110, as applicable to a particular insurer, suspend the authority of an insurer to enter into new obligations or issue a new or renewal policy of insurance in this state; or

(2) under AS 21.34.070, declare a surplus lines insurer ineligible to transact business in this state.

* **Sec. 11.** AS 21.14 is amended by adding new sections to read:

Sec. 21.14.110. Exemptions. (a) The director may exempt from the application of this chapter a domestic property and casualty insurer that

(1) writes direct business only in this state;

(2) writes direct annual premiums of \$2,000,000 or less; and

(3) does not assume reinsurance in excess of five percent of direct premiums written.

(b) The director may exempt from the application of this chapter a domestic health organization that

(1) writes direct business only in this state;

(2) does not assume reinsurance in excess of five percent of direct premiums written and

(A) writes direct annual premiums for comprehensive medical care of \$2,000,000 or less; or

(B) is a limited health service organization that covers less than 2,000 lives.

Sec. 21.14.120. Notices. All notices by the director to an insurer that may result in regulatory action under this chapter are effective upon mailing if mailed by registered or certified mail or, in the case of any other transmission, upon the director's transmission of the notice.

Sec. 21.14.130. Regulations. The director may adopt regulations to implement this chapter.

* **Sec. 12.** AS 21.14.200(4) is amended to read:

(4) "company action level event" means a report, an adjusted report that has not been challenged, or an adjusted report for which a challenge has been rejected that is filed under AS 21.14.010 and that indicates that

(A) an insurer's total adjusted capital is greater than or equal to its regulatory action level risk based capital but is less than its company action level risk based capital;

(B) if a life and health insurer or a fraternal benefit society, the insurer or the fraternal benefit society has total adjusted capital that is greater than or equal to its [THE INSURER'S] company action level risk based capital but is less than the product obtained by multiplying [250 PERCENT OF] the insurer's authorized control level risk based capital by 3.0 and that has a negative trend; or

(C) if a property and casualty insurer or health organization, the insurer or organization has total adjusted capital that is greater than or equal to the company action level risk based capital but is less than the product obtained by multiplying [300 PERCENT OF] its authorized control level risk based capital by 3.0 and that triggers the trend test calculation in the risk based capital instructions applicable to the insurer or health organization [HAS A NEGATIVE TREND];

* Sec. 13. AS 21.14.200(5) is amended to read:

(5) "company action level risk based capital" means the product obtained by multiplying [200 PERCENT OF] an insurer's authorized control level risk based capital by 2.0;

* Sec. 14. AS 21.14.200(6) is amended to read:

(6) "corrective order" means an order issued by the director specifying action that the director has determined is required [BY THE INSURER] under this chapter;

* Sec. 15. AS 21.14.200(12) is amended to read:

(12) "mandatory control level risk based capital" means the product obtained by multiplying [70 PERCENT OF] an insurer's authorized control level risk based capital by 0.70;

1 * **Sec. 16.** AS 21.14.200(13) is amended to read:

2 (13) "negative trend" for a life and health insurer or a fraternal benefit
 3 society [, A PROPERTY AND CASUALTY INSURER, AND A HEALTH
 4 ORGANIZATION] means a negative trend over a period of time, as determined by
 5 the "trend test calculation" in the risk based capital instructions applicable to the life
 6 and health insurer or fraternal benefit society;

7 * **Sec. 17.** AS 21.14.200(16) is amended to read:

8 (16) "regulatory action level risk based capital" means the product
 9 obtained by multiplying [150 PERCENT OF] an insurer's authorized control level
 10 risk based capital by 1.5;

11 * **Sec. 18.** AS 21.14.200(20) is amended to read:

12 (20) "risk based capital instructions" means risk based capital
 13 instructions most recently adopted by the National Association of Insurance
 14 Commissioners [FOR A LIFE AND HEALTH INSURER OR FOR A PROPERTY
 15 AND CASUALTY INSURER];

16 * **Sec. 19.** AS 21.14.200 is amended by adding new paragraphs to read:

17 (22) "fraternal benefit society" has the meaning given in AS 21.84.900;

18 (23) "insurer" means a property and casualty insurer, a life and health
 19 insurer, a health organization, and a fraternal benefit society;

20 (24) "limited health service organization" means a corporation,
 21 partnership, or other entity that undertakes to provide or arrange for the provision of
 22 one or more limited health services to enrollees;

23 (25) "limited health services" means dental care services, vision care
 24 services, mental health services, substance abuse services, pharmaceutical services,
 25 podiatric care services, and other services as determined by order or regulation of the
 26 director; "limited health services" does not include hospital, medical, surgical, or
 27 emergency services except as provided incident to the limited health services as
 28 defined in this paragraph.

29 * **Sec. 20.** AS 21.22.010(a) is amended to read:

30 (a) Until the provisions of (b) of this section have been fulfilled, a person may
 31 not

(1) unless the person is an issuer, 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 or a person controlling a domestic insurer.

* **Sec. 21.** AS 21.22.010(c) is amended to read:

(c) If a proposal described in (a) of this section is to be made by means of a registration statement under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or in circumstances requiring the disclosure of similar information under 15 U.S.C. 78a - 78mm (Securities Exchange Act of 1934), or under a state law requiring similar registration or disclosure, the person required to file the statement under (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 THE DUTIES OF THE DIRECTOR UNDER THIS CHAPTER.]

* **Sec. 22.** AS 21.22.010(h) is amended to read:

(h) In 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. In this subsection, "person" includes a securities broker holding, in the usual and customary broker's function, more than 20 percent of the voting securities of an insurer or of a person controlling an insurer.

* **Sec. 23.** AS 21.22.010 is amended by adding new subsections to read:

(i) A person controlling a domestic insurer seeking to divest, in any manner, its controlling interest in the domestic insurer shall file with the director and provide a copy to the insurer confidential notice of the person's proposed divestiture at least 30 days before the cessation of control. The director shall determine whether a party

1 seeking to divest or to acquire a controlling interest in an insurer is required to file for
 2 and obtain approval of the transaction. The information is confidential until the
 3 conclusion of the transaction unless the director, in the director's discretion,
 4 determines that confidential treatment will interfere with enforcement of this section.
 5 If a statement referred to in (b) of this section is otherwise filed, this subsection does
 6 not apply.

7 (j) For a transaction subject to this section, an acquiring person also shall file a
 8 preacquisition notification with the director that contains the information set out in
 9 AS 21.22.065(c). A failure to file the notification may be subject to penalties specified
 10 in AS 21.22.065(i).

11 *** Sec. 24.** AS 21.22.020 is amended by adding new subsections to read:

12 (b) In addition to the other requirements in this section, a person required to
 13 file a statement under AS 21.22.010 shall provide

14 (1) the annual enterprise risk statement specified in AS 21.22.060(n)
 15 for so long as control exists; and

16 (2) an acknowledgment that the person and all subsidiaries within the
 17 person's control in the insurance holding company system will provide information to
 18 the director upon request as necessary to evaluate enterprise risk to the insurer.

19 (c) In this section, "consideration" includes a pledge of the stock of an insurer
 20 or the insurer's subsidiary.

21 *** Sec. 25.** AS 21.22.030(b) is repealed and reenacted to read:

22 (b) The public hearing referred to in (a) of this section must be held within 60
 23 days after the statement required by AS 21.22.010 is filed and determined to be
 24 complete by the director. The director shall give notice of at least 20 days of the
 25 hearing to the person filing the statement. The person filing the statement shall give
 26 notice of at least seven days of the hearing to the insurer and to other persons as may
 27 be designated by the director. The director shall issue a decision within the 60-day
 28 period preceding the effective date of the proposed transaction. The procedure in
 29 AS 21.06.210 applies to a public hearing under this section.

30 *** Sec. 26.** AS 21.22.030(c) is repealed and reenacted to read:

31 (c) In evaluating the effect of a merger or other acquisition under (a)(2) of this

1 section, the

2 (1) information requirements of AS 21.22.065(c)(1) and the standards
3 of AS 21.22.065(d)(1), (2), and (e) apply;

4 (2) merger or other acquisition may not be disapproved if the director
5 finds that a situation meeting the criteria in AS 21.22.065(g) exists; and

6 (3) director may condition the approval of the merger or other
7 acquisition on the removal of a basis for disapproval within a specified period.

8 * **Sec. 27.** AS 21.22.030 is amended by adding a new subsection to read:

9 (e) If the proposed acquisition of control would require the approval of more
10 than one insurance regulator, the public hearing referred to under (a) and (b) of this
11 section may be held on a consolidated basis upon request of the person filing the
12 statement referred to in AS 21.22.010. That person shall file the statement referred to
13 in AS 21.22.010 with the National Association of Insurance Commissioners within
14 five days after making the request for a public hearing. The director may opt out of a
15 consolidated hearing and shall provide notice to the applicant of the opt-out within 10
16 days after receipt of the statement referred to in AS 21.22.010. A hearing conducted
17 on a consolidated basis must be public and must be held within the United States
18 before the insurance regulators of the states in which the insurers are domiciled. The
19 director may attend the hearing in person or telephonically.

20 * **Sec. 28.** AS 21.22.060(a) is amended to read:

21 (a) Except as provided in (c) of this section, an [EVERY] insurer that is
22 authorized to do business in this state and that is a member of an insurance holding
23 company system shall register with the director. An insurer that is subject to
24 registration under this section shall register not later than [WITHIN 60 DAYS
25 AFTER JANUARY 1, 1977 OR] 15 days after the insurer [IT] becomes subject to
26 registration [, WHICHEVER IS LATER], unless the director, for good cause shown,
27 extends the time for registration; if the time is extended, the insurer shall register
28 within the extended time.

29 * **Sec. 29.** AS 21.22.060(b) is amended to read:

30 (b) An [EVERY] insurer subject to registration shall file a registration
31 statement, on a form provided by the director, that must contain current information

1 about

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

4 (2) the identity **and relationship** of every member of the insurance
5 holding company system;

6 (3) the following agreements in force [, RELATIONSHIPS
7 SUBSISTING,] and transactions currently outstanding **or that have occurred in the**
8 **last calendar year** between the insurer and its affiliates:

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

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

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

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

17 (E) all management and service contracts and all cost-sharing
18 arrangements; [AND]

19 (F) reinsurance agreements;

20 **(G) dividends and other distributions to shareholders; and**

21 **(H) consolidated tax allocation agreements;** [AND]

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

25 **(5) a pledge of the insurer's stock, including stock of a subsidiary**
26 **or controlling affiliate, for a loan made to a member of the insurance holding**
27 **company system;**

28 **(6) if requested by the director, the financial statements of or**
29 **within an insurance holding company system, including all affiliates or the most**
30 **recently filed parent corporation financial statements that have been filed with**
31 **the United States Securities and Exchange Commission; financial statements may**

include annual audited financial statements filed with the United States Securities and Exchange Commission under 15 U.S.C. 77a - 77aa (Securities Act of 1933), as amended, or 15 U.S.C. 78a - 78pp (Securities Exchange Act of 1934), as amended;

(7) statements that the insurer's board of directors is responsible for and oversees corporate governance and internal controls and that the insurer's officers or senior management have approved, implemented, and continue to maintain and monitor corporate governance and internal control procedures; and

(8) other information required by the director by regulation.

* **Sec. 30.** AS 21.22.060(c) is amended to read:

(c) An [THE DIRECTOR MAY PERMIT AN] authorized insurer **is not required to register under (a) of this section if the insurer** [THAT] is a member of a holding company system subject to registration **requirements and standards** under the laws or regulations of its state of domicile that are [IN THE OPINION OF THE DIRECTOR] substantially similar to those contained in this chapter, **except that the director may require the insurer to file a copy of the registration statement, the summary outline as described in (l) of this section, or other information filed in its state of** [TO SATISFY THE REQUIREMENTS OF (a) OF THIS SECTION BY FILING A STATEMENT IN ACCORDANCE WITH THE LAWS OF ITS STATE OF] domicile.

* **Sec. 31.** AS 21.22.060(e) is amended to read:

(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 AS 21.22.100, each registered insurer shall report all dividends and other distributions to shareholders within **15** [TWO] business days following their declaration.

* **Sec. 32.** AS 21.22.060(j) is amended to read:

(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 must fully disclose all material

relationships and bases for affiliation between that person and that insurer as well as the basis for disclaiming the affiliation. **A disclaimer of affiliation is considered granted unless the director, within 30 days after receipt of a complete disclaimer, notifies the disclaiming party that the disclaimer is disallowed. If the disclaimer is disallowed, the disclaiming party may request a hearing under AS 21.06.180 - 21.06.240** [AFTER A DISCLAIMER HAS BEEN FILED, THE INSURER IS RELIEVED OF ANY DUTY TO REGISTER OR REPORT UNDER THIS SECTION THAT 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. 33.** AS 21.22.060 is amended by adding new subsections to read:

(m) A person within an insurance holding company system subject to registration shall provide complete and accurate information to an insurer, where the information is reasonably necessary to enable the insurer to comply with the provisions of this chapter.

(n) The ultimate controlling person of an insurer subject to registration shall file an annual enterprise risk report. The report must, to the best of the ultimate controlling person's knowledge and belief, identify the material risks within the insurance holding company system that may pose enterprise risk to the insurer. The report shall be filed with the lead state insurance regulator of the insurance holding company system as determined by the procedures in the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

* **Sec. 34.** AS 21.22.065(d) is amended to read:

(d) The director may enter an order under (b) of this section regarding an acquisition if [(1)] the insurer fails to file adequate information in compliance with (c) of this section **or if** [; (2)] there is substantial evidence that the acquisition may substantially lessen competition, create a monopoly in a line of insurance in this state or significantly increase an insurer's market concentration. **In determining whether**

an acquisition violates competitive standards under this subsection, the director shall consider the following:

(1) an [; (3) THERE IS SUBSTANTIAL EVIDENCE WHEN THE AGGREGATE MARKET SHARE OF ANY GROUPING OF THE LARGEST INSURERS IN THE MARKET, FROM THE TWO LARGEST TO THE EIGHTH LARGEST, HAS INCREASED BY SEVEN PERCENT OR MORE OF THE MARKET OVER A PERIOD OF TIME EXTENDING FROM ANY BASE YEAR FIVE TO 10 YEARS BEFORE THE ACQUISITION UP TO THE TIME OF THE ACQUISITION;

(4) AFTER CONSIDERING AN] acquisition covered under (a) of this section involving two or more insurers competing in the same market [THERE] is **prima facie** evidence of a violation of the competitive standards [CONTAINED IN THE FOLLOWING TABLES:]

(A) if the market is highly concentrated **and** [,] the involved insurers possess the following shares of the market:

Insurer A	Insurer B
4 percent	4 percent or more
10 percent	2 percent or more
15 percent	1 percent or more;

(B) if the market is not highly concentrated **and** [,] the involved insurers possess the following shares of the market:

Insurer A	Insurer B
5 percent	5 percent or more
10 percent	4 percent or more
15 percent	3 percent or more
19 percent	1 percent or more;

(2) an acquisition covered under (a) of this section involving two or more insurers competing in the same market is prima facie evidence of violation of the competitive standard if

(A) there is a significant trend toward increased concentration in the market, which occurs when the aggregate market

share of any grouping of the largest insurers in the market, from the two largest to the eighth largest, has increased by seven percent or more of the market over a period extending from any base year five to 10 years before the acquisition up to the date of the acquisition;

(B) one of the insurers involved is an insurer in a grouping of large insurers showing the requisite increase in market share; and

(C) another involved insurer's market share is two percent or more.

* Sec. 35. AS 21.22.080 is amended to read:

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) charges or fees for services performed shall be reasonable;

(3) expenses incurred and payment received shall be allocated to the insurer in conformity with customary insurance accounting practices consistently applied;

(4) the books, accounts, and records of each party to the transactions shall be maintained so as to disclose clearly and accurately the [PRECISE] nature and details of the transactions including accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties; [AND]

(5) 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; and

(6) agreements for cost-sharing services and management must include the provisions required by regulations adopted by the director.

* Sec. 36. AS 21.22.085(a) is amended to read:

(a) Transactions [THE FOLLOWING 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, [GUARANTEE,] 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 calendar year in which the transaction took place** [POLICYHOLDER SURPLUS, EACH CALCULATED UNDER AS 21.21.020(d)]; or

(B) with respect to life insurers, three percent of the insurer's admitted assets **as of December 31 of the calendar year in which the transaction took place** [CALCULATED UNDER AS 21.21.020(d)];

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

(A) with respect to insurers other than life insurers, the lesser of three percent of the insurer's admitted assets or 25 percent of surplus that pertains to policyholder surplus, **as of December 31 of the calendar year in which the transaction took place** [EACH CALCULATED UNDER AS 21.21.020(d)]; or

(B) with respect to life insurers, three percent of the insurer's

admitted assets as of December 31 of the calendar year in which the transaction took place [CALCULATED UNDER AS 21.21.020(d)];

(3) a reinsurance agreement or modification, including

(A) a reinsurance pooling agreement;

(B) an agreement in which the reinsurance premium or change in the insurer's liabilities, or the projected reinsurance premium or a change in the insurer's liabilities in any of the three years after entering into the agreement or modification, equals or exceeds five percent of [THE INSURER'S] surplus that pertains to policyholders as of December 31 of the calendar year in which the transaction took place [POLICYHOLDER SURPLUS, CALCULATED UNDER AS 21.21.020(d)], including an agreement that may require as consideration the transfer of assets from an insurer to a nonaffiliate if an agreement or understanding exists between the insurer and nonaffiliate that a portion of the assets will be transferred to one or more affiliates [AN AFFILIATE] of the insurer;

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

(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 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. 37.** AS 21.22.110(a) is repealed and reenacted to read:

(a) In addition to the director's authority to examine insurers under AS 21.06.120 - 21.06.170, the director may examine an insurer registered under AS 21.22.060 and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party, by any entity or combination of entities within the insurance holding company system, or by the insurance holding company system on a consolidated basis.

* **Sec. 38.** AS 21.22.110(b) is repealed and reenacted to read:

(b) The director may

(1) order an insurer registered under AS 21.22.060 to produce the records, books, or other information papers in the possession of the insurer or its affiliates that are reasonably necessary to determine compliance with this chapter;

(2) order an insurer registered under AS 21.22.060 to produce information not in the possession of the insurer if the insurer can obtain access to the information under contractual relationships, statutory obligations, or other method; in the event the insurer cannot obtain the information requested by the director, the insurer shall provide the director a detailed explanation of the reason that the insurer cannot obtain the information and the identity of the holder of information; if the director determines that the detailed explanation is without merit, the director may, after notice and hearing, require the insurer to pay a penalty of \$250 for each day's delay in providing the requested information, or may suspend or revoke the insurer's license;

(3) in the event the insurer fails to comply with an order under this subsection, examine or issue subpoenas to the insurer's affiliates to obtain the information.

* **Sec. 39.** AS 21.22 is amended by adding a new section to read:

Sec. 21.22.115. Supervisory colleges. (a) With respect to an insurer registered under AS 21.22.060, and in accordance with (c) of this section, the director may participate in a supervisory college for a domestic insurer that is part of an insurance

1 holding company system with international operations to determine the insurer's
2 compliance with this chapter. The director may

- 3 (1) initiate the establishment of a supervisory college;
- 4 (2) clarify the membership and participation of other supervisors in the
5 supervisory college;
- 6 (3) clarify the functions of the supervisory college and the role of other
7 regulators, including the establishment of a group-wide supervisor;
- 8 (4) coordinate the ongoing activities of the supervisory college,
9 including planning meetings, supervisory activities, and processes for information
10 sharing; and
- 11 (5) establish a crisis management plan.

12 (b) An insurer subject to this section is liable for and shall pay the reasonable
13 expenses of the director's participation in a supervisory college in accordance with (c)
14 of this section, including reasonable travel expenses. Under this section, a supervisory
15 college may be convened as either a temporary or permanent forum for
16 communication and cooperation between the regulators charged with the supervision
17 of the insurer or its affiliates, and the director may establish a regular assessment to
18 the insurer for the payment of those expenses.

19 (c) To assess the business strategy, financial position, legal and regulatory
20 position, risk exposure, risk management, and governance processes, and as part of the
21 examination of individual insurers in accordance with AS 21.22.110, the director may
22 participate in a supervisory college with other regulators charged with supervision of
23 the insurer or its affiliates, including other state, federal, and international regulatory
24 agencies. The director may enter into agreements in accordance under AS 21.06.060
25 and AS 21.22.120 to share confidential information between the director and
26 regulatory agencies or other members of the supervisory college.

27 (d) Nothing in this section delegates to the supervisory college the director's
28 authority to regulate or supervise an insurer or its affiliates under this title.

29 * **Sec. 40.** AS 21.22.120 is amended to read:

30 **Sec. 21.22.120. Confidentiality.** All information, documents, holding
31 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, [AS 21.22.060] and all preacquisition notification information received under AS 21.22.065 shall be given confidential treatment under AS 21.06.060 [AND MAY NOT BE MADE PUBLIC BY THE DIRECTOR OR ANY OTHER PERSON, EXCEPT TO INSURANCE AGENCIES 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, the director may publish all or part of the information in the manner the director considers appropriate.

* **Sec. 41.** AS 21.22.120 is amended by adding a new subsection to read:

(b) The director may

(1) share documents, materials, or other information, including the confidential information under (a) of this section, with state, federal, and international regulatory agencies, the National Association of Insurance Commissioners and its affiliates and subsidiaries, and state, federal, and international law enforcement authorities, including members of a supervisory college described in AS 21.22.115, if the recipient agrees in writing to maintain the confidentiality of the document, material, or other information and has verified in writing the legal authority to maintain confidentiality;

(2) not share confidential documents, material, or information reported under AS 21.22.060(n) with the insurance regulator of another state, unless the statutes or regulations of the other state are substantially similar to this section and the other state has agreed in writing not to disclose the information;

(3) enter into a written agreement with the National Association of Insurance Commissioners governing sharing and use of information obtained under this chapter that must

(A) specify procedures and protocols regarding the

1 confidentiality and security of information shared with the National
 2 Association of Insurance Commissioners and its affiliates and subsidiaries
 3 under this chapter, including procedures and protocols for sharing by the
 4 National Association of Insurance Commissioners with state, federal, or
 5 international regulators;

6 (B) specify that ownership of information shared with the
 7 National Association of Insurance Commissioners and its affiliates and
 8 subsidiaries under this chapter remains with the director and that the National
 9 Association of Insurance Commissioners' use of the information is subject to
 10 the direction of the director;

11 (C) require prompt notice to be given to an insurer whose
 12 confidential information in possession of the National Association of Insurance
 13 Commissioners under this chapter is subject to a request or subpoena to the
 14 National Association of Insurance Commissioners for disclosure or production;
 15 and

16 (D) require the National Association of Insurance
 17 Commissioners and its affiliates and subsidiaries to consent to intervention by
 18 an insurer in a judicial or administrative action in which the National
 19 Association of Insurance Commissioners and its affiliates and subsidiaries may
 20 be required to disclose confidential information about the insurer shared with
 21 the National Association of Insurance Commissioners and its affiliates and
 22 subsidiaries under this chapter.

23 * **Sec. 42.** AS 21.22.170 is repealed and reenacted to read:

24 **Sec. 21.22.170. Civil penalties for violations.** (a) An insurer failing, without
 25 just cause, to file a registration statement required under this chapter shall be required,
 26 after notice and hearing under AS 21.06.170 - 21.06.240, to pay a \$200 fine for each
 27 day the insurer fails to file the registration. The maximum penalty under this
 28 subsection is \$50,000. The director may reduce the penalty if the insurer demonstrates
 29 to the director that the imposition of the penalty would be a financial hardship to the
 30 insurer.

31 (b) A director or officer of an insurance holding company system who

1 knowingly violates, participates in, assents to, or knowingly permits an officer or
 2 agent of an insurer to engage in transactions or make investments that have not been
 3 properly reported or submitted under AS 21.22.060, 21.22.085, or 21.22.100, or that
 4 violate this chapter, shall pay, in the director's or officer's individual capacity, a fine of
 5 not more than \$50,000 for each violation, after notice and hearing under AS 21.06.170
 6 - 21.06.240. In determining the amount of the fine, the director shall take into account
 7 the appropriateness of the fine with respect to the gravity of the violation, the history
 8 of previous violations, and other matters as justice may require.

9 (c) If the director has reason to believe that an insurer subject to this chapter, or
 10 a director, officer, employee, or agent of the insurer, has engaged in a transaction or
 11 entered into a contract that is subject to AS 21.22.080 - 21.22.105, and that would not
 12 have been approved had the approval been requested, the director may order the
 13 insurer to cease and desist immediately any further activity under that transaction or
 14 contract. After notice and hearing under AS 21.06.170 - 21.06.240, the director may
 15 also order the insurer to void any contracts and restore the status quo if the action is in
 16 the best interest of the policyholders, creditors, or the public.

17 (d) If the director has reason to believe that a person has committed a violation
 18 of AS 21.22.010 or 21.22.020 that prevents the full understanding of the enterprise
 19 risk to an insurer by its affiliates or by the insurance holding company system, the
 20 violation may serve as an independent basis for disapproving dividends or
 21 distributions and for placing the insurer under an order of rehabilitation in accordance
 22 with AS 21.78.090.

23 * **Sec. 43.** AS 21.22 is amended by adding a new section to read:

24 **Sec. 21.22.175. Criminal penalties.** (a) An insurer or a director, officer,
 25 employee, or agent of an insurer who knowingly violates this chapter is guilty of a
 26 class C felony.

27 (b) A director, officer, or employee of an insurance holding company system
 28 who knowingly subscribes to or makes or causes to be made a false statement or false
 29 report or false filing with the intent to deceive the director under this chapter is guilty
 30 of a class C felony.

31 (c) An insurer may not pay a fine imposed by a court on a director, officer,

employee, or agent that is sentenced under (a) or (b) of this section. The fine must be paid by the director, officer, employee, or agent in the director's, officer's, employee's, or agent's individual capacity.

(d) In this section, "knowingly" has the meaning given in AS 11.81.900(a).

* **Sec. 44.** AS 21.22.200(10) is amended to read:

(10) "person" means an individual, a corporation, a limited liability company, 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 joint venture partnership exclusively engaged in owning, managing, leasing, or developing real or tangible personal property, or a securities broker performing not [NO] more than the usual and customary broker's function;

* **Sec. 45.** AS 21.22.200 is amended by adding new paragraphs to read:

(15) "enterprise risk" means an activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect on the financial condition or liquidity of the insurer or its insurance holding company system as a whole including anything that would cause the insurer's risk based capital to fall into company action level under AS 21.14.020 or would cause the insurer to be impaired or in imminent danger of becoming impaired, as defined in AS 21.97.900 and regulations adopted by the director;

(16) "supervisory college" means a forum for cooperation and communication among the involved state, federal, and international regulators established for the fundamental purpose of facilitating the effectiveness of supervision of entities that belong to an insurance holding company system.

* **Sec. 46.** AS 21 is amended by adding a new chapter to read:

Chapter 23. Risk Management; Own Risk and Solvency Assessment.

Sec. 21.23.010. Risk management framework. An insurer shall maintain a risk management framework to assist the insurer with identifying, assessing, monitoring, managing, and reporting on its material and relevant risks. This requirement may be satisfied if the insurance group of which the insurer is a member

maintains a risk management framework applicable to the operations of the insurer.

Sec. 21.23.020. Own risk and solvency assessment requirement. Unless exempted under AS 21.23.040, an insurer or the insurance group of which the insurer is a member shall conduct an own risk and solvency assessment consistent with the own risk and solvency assessment guidance manual

(1) annually; and

(2) when significant changes to the risk profile of the insurer or the insurance group of which the insurer is a member occur.

Sec. 21.23.030. Own risk and solvency assessment summary report. (a) If requested by the director, an insurer shall submit an own risk and solvency assessment summary report or any combination of reports that together contain the information described in the own risk and solvency assessment guidance manual that is applicable to the insurer or the insurance group of which the insurer is a member. The director may not request more than one report a year. The insurer shall submit the report to the director within 30 days after the request, unless the insurer requests an extension in writing and the director grants the request. If an insurer is a member of an insurance group, the insurer shall submit the report required by this subsection at least annually if the director is the lead state regulator of the insurance group as determined by the procedures in the Financial Analysis Handbook adopted by the National Association of Insurance Commissioners.

(b) For a report submitted under this section, an insurer's or insurance group's chief risk officer or other executive having responsibility for the oversight of the insurer's enterprise risk management process shall sign the report and attest, to the best of the officer's or executive's belief and knowledge, that the insurer applies the enterprise risk management process described in the report and that a copy of the report has been provided to the insurer's board of directors or the appropriate committee of the board.

(c) An insurer may comply with (a) of this section by providing the most recent and substantially similar report or reports provided by the insurer or another member of the insurance group of which the insurer is a member to the insurance regulator of another state or a foreign jurisdiction, if that report provides information

1 that is comparable to the information described in the own risk and solvency
 2 assessment guidance manual. A report in a language other than English must be
 3 accompanied by a translation of that report into the English language.

4 **Sec. 21.23.040. Exemption.** (a) An insurer is exempt from the requirements of
 5 this chapter if

6 (1) the insurer has annual direct written and unaffiliated assumed
 7 premium, including international direct and assumed premium but excluding
 8 premiums reinsured with the Federal Crop Insurance Corporation and the National
 9 Flood Insurance Program, of less than \$500,000,000; and

10 (2) the insurance group of which the insurer is a member has annual
 11 direct written and unaffiliated assumed premium, including international direct and
 12 assumed premium, but excluding premiums reinsured with the Federal Crop Insurance
 13 Corporation and the National Flood Insurance Program, of less than \$1,000,000,000.

14 (b) If an insurer qualifies for an exemption under (a)(1) of this section, but the
 15 insurance group of which the insurer is a member does not qualify for an exemption
 16 under (a)(2) of this section, then the own risk and solvency assessment summary
 17 report required under AS 21.23.030 must include every insurer in the insurance group.
 18 This requirement may be satisfied by the submission of more than one own risk and
 19 solvency assessment summary report for a combination of insurers provided the
 20 combination of reports includes every insurer within the insurance group.

21 (c) If an insurer does not qualify for exemption under (a)(1) of this section,
 22 but the insurance group of which the insurer is a member qualifies for exemption
 23 under (a)(2) of this section, then the only own risk and solvency assessment summary
 24 report that may be required under AS 21.23.030 is the report applicable to that insurer.

25 (d) An insurer that does not qualify for exemption under (a) of this section may
 26 apply to the director for a waiver from the requirements of this chapter based on
 27 unique circumstances. In deciding whether to grant a request for a waiver, the director
 28 may consider the type and volume of business written, ownership and organizational
 29 structure, and any other factor that the director considers relevant to the insurer or
 30 insurance group of which the insurer is a member. If the insurer is part of an insurance
 31 group with insurers domiciled in more than one state, the director shall coordinate

1 with the lead state regulator and with the other domiciliary regulators in considering
 2 whether to grant the insurer's request for a waiver.

3 (e) Notwithstanding the exemptions stated in this section, the director may
 4 require that an insurer maintain a risk management framework, conduct an own risk
 5 and solvency assessment, and file an own risk and solvency assessment summary
 6 report

7 (1) based on unique circumstances, including the type and volume of
 8 business written, ownership and organizational structure, federal agency requests, and
 9 international supervisor requests;

10 (2) if the insurer has risk based capital for company action level event
 11 as set out in AS 21.14, meets one or more of the standards of an insurer considered to
 12 be impaired or in imminent danger of becoming impaired as defined in AS 21.97.900
 13 and in regulations adopted by the director, or otherwise exhibits qualities of a troubled
 14 insurer as determined by the director.

15 (f) If an insurer that qualified for an exemption under (a) of this section no
 16 longer qualifies for that exemption because of changes in premium as reflected in the
 17 insurer's most recent annual statement or in the most recent annual statements of the
 18 insurers within the insurance group of which the insurer is a member, the insurer shall
 19 comply with the requirements of this chapter within one year after the year the
 20 threshold in (a) of this section is exceeded.

21 **Sec. 21.23.050. Contents of own risk and solvency assessment summary**
 22 **report.** (a) The own risk and solvency assessment summary report under
 23 AS 21.22.030 must be prepared in compliance with the own risk and solvency
 24 assessment guidance manual, subject to the requirements of (b) of this section. The
 25 insurer shall maintain documentation and supporting information relating to the
 26 assessment and make the documentation and information available on examination or
 27 on request of the director.

28 (b) The director shall use the procedures currently used in the analysis and
 29 examination of multistate or global insurers and insurance groups when reviewing the
 30 report and additional requests for information.

31 **Sec. 21.23.060. Confidentiality.** Documents, materials, or other information,

1 including the own risk and solvency assessment summary report, that are obtained by,
 2 created by, or disclosed to the director or another person under this chapter are
 3 confidential and are considered trade secrets and proprietary business information
 4 subject to AS 21.06.060 and AS 21.22.120. A third-party consultant is subject to the
 5 information sharing requirements of AS 21.22.120(b).

6 **Sec. 21.23.070. Penalties.** An insurer shall pay \$1,000 for each day the insurer
 7 fails to file the report within the time required in AS 21.23.030(a), not to exceed
 8 \$365,000. The director may reduce the penalty under this section if the insurer
 9 demonstrates to the director that the imposition of the penalty is a financial hardship to
 10 the insurer.

11 **Sec. 21.23.080. Regulations.** The director may adopt regulations to
 12 implement, define, and enforce the provisions of this chapter.

13 **Sec. 21.23.090. Definitions.** In this chapter,

14 (1) "insurance group" means those insurers and affiliates included in an
 15 insurance holding company system as defined in AS 21.22.200;

16 (2) "insurer" has the meaning given in AS 21.97.900, except that it does
 17 not include agencies, authorities, or instrumentalities of the United States or a
 18 possession or territory of the United States, the Commonwealth of Puerto Rico, the
 19 District of Columbia, or a state or political subdivision of a state;

20 (3) "own risk and solvency assessment" means a confidential internal
 21 assessment, appropriate to the nature, scale, and complexity of an insurer or insurance
 22 group, conducted by that insurer or insurance group of the material and relevant risks
 23 associated with the insurer's or insurance group's current business plan and the
 24 sufficiency of capital resources to support those risks;

25 (4) "own risk and solvency assessment guidance manual" means the
 26 Own Risk and Solvency Assessment Guidance Manual developed and most recently
 27 adopted by the National Association of Insurance Commissioners;

28 (5) "own risk and solvency assessment summary report" means a
 29 confidential, high-level summary of an insurer's or insurance group's own risk and
 30 solvency assessment;

31 (6) "risk management framework" means a set of internal policies or

procedures that address an insurer's or insurance group's risk culture and governance, risk identification and prioritization, risk appetite, tolerance and limits, risk management controls, and risk reporting and communication as described in and most recently adopted by the National Association of Insurance Commissioners Own Risk and Solvency Assessment Guidance Manual.

* **Sec. 47.** AS 21.27.570(a) is amended to read:

(a) If the aggregate amount of gross written premium on business placed by a controlling insurance producer exceeds five percent of the admitted assets of the controlled insurer for a calendar year as reported in the insurer's most recent financial statement filed with the director, the controlling insurance producer may not place business with the controlled insurer and the controlled insurer may not accept business from the controlling insurance producer unless a written contract is in effect between the parties that

(1) establishes the responsibilities of each party, indicates each party's share of responsibility for each particular function, and specifies the division of responsibilities;

(2) has been approved by the board of directors of the controlled insurer;

(3) contains the following minimum provisions:

(A) the controlled insurer may terminate the contract for cause upon written notice sent [BY CERTIFIED MAIL] to the controlling producer and shall suspend the authority of the controlling insurance producer to write business during a dispute regarding the cause for termination;

(B) the controlling insurance producer shall render accounts to the controlled insurer detailing all transactions, including information in the accounts necessary to support compensation, commissions, charges, and other fees received by, or owing to, the controlling producer;

(C) the controlling insurance producer shall remit money due under the contract to the controlled insurer at least monthly;

(D) premiums or installments collected shall be due not later than 90 days after the effective date of coverage placed with the controlled

insurer;

(E) money collected for the account of a controlled insurer shall be held by the controlling insurance producer as a fiduciary, except a controlling insurance producer not required to be licensed under this chapter shall act as a fiduciary in compliance with the requirements of its domiciliary jurisdiction;

(F) all payments on behalf of the controlled insurer shall be held by the controlling insurance producer as a fiduciary;

(G) the controlling insurance producer shall maintain separate records for each controlled insurer in a form usable by the controlled insurer; the controlled insurer or its authorized representative shall have the right to audit and the right to copy all accounts and records related to the controlled insurer's business; the director, in addition to authority granted in this title, shall have access to all books, bank accounts, and records of the controlling insurance producer in a form usable to the director;

(H) the contract may not be assigned in whole or in part by the controlling insurance producer;

(I) the controlled insurer shall provide, and the controlling producer shall follow, written underwriting standards, rules, procedures, and manuals that must include the conditions for acceptance or rejection of risks, including types of risks that may be written, maximum limits of liability, applicable exclusions, territorial limitations, policy cancellation provisions, the maximum policy term, the rating system, and basis of the rates to be charged;

(J) the underwriting standards, rules, procedures, and manuals shall be the same as those applicable to comparable business placed with the controlled insurer by insurance producers [LICENSEES] other than the controlling insurance producer [LICENSEE];

(K) the rates and terms of the controlling insurance producer's compensation including commissions, charges, and other fees may not be greater than those applicable to comparable business placed with the controlled insurer by insurance producers [LICENSEES] other than the controlling

insurance producers [LICENSEE];

(L) the controlled insurer shall establish a limit, that may be different for each kind or class of business, on the amount of premium that the controlling insurance producer may place with the controlled insurer in relation to the controlled insurer's surplus and total writings;

(M) the controlled insurer shall notify the controlling insurance producer if an applicable limit is approached and the controlling insurance producer may not place and the controlled insurer may not accept business if the limit under (L) of this paragraph has been reached;

(N) if the contract provides that the controlling insurance producer, on insurance placed with the controlled insurer, is to be compensated contingent upon the controlling insurer's profits on the placed insurance, the contingent compensation may not be determined or paid until

(i) at least five years after the premiums are earned on casualty business and at least one year after the premiums are earned on any other insurance;

(ii) a later period established by the director for specified kinds or classes of insurance; and

(iii) not until the profits have been verified under (b) of this section;

(O) the controlling insurance producer may negotiate but may not bind reinsurance on behalf of the controlled insurer on insurance that the controlling insurance producer places with the controlled insurer, except that the controlling insurance producer may bind facultative reinsurance contracts under obligatory agreements if the contract with the controlled insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which automatic agreements are in effect, the coverage and amounts or percentages that may be reinsured, and commission schedules; and

(4) provides that the controlled insurer has an audit committee composed of independent members of the board of directors that meet at least annually

1 with management, the insurer's independent certified public accountants, and an
 2 independent actuary specialist acceptable to the director to review the adequacy of the
 3 insurer's reserves for losses incurred and outstanding.

4 * **Sec. 48.** AS 21.27.570 is amended by adding new subsections to read:

5 (i) Except as provided in this section, AS 21.22 applies to all parties within an
 6 insurance holding company system subject to this section.

7 (j) A controlling insurance producer may not be appointed as a broker by a
 8 client in this state or relative to a subject resident, located, or to be performed in this
 9 state unless, in a form acceptable to the director, the controlling insurance producer
 10 has disclosed in writing to the client the relationship between the controlling insurance
 11 producer and controlled insurer, each client has acknowledged receipt of the
 12 disclosure, and a copy of the acknowledged disclosure is maintained by the controlling
 13 insurance producer in its records. The records shall be available for inspection by the
 14 director.

15 * **Sec. 49.** AS 21.27.900(8) is amended to read:

16 (8) "controlled insurer"

17 (A) means

18 (i) an admitted insurer domiciled in this state or
 19 domiciled in a state that is not an accredited state having a law
 20 substantially similar to AS 21.27.570 that is controlled, directly or
 21 indirectly, by an insurance producer;

22 (ii) a risk retention group as defined in 15 U.S.C.
 23 3901, as amended;

24 (B) does not include a captive insurer;

25 * **Sec. 50.** AS 21.27.900 is amended by adding new paragraphs to read:

26 (32) "accredited state" means a state in which the insurance department
 27 or regulatory agency of that state has qualified as meeting the minimum financial
 28 regulatory standards adopted and established by the National Association of Insurance
 29 Commissioners;

30 (33) "captive insurer" means an insurer owned by another organization
 31 whose exclusive purpose is to insure risks of the parent organization and affiliated

companies or, in the case of groups and associations, an insurance organization owned by the insureds whose exclusive purpose is to insure risks of member organizations and group members and their affiliates.

* **Sec. 51.** AS 21.36.360(q) is amended to read:

(q) A fraudulent or criminal insurance act described in

(1) (b) of this section that is committed to obtain \$10,000 or more is a class B felony;

(2) (c), (d), or (p)(4) of this section is a class B felony;

(3) (b) of this section that is committed to obtain \$500 or more but less than \$10,000 is a class C felony;

(4) (e), (f), or (g) [, OR (h),] of this section is a class C felony;

(5) (b) of this section that is committed to obtain less than \$500 is a class A misdemeanor;

(6) (i), (j), (k), (l), (m), or (n) of this section is a class A misdemeanor;

(7) (o) of this section is a class B misdemeanor;

(8) (p)(1) of this section is a class B misdemeanor unless another specific penalty is provided for the violation of the provision; and

(9) (p)(2) and (3) of this section may be prosecuted under AS 11.46.

* **Sec. 52.** AS 21.14.010(d), 21.14.010(e); AS 21.27.560(f), 21.27.570(h)(5); and AS 21.36.360(h) are repealed.

* **Sec. 53.** The uncoded law of the State of Alaska is amended by adding a new section to read:

REVISOR'S INSTRUCTIONS. The revisor of statutes is requested to change the catch line of AS 21.22.080 from "Transactions with affiliates" to "Transactions within an insurance holding company system."

* **Sec. 54.** This Act takes effect July 1, 2015.