

HOUSE BILL NO. 280

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 4/17/91

Referred: Labor & Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to regulation of insurance holding companies; and providing for an
2 effective date."

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

4 * Section 1. AS 21.21.180 is repealed and reenacted to read:

5 Sec. 21.21.180. INVESTMENTS IN SUBSIDIARIES. (a) A domestic insurer, either
6 alone or in cooperation with one or more persons, may organize or acquire one or more
7 subsidiaries engaged in the following kinds of business:

8 (1) insurance business authorized by this title;

9 (2) acting as an insurance broker or as an insurance agent for the insurer's parent
10 or for any of the insurer's parent's insurer subsidiaries and controlled affiliates;

11 (3) investing, reinvesting, or trading in securities for the insurer's own account,
12 that of the insurer's parent, a subsidiary of the insurer's parent, an affiliate, or a subsidiary;

13 (4) management of an investment company subject to or registered under 15
14 U.S.C. 80 (Investment Company Act of 1940, as amended), including related sales and services;

1 (5) acting as a broker-dealer subject to or registered under 15 U.S.C. 77 - 78
2 (Securities Exchange Act of 1934, as amended);

3 (6) rendering investment advice to a government, government agency, corporation,
4 or other organization or group;

5 (7) rendering other services related to the operations of an insurance business
6 including actuarial, loss prevention, safety engineering, data processing, accounting, claims,
7 appraisal, and collection services;

8 (8) ownership and management of assets that the parent corporation could own
9 or manage under AS 21.22 if the aggregate investment by the insurer and subsidiaries acquired
10 or organized under this paragraph do not exceed the limitations in AS 21.22;

11 (9) acting as administrative agent for a governmental instrumentality that is
12 performing an insurance function;

13 (10) financing insurance premiums, agents, and other forms of consumer
14 financing;

15 (11) any other business activity determined by the director in writing using the
16 standards set out in this section to be reasonably ancillary to an insurance business; or

17 (12) owning a corporation engaged or organized to engage exclusively in one or
18 more of the businesses specified in this section.

19 (b) A domestic insurer may also

20 (1) invest in securities described in AS 21.21.140 - 21.21.160 of one or more
21 subsidiaries in amounts that do not exceed the lesser of 10 percent of the insurer's assets or 50
22 percent of the insurer's surplus regarding policyholders, if, after the investment, the insurer's
23 surplus regarding policyholders will be reasonable in relation to the insurer's outstanding
24 liabilities and adequate to the insurer's financial needs; in calculating the amount of the
25 investment, investment in domestic or foreign insurance subsidiaries shall be excluded, but the
26 following must be included:

27 (A) total net moneys or other consideration expended and all obligations
28 assumed in the acquisition or formation of a subsidiary, including all organizational
29 expenses and contributions to capital and surplus of the subsidiary if represented or not
30 represented by the purchase of capital stock or issuance of other securities; and

31 (B) all amounts expended in acquiring additional securities described in

1 AS 21.21.140 - 21.21.160 and all contributions to the capital or surplus of a subsidiary
2 subsequent to the subsidiary's acquisition or formation;

3 (2) invest an amount in securities described in AS 21.21.140 - 21.21.160 of one
4 or more subsidiaries engaged or organized to engage exclusively in the ownership and
5 management of assets authorized as an investment for the insurer if that subsidiary agrees to limit
6 the subsidiary's investment in an asset in a way that the investment does not cause the amount
7 of the total investment of the insurer to exceed the investment limitations specified in (1) of this
8 subsection or AS 21.21.050; for the purpose of this paragraph, the total investment of the insurer
9 includes:

10 (A) a direct investment by the insurer in an asset; and

11 (B) the insurer's proportionate share of an investment in an asset by a
12 subsidiary of the insurer calculated by multiplying the amount of the subsidiary's
13 investment by the percentage of the ownership in the subsidiary; or

14 (3) with the approval of the director, invest a greater amount in those securities
15 described in AS 21.21.140 - 21.21.160 of one or more subsidiaries if after the investment the
16 insurer's surplus regarding policyholders is reasonable in relation to the insurer's outstanding
17 liabilities and adequate to the insurer's financial needs.

18 (c) A domestic insurer shall determine if an investment meets the applicable requirements
19 under (b) of this section before the investment is made by calculating the applicable investment
20 limitations as though the investment had already been made under AS 21.21.020(d) and by taking
21 into account the then outstanding principal balance on all previous investments under
22 AS 21.21.140 - 21.21.160, calculated at statement value, giving effect to a return of capital
23 invested and not giving effect to dividends.

24 (d) If an insurer ceases to control a subsidiary, it shall dispose of an investment in the
25 subsidiary made under this section within three years from the time of the cessation of control
26 or within a further time that the director prescribes unless, at any time after the investment has
27 been made, the investment meets the requirements for investment under another section of this
28 chapter and the insurer has notified the director regarding the application of another section of
29 this chapter to the investment.

30 * Sec. 2. AS 21.21.350(b) is amended to read:

31 (b) Before completing investment activities with or through affiliated or controlling

1 persons or completing a transaction of the type listed in AS 21.21.180, an insurer shall fully
2 disclose and document in writing to its board of directors, the committee or committees having
3 responsibility for reviewing the insurer's financial condition under AS 21.22.105(d) or (e),
4 and the committee authorized by the board and charged with the supervision or making of the
5 investment or loan involved, the material facts concerning the affiliation or circumstances of
6 control. An insurer may not complete an investment activity with or through affiliated or
7 controlling persons [,] unless the board of directors, by specific board action, authorizes the
8 transaction and concludes that the transaction complies with (c) and (d) of this section. The vote
9 of the board authorizing the transaction must be recorded in the minutes, on a
10 member-by-member basis, and must indicate each vote approving, disapproving, or abstaining
11 on the transaction.

12 * Sec. 3. AS 21.22.060 is amended by adding new subsections to read:

13 (k) An insurer subject to registration under (a) of this section shall register annually by
14 April 1 of each year for the previous calendar year, unless for good cause shown, the director
15 extends the time for registration. The director may require an insurer authorized to do business
16 in the state, that is a member of a holding company system and that is not subject to registration
17 under (a) of this section, to furnish a copy of the registration statement, the summary specified
18 in (l) of this section, or other information filed by the insurer with the insurance regulatory
19 authority of the insurer's state of domicile.

20 (l) An annual registration statement filed under (k) of this section must contain a
21 summary outline of items in the current registration statement representing changes from the prior
22 registration statement.

23 * Sec. 4. AS 21.22 is amended by adding a new section to read:

24 Sec. 21.22.065. ACQUISITIONS INVOLVING INSURERS NOT OTHERWISE
25 COVERED. (a) Unless exempted in (j) of this section, this section applies to any acquisition
26 in which there is a change in control of an insurer authorized to do business in this state.

27 (b) If an acquisition violates the standards established in (d) and (f) of this section, the
28 director may enter an order requiring an involved insurer to cease doing business in this state
29 with respect to the line or lines of insurance involved in the violation or denying the application
30 of an acquired or acquiring insurer for a license to do business in this state. Within 30 days of
31 the issuance of the order, the involved insurer may submit a plan to remedy the anticompetitive

1 effect of the acquisition within a reasonable time. Based upon a plan or other information
2 submitted, the director shall specify the conditions, if any, under a time period during which the
3 aspects of the acquisition causing a violation of the standards of this section would be remedied
4 and the order vacated or modified. The order is stayed by the insurer's submission of a plan and
5 shall be rescinded if the acquisition is not consummated.

6 (c) An acquisition subject to (a) of this section is subject to an order under (b) of this
7 section unless the acquiring person files a preacquisition notification and the waiting period has
8 expired. The person to be acquired may file a preacquisition notification. A preacquisition
9 notification by a person to be acquired may not be filed in place of a preacquisition filing by an
10 acquiring person. The preacquisition notification

11 (1) must be in a form and contain the information prescribed in regulations
12 adopted by the director relating to insurance markets that, under (j)(5) of this section, cause the
13 acquisition not to be exempt from the provisions of this section; the director may require
14 additional material and information the director considers necessary to determine whether the
15 proposed acquisition, if consummated, would violate the competitive standards of this section;

16 (2) may include an opinion of an economist regarding the competitive effect of
17 the acquisition in this state accompanied by a summary of the education and experience
18 indicating the economist's ability to render an informed opinion; and

19 (3) must be followed by a waiting period beginning on the date of receipt by the
20 director of a preacquisition notification and ending on the earlier of the 30th day after the date
21 of receipt or termination of the waiting period by the director unless, before the end of the
22 waiting period, the director requires the submission of additional information relevant to the
23 proposed acquisition, in which event the waiting period shall end on the 30th day after receipt
24 of the additional information by the director or termination of the waiting period by the director,
25 whichever is earlier.

26 (d) The director may enter an order under (b) of this section regarding an acquisition if

27 (1) the insurer fails to file adequate information in compliance with (c) of this
28 section;

29 (2) there is substantial evidence that the acquisition may substantially lessen
30 competition, create a monopoly in a line of insurance in this state or significantly increase an
31 insurer's market concentration; there is substantial evidence that there is a significant trend

1 toward increased concentration when

2 (A) the aggregate market share of any grouping of the largest insurers in
3 the market, from the two largest to the eighth largest, has increased by seven percent or
4 more of the market over a period of time extending from any base year five to 10 years
5 before the acquisition up to the time of the acquisition; or

6 (B) the following, if found, is considered prima facie evidence of violation
7 of this subsection:

8 (i) there is a significant trend toward increased concentration in the
9 market, as determined under (A) of this paragraph;

10 (ii) one of the insurers involved is one of the insurers in a
11 grouping of large insurers showing the requisite increase in the market share; and

12 (iii) another involved insurer's market is two percent or more;

13 (3) after considering an acquisition covered under (a) of this section involving two
14 or more insurers competing in the same market there is evidence of a violation of the competitive
15 standards contained in the following tables:

16 (A) if the market is highly concentrated, the involved insurers possess the
17 following shares of the market:

18	Insurer A	Insurer B
19	4 percent	4 percent or more
20	10 percent	2 percent or more
21	15 percent	1 percent or more;

22 (B) if the market is not highly concentrated, the involved insurers possess
23 the following shares of the market:

24	Insurer A	Insurer B
25	5 percent	5 percent or more
26	10 percent	4 percent or more
27	15 percent	3 percent or more
28	19 percent	1 percent or more.

29 (e) A percentage not shown in the tables contained in (d) of this section may be
30 interpolated proportionately to the percentage that is shown. The insurer with the largest share
31 of the market shall be considered Insurer A. If more than two insurers are involved, a market

1 share that exceeds the total of the two columns in the table by the insurers involved is prima
2 facie evidence of violation of the competitive standards contained in (d) of this section.

3 (f) Even though an acquisition is not prima facie violative of the competitive standard
4 under (d) of this section, the director may establish the requisite anticompetitive effect based
5 upon other substantial evidence. Even though an acquisition is prima facie violative of the
6 competitive standard under (d) of this section, a party may establish the absence of the requisite
7 anticompetitive effect based upon other substantial evidence. Relevant factors in making a
8 determination under (d) of this section include market shares, volatility of ranking of market
9 leaders, number of competitors, concentration, trend of concentration in the industry, and ease
10 of entry into and exit out of the market. The burden of showing prima facie evidence of a
11 violation of the competitive standards rests with the director.

12 (g) An order may not be entered under (b) of this section if

13 (1) the acquisition will yield substantial economy of scale or economy in resource
14 utilization that cannot be achieved in another way and the public benefits that would arise from
15 the economy exceed the public benefits that would arise from not lessening competition; or

16 (2) the acquisition will substantially increase the availability of insurance and the
17 public benefits of the increase exceed the public benefits that would arise from not lessening
18 competition.

19 (h) A person who violates a cease and desist order of the director under (b) of this
20 section may, after hearing and on order of the director, be subject to the suspension or revocation
21 of a license, a civil penalty not to exceed \$10,000 for each day of violation, or both.

22 (i) An insurer or other person who fails to make a filing required by (c) of this section
23 and who also fails to demonstrate a good faith effort to comply with filing requirements shall be
24 subject to a fine of not more than \$50,000.

25 (j) This section does not apply to

26 (1) an acquisition subject to approval or disapproval by the director under
27 AS 21.22.010;

28 (2) a purchase of securities solely for investment purposes if the securities are not
29 used by voting or otherwise to cause or attempt to cause the substantial lessening of competition
30 in an insurance market in this state; if a purchase of securities for investment purposes results
31 in a presumption of control under AS 21.22.200(2), it is not solely for investment purposes unless

1 the insurance supervisory official of the insurer's state of domicile accepts a disclaimer of control
2 or affirmatively finds that control does not exist and the disclaimer action or affirmative finding
3 is communicated by the domiciliary commissioner to the director;

4 (3) the acquisition of a person by another person when both persons are neither
5 directly nor through affiliates primarily engaged in the business of insurance if preacquisition
6 notification is filed with the director under (c) of this section 30 days before the proposed
7 effective date of the acquisition; however, the preacquisition notification is not required for
8 exclusion if the acquisition would otherwise be excluded under this section;

9 (4) the acquisition of an already affiliated person;

10 (5) an acquisition if, as an immediate result of the acquisition,

11 (A) the combined market share of the involved insurers would not exceed
12 five percent of the total market;

13 (B) there would not be an increase in a market share of the larger writer;

14 or

15 (C) the combined market share of the involved insurers would not exceed
16 12 percent of the total market and the market share of the larger writer would not increase
17 by more than two percent of the total market;

18 (6) an acquisition for which a preacquisition notification would be required under
19 this section due solely to the resulting effect on the ocean marine insurance line of business; or

20 (7) an acquisition of an insurer whose domiciliary commissioner affirmatively
21 finds that the insurer is in a failing condition, there are no feasible alternatives to improving this
22 condition, the public benefits of improving the insurer's condition through the acquisition exceed
23 the public benefits that would arise from not lessening competition, and these findings are
24 communicated by the domiciliary commissioner to this state's director.

25 (k) AS 21.22.140 - 21.22.160 and 21.22.180 do not apply to acquisitions covered under
26 this section.

27 * Sec. 5. AS 21.22.080 is amended to read:

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

30 (1) the terms shall be fair and reasonable;

31 (2) charges or fees for services performed shall be reasonable;

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

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

7 **(5) [(3)] the insurer's surplus as regards policyholders following any dividends**
8 **or distributions to shareholder affiliates or performance under a material transaction with an**
9 **affiliate shall be reasonable in relation to the insurer's outstanding liabilities and adequate to its**
10 **financial needs.**

11 * Sec. 6. AS 21.22.090 is amended to read:

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

16 (1) the size of the insurer as measured by its assets, capital and surplus, reserves,
17 premium writings, insurance in force, and other appropriate criteria;

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

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

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

22 (5) the nature and extent of the insurer's reinsurance program;

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

24 (7) the recent past and projected future trend in the size of the insurer's

25 **investment portfolio [SURPLUS AS REGARDS POLICYHOLDERS];**

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

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

28 (10) the quality and liquidity of investments in **affiliates** [SUBSIDIARIES] made
29 under AS 21.21; the director may treat any such investment as a disallowed asset for purposes
30 of determining the adequacy of surplus as regards policyholders whenever the director determines
31 the investment warrants it.

1 * Sec. 7. AS 21.22.100(b) is amended to read:

2 (b) For purposes of this section, an extraordinary dividend or distribution includes a
3 [ANY] dividend or distribution of cash or other property, the fair market value of which together
4 with that of other dividends or distributions made within the preceding 12 months exceeds the
5 greater of (1) 10 percent of the insurer's surplus as regards policyholders as of December 31 of
6 the preceding year; or (2) the net gain from operations of the insurer, if the insurer is a life
7 insurer, or the net investment income, if the insurer is not a life insurer, not including realized
8 capital gains, for the 12-month period ending December 31 of the preceding year; but does not
9 include pro rata distributions of any class of the insurer's own securities. In determining
10 whether a dividend or distribution is extraordinary, an insurer other than a life insurer
11 may carry forward net income from the previous two calendar years that has not already
12 been paid out as dividends. The carry forward provision shall be computed by taking the
13 net income from the second and third preceding calendar years, not including realized
14 capital gains, less dividends paid in the second and immediate preceding calendar years.

15 * Sec. 8. AS 21.22 is amended by adding a new section to read:

16 Sec. 21.22.105. MANAGEMENT OF DOMESTIC INSURERS SUBJECT TO
17 REGISTRATION. (a) Notwithstanding the control of a domestic insurer by any person, the
18 officers and directors of the insurer may not be relieved of an obligation or liability to which the
19 officers and directors would otherwise be subject to by law, and the insurer shall be managed so
20 as to assure the insurer's separate operating identity consistent with this title.

21 (b) This section does not preclude a domestic insurer from having or sharing a common
22 management or cooperative or joint use of personnel, property, or services with one or more
23 other persons under arrangements meeting the standards of AS 21.22.080.

24 (c) Not less than one-third of the directors of a domestic insurer and not less than one-
25 third of the members of each committee of the board of directors of a domestic insurer shall be
26 persons who are not officers or employees of the insurer or of an entity controlling, controlled
27 by, or under common control with the insurer and who are not beneficial owners of a controlling
28 interest in the voting stock of the insurer or an entity. At least one person who is not an officer,
29 employee, or owner of a controlling interest in stock of an insurer or controlling entity must be
30 included in a quorum for the transaction of business at a meeting of the board of directors or a
31 committee of the board of directors.

1 (d) The board of directors of a domestic insurer shall establish one or more committees
2 comprised solely of directors who are not officers or employees of the insurer or of an entity
3 controlling, controlled by, or under common control with the insurer and who are not beneficial
4 owners of a controlling interest in the voting stock of the insurer or an entity. The committee
5 or committees shall have responsibility for recommending the selection of independent certified
6 public accountants, reviewing the insurer's financial condition, the scope and results of the
7 independent audit, and an internal audit, nominating candidates for director for election by
8 shareholders or policyholders, evaluating the performance of officers that are principal officers
9 of the insurer, and recommending to the board of directors the selection and compensation of the
10 principal officers.

11 (e) The provisions of (c) and (d) of this section do not apply to a domestic insurer if the
12 person controlling the insurer is an insurer having a board of directors and committees that meet
13 the requirements of (c) and (d) of this section.

14 * Sec. 9. AS 21.22.120 is amended to read:

15 Sec. 21.22.120. CONFIDENTIALITY. All information, documents, and copies of the
16 information and documents obtained by or disclosed to the director or any other person in the
17 course of an examination or investigation made under AS 21.22.110 and all information reported
18 under AS 21.22.060 and all preacquisition notification information received under
19 AS 21.22.065, shall be given confidential treatment and may not be made public by the director
20 or any other person, except to insurance departments of other states, without the prior written
21 consent of the insurer to which it pertains. However, if the director, after giving the insurer and
22 its affiliates who would be affected by publication of the information notice and opportunity to
23 be heard, determines that the interests of policyholders, shareholders, or the public will be served
24 by the publication of the information, the director may publish all or any part of the information
25 in the manner the director considers appropriate.

26 * Sec. 10. AS 21.22.200 is amended by adding new paragraphs to read:

27 (11) "acquisition" means an agreement, arrangement, or activity the consummation
28 of which results in a person acquiring directly or indirectly the control of another person, and
29 includes the acquisition of voting securities, assets, bulk reinsurance, and mergers;

30 (12) "highly concentrated" means a market in which the share of the four largest
31 insurers is 75 percent or more of the market;

1 (13) "insurer" has the meaning in AS 21.90.900(19) and includes a company or
2 group of companies under common management, ownership, or control;

3 (14) "involved insurer" means an insurer that either acquires or is acquired, is
4 affiliated with an acquirer or acquired, or is the result of a merger;

5 (15) "market" or "insurance market" means direct written insurance premium in
6 this state for a line of business as contained in the annual statement required to be filed by
7 insurers licensed to do business in this state; in determining the relevant product and geographical
8 markets, the director shall give due consideration to, among other things, the definitions or
9 guidelines adopted by the National Association of Insurance Commissioners and to information
10 submitted by parties to the acquisition; in the absence of sufficient information to the contrary,
11 the relevant product market is assumed to be the direct written insurance premium for a line of
12 business, the line being that used in the annual statement required to be filed by insurers doing
13 business in this state, and the relevant geographical market is assumed to be this state;

14 (16) "statement value" means the value that an insurer is instructed by the
15 securities valuation office of the National Association of Insurance Commissioners to carry on
16 the insurer's financial statement and that represents an investment.

17 * Sec. 11. AS 21.78 is amended by adding a new section to read:

18 Sec. 21.78.325. RECOVERY FROM AFFILIATES. (a) If an order for liquidation or
19 rehabilitation of a domestic insurer has been entered, the receiver appointed under the order has
20 a right to recover on behalf of the insurer (1) from a parent corporation or holding company or
21 person or affiliate who otherwise controlled the insurer, the amount of distributions, other than
22 a distribution of shares of the same class of stock, paid by the insurer on the insurer's capital
23 stock; or (2) a payment in the form of a bonus, termination settlement, or extraordinary lump sum
24 salary adjustment made by the insurer or the insurer's subsidiary to a director, officer, or
25 employee; if the distribution or payment is made during the 12 months preceding the petition for
26 liquidation, conservation, or rehabilitation, the distribution or payment is subject to the limitations
27 of (b) - (d) of this section.

28 (b) A distribution may not be recovered if the parent or affiliate shows that when paid
29 the distribution was lawful and reasonable and that the insurer did not know and could not
30 reasonably have known that the distribution might adversely affect the ability of the insurer to
31 fulfill its contractual obligations.

1 (c) A person who was a parent corporation or holding company or a person who
2 otherwise controlled the insurer or affiliate at the time the distribution was paid is liable up to
3 the amount of the distribution or payment that the person received. A person who otherwise
4 controlled the insurer at the time the distribution was declared is liable up to the amount of the
5 distribution the person would have received if the distribution had been paid immediately. If two
6 or more persons are liable with respect to the same distribution, the persons are jointly and
7 severally liable.

8 (d) The maximum amount recoverable under this section is the amount needed in excess
9 of all other available assets of the impaired or insolvent insurer to pay the contractual obligations
10 of the impaired or insolvent insurer and to reimburse any guaranty funds that expended funds or
11 incurred expenses or may expend funds or may incur expenses in connection with the impaired
12 or insolvent insurer.

13 (e) To the extent that a person liable under (c) of this section is insolvent or otherwise
14 fails to pay a claim due under (c) of this section, the person's parent corporation or holding
15 company or person who otherwise controlled the parent corporation or holding company at the
16 time the distribution was paid is jointly and severally liable for the resulting deficiency in the
17 amount recovered from the parent corporation or holding company or the person who otherwise
18 controlled the parent corporation or holding company.

19 * Sec. 12. This Act takes effect immediately under AS 01.10.070(c).