

HOUSE BILL NO. 281

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 examination of insurers, agents, brokers, adjusters, and solicitors."

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

3 \* Section 1. AS 21.06.120(a) is amended to read:

4 (a) The director may examine the affairs, transactions, accounts, records, and assets of  
5 each authorized and formerly authorized insurer and each licensed and formerly licensed surplus  
6 lines broker as often as the director considers advisable. The director shall [SO] examine each  
7 domestic insurer at least once every three years. In scheduling and determining the nature,  
8 scope, and frequency of examinations, the director may consider the results of financial  
9 statement analysis and ratios, competency of management or change of ownership, actuarial  
10 opinions, reports of independent certified public accountants, number and nature of  
11 consumer complaints, results of prior examinations, frequency of prior violations of statute  
12 and regulation, amount or type of risk being assumed, degree to which the activity is  
13 imbued with public interest, and other criteria set out in the Examiners' Handbook most  
14 recently approved by the National Association of Insurance Commissioners and in effect

1 **when the director conducts an examination.** Examination of an alien insurer may be limited  
2 to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer  
3 may also include examination of its attorney-in-fact to the extent that the transactions of the  
4 attorney-in-fact relate to the insurer.

5 \* Sec. 2. AS 21.06.120(c) is amended to read:

6 (c) In place of an examination by the director, the director may accept a full report of  
7 the last recent examination of a foreign or alien insurer, certified to by the insurance supervisory  
8 official of another state, territory, commonwealth, or district of the United States **until**  
9 **January 1, 1994; after December 31, 1993, reports, other than examination by the director,**  
10 **shall only be accepted if**

11 (1) **the insurance regulatory agency was at the time of the examination**  
12 **accredited under the National Association of Insurance Commissioners' Financial**  
13 **Regulation Standards and Accreditation Program; or**

14 (2) **the examination is performed under the supervision of an accredited state**  
15 **insurance regulatory agency or with the participation of one or more examiners who are**  
16 **employed by an accredited state insurance regulatory agency and who after a review of the**  
17 **examination work papers and report state under oath that the examination was performed**  
18 **in a manner consistent with the standards and procedures required by their accredited state**  
19 **insurance regulatory agency.**

20 \* Sec. 3. AS 21.06.120 is amended by adding a new subsection to read:

21 (f) For purposes of completing an examination of a company under this title, the director  
22 may examine or investigate any person, or the business of any person, third party administrator,  
23 managing general agent, or general agent, if the examination or investigation is, in the sole  
24 discretion of the director, necessary or material to the examination.

25 \* Sec. 4. AS 21.06.130(a) is amended to read:

26 (a) To determine compliance with this title, the director may as often as the director  
27 considers advisable examine or require a written report **prepared under AS 21.06.150** of the  
28 accounts, records, documents, and transactions pertaining to or affecting the insurance affairs or  
29 proposed insurance affairs of

30 (1) an insurance agent, broker, solicitor, **managing** general agent, or adjuster;

31 (2) [A PERSON HAVING A CONTRACT UNDER WHICH THE PERSON

1 ENJOYS IN FACT THE EXCLUSIVE OR DOMINANT RIGHT TO MANAGE OR CONTROL  
2 AN INSURER;

3 (3) A PERSON HOLDING THE SHARES OF VOTING STOCK OR  
4 POLICYHOLDER PROXIES OF A DOMESTIC INSURER, FOR THE PURPOSE OF  
5 CONTROLLING ITS MANAGEMENT, AS VOTING TRUSTEE OR OTHERWISE;

6 (4)] a person engaged in or proposing to be engaged in or assisting in the  
7 promotion or formation of a domestic insurer or insurance holding corporation, or corporation  
8 to finance a domestic insurer or the production of its business.

9 \* Sec. 5. AS 21.06.140(c) is amended to read:

10 (c) If the director finds accounts to be inadequate or inadequately kept or posted or if  
11 an insurer's accounts are not kept as required by the Accounting Practices and Procedures  
12 Manual currently approved by the National Association of Insurance Commissioners  
13 [AFTER THE DIRECTOR HAS GIVEN THE PERSON NOTICE OF THE INADEQUACY OF  
14 THE ACCOUNTS AND A REASONABLE OPPORTUNITY TO COMPLETE OR CORRECT  
15 THE ACCOUNTING], the director may employ experts to rewrite, post, or balance them at the  
16 expense of the person being examined.

17 \* Sec. 6. AS 21.06.140(d) is repealed and reenacted to read:

18 (d) When making an examination under this section, the director may retain attorneys,  
19 appraisers, independent actuaries, independent certified public accountants, or other professionals  
20 and specialists as examiners, the cost of which shall be paid by the person being examined,  
21 except for examinations under AS 21.06.130.

22 \* Sec. 7. AS 21.06.140 is amended by adding new subsections to read:

23 (f) Upon determining that an examination should be conducted, the director shall issue  
24 an examination order appointing one or more examiners to perform the examination and  
25 instructing them as to the scope of the examination. In conducting the examination, the examiner  
26 shall observe those guidelines and procedures set out in the Examiners' Handbook currently  
27 approved by the National Association of Insurance Commissioners that are consistent with the  
28 scope of the examination as given by the director or the director's designee. The director may  
29 also employ any other guidelines or procedures that the director finds appropriate.

30 (g) An examiner may not be appointed by the director if the examiner, either directly or  
31 indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary

1 interest in a person subject to examination under this title. This section may not be construed  
2 to automatically preclude an examiner from being, in the ordinary course of business,

3 (1) a policyholder or claimant under an insurance policy;

4 (2) a grantor of a mortgage or similar instrument on the examiner's residence to  
5 a regulated entity if obtained under customary terms;

6 (3) an investment owner in shares of regulated mutual fund companies; or

7 (4) a settlor or beneficiary of a "blind trust" into which otherwise impermissible  
8 holdings have been placed.

9 (h) The director may terminate or suspend an examination in order to pursue other legal  
10 or regulatory action under the insurance laws of this state.

11 (i) Findings of fact and conclusions of law made in an examination report approved  
12 under AS 21.06.150(b)(1) may be used as prima facie evidence in any legal or administrative  
13 proceeding.

14 \* Sec. 8. AS 21.06.150 is repealed and reenacted to read:

15 Sec. 21.06.150. EXAMINATION REPORTS. (a) An examination report may only  
16 consist of facts appearing upon the books, records, or other documents of the examined company,  
17 the company's agents, or other persons examined, or facts determined from the testimony of  
18 officers, agents, or other persons examined concerning the company's affairs, and the conclusions  
19 and recommendations that the examiners find reasonably warranted from the facts.

20 (b) The examiner shall file with the division a proposed written report of an examination  
21 not later than 60 days following the last day of examination field work. The period for filing  
22 the proposed report may be extended for 60 additional days upon approval of the director. Upon  
23 receipt of the proposed report, the division shall transmit the report to the person being examined,  
24 together with a notice that gives the person being examined a reasonable opportunity of not more  
25 than 30 days to make a written submission or rebuttal with respect to matters contained in the  
26 proposed examination report. If, after the 30-day period, a written submission or rebuttal of  
27 matters contained in the proposed report has not been received, the report is presumed approved  
28 by the person being examined. Within 30 days of the end of the period allowed for the receipt  
29 of written submissions or rebuttals, the director shall fully consider and review the report,  
30 together with any written submissions or rebuttals, and any relevant portions of the examiner's  
31 work papers and enter an order

1 (1) approving the examination report as filed or approving the examination report  
2 with modification or corrections; if the examination report reveals that the examinee is operating  
3 in violation of a statute, regulation, or prior order of the director, the director may order the  
4 person being examined to take any action the director considers necessary and appropriate to  
5 remedy the violation; the person examined may request a hearing under AS 21.06.180(b) on an  
6 order issued by the director;

7 (2) rejecting the examination report with directions to the examiners to reopen the  
8 examination for the purpose of obtaining additional data, documentation, or information and  
9 refiling the report under (b) of this section; or

10 (3) setting a hearing under AS 21.06.180 for purposes of obtaining additional  
11 information.

12 (c) In the event the director determines that regulatory action is appropriate as a result  
13 of an examination, the director may initiate proceedings as provided by law. The director may  
14 use and, if appropriate, make public an examination report, work papers or other documents, the  
15 testimony of the examiners, or other information discovered or developed during the course of  
16 an examination conducted in a legal or administrative proceeding, whether or not a written report  
17 of the examination at the time has been made, transmitted, or approved by the director.

18 (d) The director may disclose the content of an examination report, preliminary  
19 examination report or results, or any matter relating to it to the insurance division of this or  
20 another state or country, or to law enforcement officials of this or another state or agency of the  
21 federal government.

22 (e) An order entered under (b)(1) of this section must be accompanied by findings of fact  
23 and conclusions of law resulting from the director's consideration and review of the examination  
24 report, relevant examiner work papers, and written submissions or rebuttals.

25 (f) Within 30 days of the receipt of the approved report, the person examined shall file  
26 affidavits executed by each director and the chief executive officer or equivalent officer stating  
27 under oath that they have received and reviewed a copy of the approved report and related orders.

28 \* Sec. 9. AS 21.06.165 is amended by adding a new subsection to read:

29 (d) A person identified in (a) of this section shall be awarded attorney fees and costs if  
30 the person is the prevailing party in a civil action for libel, slander, or another relevant civil  
31 action arising out of the activities performed in carrying out the provisions of (a) of this section

1           and the party bringing the action was not substantially justified in filing the civil action. In this  
2           subsection, "substantially justified" means the action had a reasonable basis in law or fact at the  
3           time it was filed.

4   \* Sec. 10. AS 21.90.900 is amended by adding a new paragraph to read:

5                       (29) "examiner" means an individual or firm who has been authorized by the  
6           director to conduct an examination under AS 21.06.120 or 21.06.130.

7   \* Sec. 11. AS 21.06.130(b) is repealed.