

CS FOR HOUSE BILL NO. 281 (L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SEVENTEENTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 5/9/91  
Referred: Judiciary, Finance

Sponsor(s): HOUSE LABOR & COMMERCE COMMITTEE

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 in the  
13 public interest, and other criteria set out in the Examiners' Handbook most recently  
14 approved by the National Association of Insurance Commissioners and in effect when the

1 director conducts an examination. Examination of an alien insurer may be limited to its  
2 insurance transactions and affairs in the United States. Examination of a reciprocal insurer may  
3 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 may 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 extend the examination or investigation as provided under AS 21.06.170.

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

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

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

29 (2) [A PERSON HAVING A CONTRACT UNDER WHICH THE PERSON  
30 ENJOYS IN FACT THE EXCLUSIVE OR DOMINANT RIGHT TO MANAGE OR CONTROL  
31 AN INSURER;

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

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

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

8 (c) If the director finds accounts to be inadequate or inadequately kept or posted or if  
9 an insurer's accounts are not kept as required by the Accounting Practices and Procedures  
10 Manual currently approved by the National Association of Insurance Commissioners after  
11 the director has given the person notice of the inadequacy of the accounts and a reasonable  
12 opportunity to complete or correct the accounting, the director may employ experts to rewrite,  
13 post, or balance them at the expense of the person being examined.

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

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

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

20 (f) In conducting an examination under this section, the examiner shall observe those  
21 guidelines and procedures set out in the Examiners' Handbook currently approved by the National  
22 Association of Insurance Commissioners that are consistent with the scope of the examination  
23 as given by the director or the director's designee. The director may also employ any other  
24 guidelines or procedures that the director finds appropriate.

25 (g) An examiner may not be appointed by the director if the examiner, either directly or  
26 indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary  
27 interest in a person subject to examination under this title. This section may not be construed  
28 to automatically preclude an examiner from being, in the ordinary course of business,

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

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

1 (3) an investment owner in shares of regulated mutual fund companies; or  
2 (4) a settlor or beneficiary of a "blind trust" into which otherwise impermissible  
3 holdings have been placed.

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

6 (i) Findings of fact made in an examination report approved under AS 21.06.150(b)(1)  
7 may be used as prima facie evidence in any legal or administrative proceeding.

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

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

14 (b) The examiner shall file with the division a proposed written report of an examination,  
15 signed by the examiner under oath, not later than 60 days following the last day of examination  
16 field work. The period for filing the proposed report may be extended for 60 additional days  
17 upon approval of the director. Upon receipt of the proposed report, the division shall transmit  
18 the report to the person being examined, together with a notice that gives the person being  
19 examined a reasonable opportunity of not more than 30 days to make a written submission or  
20 rebuttal with respect to matters contained in the proposed examination report. Within 30 days  
21 of the end of the period allowed for the receipt of written submissions or rebuttals, the director  
22 shall fully consider and review the report, together with any written submissions or rebuttals, and  
23 any relevant portions of the examiner's work papers and enter an order

24 (1) approving the examination report as filed or approving the examination report  
25 with modification or corrections;

26 (2) rejecting the examination report with directions to the examiners to reopen the  
27 examination for the purpose of obtaining additional data, documentation, or information and  
28 refiling the report under this subsection; or

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

31 (c) In the event the director determines that regulatory action is appropriate as a result

1 of an examination, the director may initiate proceedings as provided by law. The director may  
2 use and, if appropriate, make public an examination report, work papers or other documents, the  
3 testimony of the examiners, or other information discovered or developed during the course of  
4 an examination in a legal or administrative proceeding, whether or not a written report of the  
5 examination at the time has been made, transmitted, or approved by the director.

6 (d) The director may disclose the contents of an examination report or results, or any  
7 matter relating to it, to the insurance division of this or another state or country. The director  
8 may disclose the contents of a preliminary examination report or other matter of a preliminary  
9 nature if the director by written order finds that there is imminent danger of serious harm to the  
10 public and that the harm to the public can be avoided or mitigated by release of the preliminary  
11 examination report or other matter of a preliminary nature. An order issued under this subsection  
12 shall be served on the company being examined and is effective 48 hours after being issued.

13 (e) An order entered under this section must be accompanied by findings of fact resulting  
14 from the director's consideration and review of the examination report, relevant examiner work  
15 papers, and written submissions or rebuttals.

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

19 \* Sec. 9. AS 21.90.900 is amended by adding a new paragraph to read:

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

22 \* Sec. 10. AS 21.06.130(b) is repealed.