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SENATE BILL NO. 342

IN THE LEGISLATURE OF THE STATE OF ALASKA

EIGHTEENTH LEGISLATURE - SECOND SESSION

BY THE SENATE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 3/3/94
Referred: L&C, JUD

A BILL

FOR AN ACT ENTITLED

"An Act relating to risk based capital for insurers; and providing for an effective date."

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

* **Section 1.** AS 21 is amended by adding a new chapter to read:

CHAPTER 14. RISK BASED CAPITAL FOR INSURERS.

Sec. 21.14.010. RISK BASED CAPITAL REPORTS. (a) A life and health domestic insurer, property and casualty domestic insurer, or other insurer required by the director shall, on or before March 1, submit to the director a report of its risk based capital covering the previous calendar year, if required by the director. The report must be in a form and contain the information required by risk based capital instructions. A domestic insurer required to submit a report under this subsection shall file the report with

(1) the National Association of Insurance Commissioners; and

(2) the insurance regulatory agency in each state in which the insurer

is authorized to transact business, if the insurance regulatory agency has requested the report in writing from the insurer; a report requested under this paragraph shall be delivered

(A) not later than 15 days from the receipt of a request if the report has already been filed with the director; or

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

(b) An insurer's risk based capital shall be determined under the formula contained in the risk based capital instructions.

(c) If a domestic insurer files a report that the director determines to be inaccurate, the director may adjust the report to correct the inaccuracy. The director shall notify the insurer of an adjustment and the reason for it.

(d) If a domestic insurer transacts business only in this state and the insurer's total annual written premium plus monetary consideration received on an annuity is less than $2,000,000, the insurer may apply annually to the director for an exemption from submitting the report required under this section.

Sec. 21.14.020. COMPANY ACTION LEVEL EVENT. If a company action level event occurs, the affected insurer shall submit to the director a plan under AS 21.14.060.

Sec. 21.14.030. REGULATORY ACTION LEVEL EVENT. (a) If a regulatory action level event occurs, the director shall

(1) require the affected insurer to submit a plan or a revised plan under AS 21.14.060; if the level event is caused by the insurer's failure to adhere to a previously filed plan or revised plan that has been accepted by the director, the director may exempt the insurer from this requirement;

(2) perform whatever examination, analysis, or review of the assets, liabilities, and operations of the insurer that the director determines necessary; and

(3) issue a corrective order specifying the action that the insurer is required to take to eliminate the level event.

(b) When conducting a review of the insurer's plan 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. The affected insurer or affiliated person shall pay the reasonable costs of a person retained by the director under this subsection as ordered by the director.

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(b) 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. 21.14.050. MANDATORY CONTROL LEVEL EVENT. (a) If a mandatory control level event occurs, the director shall take the action necessary to place the insurer under regulatory control under AS 21.78.

(b) Notwithstanding (a) of this section, the director may delay taking action under AS 21.78 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. 21.14.060. RISK BASED CAPITAL PLAN. (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 shall be a financial plan that 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 for the insurer's financial results in the current year and 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 projects 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.

(b) An insurer shall submit a plan within 45 days

(1) of an event described in AS 21.14.020 - 21.14.050; or

(2) after the insurer receives notification from the director that the director has rejected the insurer's challenge, if the insurer has challenged an adjusted report under AS 21.14.080.

(c) Not later than 60 days after an insurer has submitted a plan to the director, the director shall notify the insurer if the plan is satisfactory or unsatisfactory. If the director determines the plan to be satisfactory, the insurer shall implement the plan upon receiving notice from the director. If the director determines the plan is unsatisfactory, notification to the insurer must state the reasons for the determination and may propose revisions that, in the judgment of the director, will render the plan satisfactory. Upon receiving notice from the director that a plan is unsatisfactory, the insurer shall prepare a revised plan that may incorporate revisions proposed by the director and submit the revised plan to the director. A revised plan shall be submitted to the director within 45 days after the insurer receives notice that

(1) the original plan is unsatisfactory; or

(2) the director has rejected the insurer's challenge, if the insurer challenges an unsatisfactory determination of the director under AS 21.14.080.

(d) A domestic insurer that files a plan or revised plan with the director shall file a copy of the plan or revised plan with the insurance regulatory agency in each state in which the insurer transacts business, if

(1) the state has a risk based capital provision substantially similar to AS 21.14.090, as determined by the director; and

(2) the insurance regulatory agency of that state has made a request in writing to the insurer.

(e) An insurer shall file the copy of the plan or revised plan required under (d)

of this section (1) within 15 days of the insurer's receipt of a request for the filing from a state; or (2) by the date on which the plan or revised plan is filed in this state under this section, whichever is later.

Sec. 21.14.070. FOREIGN INSURERS. (a) A foreign insurer shall, upon the written request of the director, submit to the director a report described under AS 21.14.010 not later than

(1) 15 days from the receipt by the foreign insurer of a request, if the report has already been filed with the domiciliary state;

(2) 60 days from the receipt by the foreign insurer of a request, if the report is not required to be filed with the domiciliary state; or

(3) the date on which the report is filed with the domiciliary state or 60 days from receipt by the foreign insurer of the request, whichever is earlier, if the report is required to be filed but has not already been filed with the domiciliary state.

(b) Within 15 days after receiving a written request from the director, a foreign insurer shall submit to the director a copy of a plan that is filed with an insurance regulatory agency of another state.

(c) The director may require a foreign insurer to file a plan under AS 21.14.060, if

(1) a company action level event, regulatory action level event, or authorized control level event occurs with respect to a foreign insurer as determined under

(A) the risk based capital statute applicable in the domiciliary state of the insurer; or

(B) this chapter, if a risk based capital statute is not in force in the domiciliary state that is substantially similar to this chapter; or

(2) the insurance regulatory agency of the domiciliary state of the foreign insurer fails to require the foreign insurer to file a plan in the manner specified under that state's risk based capital statute.

(d) If a foreign insurer fails to file a plan with the director as required under this section, the director may order the insurer to stop writing new insurance business in this state.

(e) If a mandatory control level event occurs that involves a foreign insurer, the director may apply to a court under AS 21.78 for the liquidation of property of the foreign insurer that is located in this state, unless a domiciliary receiver has been appointed for the foreign insurer under the rehabilitation and liquidation statute applicable in the foreign insurer's domiciliary state.

Sec. 21.14.080. HEARINGS. An insurer may request a hearing to challenge an action of the director or request a stay of the director's action as provided under AS 21.06.180 - 21.06.240.

Sec. 21.14.090. CONFIDENTIALITY; RESTRICTIONS ON USE. (a) Except as provided in this subsection, a report required under AS 21.14.010, a plan required under AS 21.14.060, the results or report of an examination or analysis of an insurer performed under this chapter, and a corrective order issued by the director are confidential and may not be made public by the director or another person without the prior written consent of the insurer who is the subject of the report, plan, analysis, or order. 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. This subsection does not prohibit the director from releasing a report, plan, analysis, or order to an insurance regulatory agency of another state.

(b) The calculation of risk based capital for an insurer constitutes a regulatory tool that may indicate a need for corrective action and the calculation may not be used by the director as a means to rank insurers. Except as otherwise required in this chapter, a person may not directly or indirectly use information regarding the risk based capital of an insurer. If a materially false statement regarding an insurer's risk based capital or an inappropriate comparison of any other amount to the insurer's risk based capital is published and the insurer is able to demonstrate with substantial proof, as determined by the director, the falsity or inappropriateness of the statement, the insurer may publish an announcement exclusively to rebut the materially false statement or inappropriate comparison.

(c) The director may use the risk based capital instructions, report, adjusted report, plan, and revised plan only for monitoring the solvency of an insurer or for determining the need for corrective action by an insurer. Notwithstanding AS 21.39, documents described in this subsection may not be considered or introduced as evidence in a rate proceeding or used by the director to calculate or derive any elements of an appropriate premium level or rate of return for a line of insurance that an insurer or an affiliate is authorized to write.

Sec. 21.14.100. PENALTY FOR VIOLATION. (a) An insurer shall pay to the division $100 for each day the insurer fails to file a report, and $1,000 for each day the insurer fails to file a plan or revised plan in conformance with the requirements of this chapter.

(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, 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. 21.14.200. DEFINITIONS. In this chapter,

(1) "adjusted report" means a risk based capital report that has been adjusted by the director under AS 21.14.010;

(2) "authorized control level event" means

(A) 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 an insurer's total adjusted capital is greater than or equal to its mandatory control level risk based capital but is less than its authorized control level risk based capital; or

(B) an insurer fails to respond to a corrective order issued under AS 21.14.030 in a manner satisfactory to the director, if

(i) the insurer does not challenge the corrective order as permitted under AS 21.14.080; or

(ii) after a hearing under AS 21.06.180 - 21.06.240, a

challenge to the corrective order by the insurer under AS 21.14.080 is rejected by the director;

(3) "authorized control level risk based capital" means the number determined under the risk based capital formula in the risk based capital instructions;

(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; or

(B) if a life and health insurer, the insurer has total adjusted capital that is greater than or equal to the insurer's company action level risk based capital but is less than 250 percent of the insurer's authorized control level risk based capital and that has a negative trend;

(5) "company action level risk based capital" means 200 percent of an insurer's authorized control level risk based capital;

(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;

(7) "foreign insurer" means a foreign insurer as defined in AS 21.90.900 but excludes an alien insurer;

(8) "life and health insurer"

(A) means an insurer who transacts life insurance as defined in AS 21.12.040 or disability insurance as defined in AS 21.12.050;

(B) does not include a benevolent association under AS 21.72, a fraternal benefit society under AS 21.84, a health maintenance organization under AS 21.86, or a hospital or medical service corporation under AS 21.87;

(9) "mandatory control 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 an insurer's total adjusted capital is less than the insurer's mandatory control level risk based capital;

(10) "mandatory control level risk based capital" means 70 percent of

an insurer's authorized control level risk based capital;

(11) "negative trend" for a life and health insurer means a negative trend over a period of time, as determined by the "trend test calculation" in the risk based capital instructions;

(12) "property and casualty insurer" means an insurer who transacts disability insurance as defined in AS 21.12.050, property insurance as defined in AS 21.12.060, casualty insurance as defined in AS 21.12.070, surety insurance as defined in AS 21.12.080, marine or wet marine and transportation insurance as defined in AS 21.12.090, or mortgage guaranty insurance as defined in AS 21.12.110;

(13) "regulatory action level event" means

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

(B) an insurer fails to file a report required under AS 21.14.010 by its due date, unless the insurer has provided a written explanation for the failure by the due date that is satisfactory to the director and the insurer has cured the failure not later than 10 days after the report is due;

(C) an insurer fails to submit a plan to the director within the time period described in AS 21.14.060;

(D) a notification by the director to an insurer that a plan or revised plan submitted by the insurer is determined by the director to be unsatisfactory, if

(i) the insurer does not challenge the determination of the director; or

(ii) after a hearing under AS 21.06.180 - 21.06.240, a challenge of the director's determination by the insurer under AS 21.14.080 is rejected by the director; or

(E) a notification by the director to an insurer that the insurer has failed to adhere to the insurer's plan or revised plan, if the director

determines that the failure has a substantially adverse effect on the ability of the insurer to accomplish the objectives of the plan or revised plan, if

(i) the insurer does not challenge the determination of the director; or

(ii) after a hearing under AS 21.06.180 - 21.06.240, a challenge of the director's determination by the insurer under AS 21.14.080 is rejected by the director;

(14) "regulatory action level risk based capital" means 150 percent of an insurer's authorized control level risk based capital;

(15) "revised plan" means a risk based capital plan revised by an insurer, after the director has found the original risk based capital plan unsatisfactory under AS 21.14.060;

(16) "risk based capital" means the amount of risk based capital and surplus produced by the application of the risk based capital instructions, or other amount the director determines after examination to be sufficient to support the insurer's asset risk, underwriting risk, and credit risk, including the minimum capital and surplus required under AS 21.09;

(17) "risk based capital instructions" means the most recently approved risk based capital instructions for a life and health insurer or for a property and casualty insurer adopted by the National Association of Insurance Commissioners or modified by order of the director;

(18) "report" means the report of an insurer's risk based capital for a calendar year as required under AS 21.14.010;

(19) "total adjusted capital" means the total of

(A) an insurer's statutory capital and surplus as reported under AS 21.09.200 or 21.09.205; and

(B) any other item required under the risk based capital instructions.

* **Sec. 2.** AS 21.78.040(a) is amended by adding a new paragraph to read:

(15) has reached an authorized control level event under AS 21.14.040 or a mandatory control level event under AS 21.14.050.

*** Sec. 3.** This Act takes effect January 1, 1995.