

HOUSE BILL NO. 164

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-NINTH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Introduced: 3/23/15

Referred:

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 for evaluating insurance
6 holding companies, risk based capital, risk management, and own risk and solvency
7 assessments; clarifying provisions related to risk based capital plans; relating to
8 exemptions by the director of insurance for certain domestic and casualty insurers from
9 risk based capital requirements; relating to insurance holding companies, including
10 filing requirements, divestiture, content of statements, and hearings; relating to
11 registration requirements; relating to transactions within an insurance holding company
12 system or transactions involving a domestic insurer; relating to management and

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

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

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

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

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

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

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

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

25 * **Sec. 2.** AS 21.14.030(b) is repealed and reenacted to read:

26 (b) The director may retain an actuary, investment expert, or other consultant
 27 as may be necessary to review the insurer's risk based capital plan or revised risk
 28 based capital plan, to examine or analyze the assets, liabilities, and operations of the

1 insurer or to formulate a corrective order with respect to the insurer. The affected
 2 insurer or affiliated person shall pay the fees, costs, and expenses of a person retained
 3 by the director under this subsection as ordered by the director.

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

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

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

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

12 * **Sec. 4.** AS 21.14.050(a) is amended to read:

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

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

17 (c) The director may allow a property and casualty insurer that is running off
 18 its business, by writing no new business and only by renewing ongoing business to the
 19 extent required by law or by contract, but continuing to collect premiums and pay
 20 claims as they come due on existing business, to continue the runoff under the
 21 director's supervision without placing the insurer under regulatory control under
 22 AS 21.78.

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

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

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

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

30 (3) projections **of** [FOR] the insurer's financial results **for** [IN] the
 31 current year and **for at least the next four years or, if a health organization, for at**

1 **least the next two years** [IN THE FOUR SUBSEQUENT YEARS AFTER THE
 2 CURRENT YEAR], with and without the proposed corrective action, including
 3 projections of statutory operating income, net income, and capital and surplus; the
 4 projections for new and renewal business must include separate projections for each
 5 major line of business and separately identify each significant income, expense, and
 6 benefit component;

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

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

13 (6) other information required by the director.

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

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

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

20 (b) An insurer shall request a hearing within 15 days after the director's notice
 21 of

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

23 (2) an unsatisfactory risk based capital plan or revised risk based
 24 capital plan;

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

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

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

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

2 (a) Except as provided in AS 21.06.060 and this subsection, a report required
 3 under AS 21.14.010, a plan required under AS 21.14.060, the results or report of an
 4 examination or analysis of an insurer performed under this chapter, and a corrective
 5 order issued by the director are confidential and privileged and may not be made
 6 public by the director or another person. Information in a risk based capital report
 7 that is also set out in a publically available annual statement schedule is not
 8 confidential [WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER
 9 WHO IS THE SUBJECT OF THE REPORT, PLAN, ANALYSIS, OR ORDER. IF
 10 THE DIRECTOR, AFTER GIVING THE INSURER AND ITS AFFILIATES WHO
 11 WOULD BE AFFECTED BY PUBLICATION OF THE INFORMATION NOTICE
 12 AND OPPORTUNITY TO BE HEARD, DETERMINES THAT THE INTERESTS
 13 OF POLICYHOLDERS, SHAREHOLDERS, OR THE PUBLIC WILL BE SERVED
 14 BY THE PUBLICATION OF THE INFORMATION, THE DIRECTOR MAY
 15 PUBLISH ALL OR PART OF THE INFORMATION IN THE MANNER THE
 16 DIRECTOR CONSIDERS APPROPRIATE. THIS SUBSECTION DOES NOT
 17 PROHIBIT THE DIRECTOR FROM RELEASING A REPORT, PLAN,
 18 ANALYSIS, OR ORDER TO AN INSURANCE REGULATORY AGENCY OF
 19 ANOTHER STATE].

20 * **Sec. 10.** AS 21.14.090 is amended by adding a new subsection to read:

21 (d) In addition to the provisions in AS 21.06.060, information that is
 22 confidential and privileged under this section is not subject to discovery and is not
 23 admissible as evidence in a private civil action.

24 * **Sec 11.** AS 21.14.100(b) is amended to read:

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

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

31 (2) under AS 21.34.070, declare a surplus lines insurer ineligible to

1 transact business in this state.

2 * **Sec. 12.** AS 21.14 is amended by adding new sections to read:

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

5 (1) writes direct business only in this state;

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

7 (3) assumes no reinsurance in excess of five percent of direct premium
8 written.

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

11 (1) writes direct business only in this state;

12 (2) assumes no reinsurance in excess of five percent of direct premium
13 written; and

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

16 (B) is a limited health service organization that covers less than
17 2,000 lives.

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

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

24 * **Sec. 13.** AS 21.14.200(4) is amended to read:

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

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

31 (B) if a life and health insurer or a fraternal benefit society,

1 the insurer **or the fraternal benefit society** has total adjusted capital that is
 2 greater than or equal to **its** [THE INSURER'S] company action level risk based
 3 capital but is less than **the product** [250 PERCENT] of the insurer's authorized
 4 control level risk based capital **and 3.0** and that has a negative trend; or

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

12 * **Sec. 14.** AS 21.14.200(5) is amended to read:

13 (5) "company action level risk based capital" means **the product of**
 14 **2.0 and** [200 PERCENT OF] an insurer's authorized control level risk based capital;

15 * **Sec. 15.** AS 21.14.200(6) is amended to read:

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

19 * **Sec. 16.** AS 21.14.200(12) is amended to read:

20 (12) "mandatory control level risk based capital" means **the product**
 21 **of 0.70** [70 PERCENT] of an insurer's authorized control level risk based capital;

22 * **Sec. 17.** AS 21.14.200(13) is amended to read:

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

28 * **Sec. 18.** AS 21.14.200(16) is amended to read:

29 (16) "regulatory action level risk based capital" means **the product of**
 30 **1.5** [150 PERCENT] of an insurer's authorized control level risk based capital;

31 * **Sec. 19.** AS 21.14.200(20) is amended to read:

1 (20) "risk based capital instructions" means risk based capital
 2 instructions **most recently adopted by the National Association of Insurance**
 3 **Commissioners** [FOR A LIFE AND HEALTH INSURER OR FOR A PROPERTY
 4 AND CASUALTY INSURER];

5 * **Sec. 20.** AS 21.14.200 is amended by adding new paragraphs to read:

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

7 (23) "insurer" means a property and casualty insurer, a life and health
 8 insurer, a health organization, and a fraternal benefit society.

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

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

12 (1) **unless the person is an issuer,** make a tender or an offer for or a
 13 request or an invitation for tenders of, or enter into any agreement to exchange
 14 securities for, seek to acquire, or acquire, in the open market or otherwise, any voting
 15 security of a domestic insurer if, after the purchase, the person would, directly or
 16 indirectly or by conversion or by exercise of any right to acquire, be in control of the
 17 insurer; or

18 (2) enter into an agreement to merge with or otherwise to acquire
 19 control of a domestic insurer **or a person controlling a domestic insurer.**

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

21 (c) If a proposal described in (a) of this section is to be made by means of a
 22 registration statement under 15 U.S.C. 77a - 77aa (Securities Act of 1933) or in
 23 circumstances requiring the disclosure of similar information under 15 U.S.C. 78a -
 24 78mm (Securities Exchange Act of 1934), or under a state law requiring similar
 25 registration or disclosure, the person required to file the statement under (b) of this
 26 section may use those documents in furnishing the information called for by that
 27 statement. [HOWEVER, THE DIRECTOR MAY REQUIRE THE PERSON
 28 MAKING THE PROPOSAL TO PRODUCE OTHER INFORMATION THE
 29 DIRECTOR CONSIDERS NECESSARY TO CARRY OUT THE DUTIES OF THE
 30 DIRECTOR UNDER THIS CHAPTER.]

31 * **Sec. 23.** AS 21.22.010(h) is amended to read:

1 (h) In this section, "domestic insurer" includes any person controlling a
 2 domestic insurer unless that person is either directly or through its affiliates primarily
 3 engaged in business other than the business of insurance; in this subsection,
 4 "person" includes a securities broker holding, in the usual and customary
 5 broker's function, more than 20 percent of the voting securities of an insurer or
 6 of a person controlling an insurer.

7 * **Sec. 24.** AS 21.22.010 is amended by adding new subsections to read:

8 (i) A controlling person of a domestic insurer seeking to divest its controlling
 9 interest in the domestic insurer, in any manner, shall file with the director, with a copy
 10 to the insurer, confidential notice of its proposed divestiture at least 30 days before the
 11 cessation of control. The director shall determine those instances in which a party
 12 seeking to divest or to acquire a controlling interest in an insurer will be required to
 13 file for and obtain approval of the transaction. The information is confidential until the
 14 conclusion of the transaction unless the director, in the director's discretion,
 15 determines that confidential treatment will interfere with enforcement of this section.
 16 If a statement referred to in (b) of this section is otherwise filed, this subsection will
 17 not apply.

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

22 * **Sec. 25.** AS 21.22.020 is amended by adding new subsections to read:

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

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

27 (2) an acknowledgment that the person and all subsidiaries within its
 28 control in the insurance holding company system will provide information to the
 29 director upon request as necessary to evaluate enterprise risk to the insurer.

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

1 * **Sec. 26.** AS 21.22.030(b) is repealed and reenacted:

2 (b) The public hearing referred to in (a) of this section must be held within 60
3 days after the statement required by AS 21.22.010 is filed and determined to be
4 complete by the director. The director shall give at least 20 days' notice of the hearing
5 to the person filing the statement. The person filing the statement shall give at least
6 seven days' notice of the hearing to the insurer and to other persons as may be
7 designated by the director. The director shall issue a decision within the 60-day period
8 preceding the effective date of the proposed transaction. The procedure in
9 AS 21.06.210 will apply to a public hearing under this section.

10 * **Sec. 27.** AS 21.22.030(c) is repealed and reenacted to read:

11 (c) In evaluating the effect of a merger or other acquisition under (a)(2) of this
12 section, the

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

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

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

19 * **Sec. 28.** AS 21.22.030 is amended by adding a new subsection to read:

20 (e) If the proposed acquisition of control will require the approval of more
21 than one insurance regulator, the public hearing referred to under (a) and (b) of this
22 section may be held on a consolidated basis upon request of the person filing the
23 statement referred to in AS 21.22.010. That person shall file the statement referred to
24 in AS 21.22.010 with the National Association of Insurance Commissioners within
25 five days after making the request for a public hearing. The director may opt out of a
26 consolidated hearing and shall provide notice to the applicant of the opt-out within 10
27 days after receipt of the statement referred to in AS 21.22.010. A hearing conducted
28 on a consolidated basis must be public and must be held within the United States
29 before the insurance regulators of the states in which the insurers are domiciled. The
30 director may attend the hearing in person or by telecommunication.

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

1 (a) **Except as provided in (c) of this section, an** [EVERY] insurer that is
 2 authorized to do business in this state and that is a member of an insurance holding
 3 company system shall register with the director. An insurer that is subject to
 4 registration under this section shall register **not later than** [WITHIN 60 DAYS
 5 AFTER JANUARY 1, 1977 OR] 15 days after it becomes subject to registration [,
 6 WHICHEVER IS LATER], unless the director for good cause shown extends the time
 7 for registration; if the time is extended, the insurer shall register within the extended
 8 time.

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

10 (b) **An** [EVERY] insurer subject to registration shall file a registration
 11 statement, on a form provided by the director, that must contain current information
 12 about

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

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

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

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

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

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

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

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

30 (F) reinsurance agreements;

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

1 (H) consolidated tax allocation agreements; and

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

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

8 (6) if requested by the director, the financial statements of or
9 within an insurance holding company system, including all affiliates or the most
10 recently filed parent corporation financial statements that have been filed with
11 the United States Securities and Exchange Commission; financial statements may
12 include annual audited financial statements filed with the United States Securities
13 and Exchange Commission under the Securities Act of 1933, as amended, or the
14 Securities Exchange Act of 1934, as amended;

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

20 (8) other information required by the director by rule or
21 regulation.

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

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

1 STATE OF ITS] domicile.

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

3 (e) Each registered insurer shall keep current the information required to be
4 disclosed in its registration statement by reporting all material changes or additions on
5 amendment forms provided by the director within 30 days after the end of the month
6 in which it learns of each change or addition; however, subject to AS 21.22.100, each
7 registered insurer shall report all dividends and other distributions to shareholders
8 within **15** [TWO] business days following their declaration.

9 * **Sec. 33.** AS 21.22.060(j) is amended to read:

10 (j) A person may file with the director a disclaimer of affiliation with an
11 authorized insurer or the disclaimer may be filed by the insurer or a member of an
12 insurance holding company system. The disclaimer must fully disclose all material
13 relationships and bases for affiliation between that person and that insurer as well as
14 the basis for disclaiming the affiliation. **A disclaimer of affiliation will be considered**
15 **granted unless the director, within 30 days following receipt of a complete**
16 **disclaimer, notifies the disclaiming party that the disclaimer is disallowed. If**
17 **disallowed, the disclaiming party may request a hearing under AS 21.06.180**
18 [AFTER A DISCLAIMER HAS BEEN FILED, THE INSURER IS RELIEVED OF
19 ANY DUTY TO REGISTER OR REPORT UNDER THIS SECTION THAT MAY
20 ARISE OUT OF THE INSURER'S RELATIONSHIP WITH THE PERSON UNTIL
21 THE DIRECTOR DISALLOWS THE DISCLAIMER. THE DIRECTOR SHALL
22 DISALLOW A DISCLAIMER ONLY AFTER FURNISHING ALL PARTIES IN
23 INTEREST WITH NOTICE AND AN OPPORTUNITY TO BE HEARD AND
24 AFTER MAKING SPECIFIC FINDINGS OF FACT TO SUPPORT THE
25 DISALLOWANCE].

26 * **Sec. 34.** AS 21.22.060 is amended by adding new subsections to read:

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

31 (n) The ultimate controlling person of an insurer subject registration shall file

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

7 * **Sec. 35.** AS 21.22.065(d) is repealed and reenacted to read:

8 (d) The director may enter an order under (b) of this section regarding an
 9 acquisition if the insurer fails to file adequate information in compliance with (c) of
 10 this section or if there is substantial evidence that the acquisition may substantially
 11 lessen competition, create a monopoly in a line of insurance in this state, or
 12 significantly increase an insurer's market concentration. In determining whether an
 13 acquisition violates the competitive standards in this subsection, the director shall
 14 consider the following:

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

18 (A) the market is highly concentrated and the involved insurers
 19 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;

24 (B) the market is not highly concentrated and the involved
 25 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.

31 (2) an acquisition covered under (a) of this section involving two or

1 more insurers competing in the same market is prima facie evidence of violation of the
2 competitive standard if

3 (A) there is a significant trend toward increased concentration
4 in the market, which occurs when the aggregate market share of any grouping
5 of the largest insurers in the market, from the two largest to the eighth largest,
6 has increased by seven percent or more of the market over a period of time
7 extending from any base year five to 10 years before the acquisition up to the
8 date of the acquisition;

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

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

13 * **Sec. 36.** AS 21.22.080 is amended to read:

14 **Sec. 21.22.080. Transactions with affiliates.** Material transactions by
15 registered insurers with their affiliates are subject to the following standards:

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

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

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

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

25 (5) the insurer's surplus as regards policyholders following any
26 dividends or distributions to shareholder affiliates or performance under a material
27 transaction with an affiliate shall be reasonable in relation to the insurer's outstanding
28 liabilities and adequate to its financial needs; **and**

29 **(6) agreements for cost sharing services and management must**
30 **include the provisions as are required by regulation adopted by the director.**

31 * **Sec. 37.** AS 21.22.085(a) is amended to read:

1 (a) **Transactions** [THE FOLLOWING TRANSACTIONS] involving a
 2 domestic insurer and a person in its **insurance** holding company system, **including**
 3 **amendments or modifications of affiliate agreements previously filed under**
 4 **AS 21.22.080, which are subject to a materiality standard in (1) - (7) of this**
 5 **subsection**, may not be entered into unless the insurer has notified the director in
 6 writing of the insurer's intention to enter into the transaction at least 30 days before the
 7 transaction, or a shorter period if allowed by the director, and the director has not
 8 disapproved the transaction within the required notice period. **The notice of**
 9 **amendments or modifications must include the reasons for the change and the**
 10 **financial impact on the domestic insurer. A domestic insurer shall provide to the**
 11 **director informal notice, within 30 days after a termination of a previously filed**
 12 **agreement, for determination of the type of filing required, if any. The**
 13 **requirements in this section apply to the following transactions:**

14 (1) a sale, purchase, exchange, loan or extension of credit,
 15 [GUARANTEE,] or investment, provided the transaction is equal to or exceeds

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

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

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

31 (A) with respect to insurers other than life insurers, the lesser of

1 three percent of the insurer's admitted assets or 25 percent of surplus that
 2 pertains to policyholder surplus, **as of the 31st day of December of the**
 3 **calendar year in which the transaction took place** [EACH CALCULATED
 4 UNDER AS 21.21.020(d)]; or

5 (B) with respect to life insurers, three percent of the insurer's
 6 admitted assets as of the 31st day of December of the calendar year in which
 7 the transaction took place, calculated under AS 21.21.020(d);

8 (3) a reinsurance agreement or modification, **including**

9 **(A) a reinsurance pooling agreement;**

10 **(B) an agreement in which the reinsurance premium or a**
 11 **change in the insurer's liabilities, or the projected reinsurance premium**
 12 **or a change in the insurer's liabilities in any of the three years after**
 13 **entering into the agreement or modification, equals or exceeds five percent**
 14 **of the insurer's surplus that pertains to policyholders as of the 31st day of**
 15 **December of the calendar year in which the transaction took place,**
 16 **including those agreements that may require as consideration a transfer of**
 17 **assets from an insurer to a nonaffiliate, if an agreement or understanding**
 18 **exists between the insurer and nonaffiliate that a portion of the assets will**
 19 **be transferred to one or more affiliates of the insurer** [IN WHICH THE
 20 REINSURANCE PREMIUM OR CHANGE IN THE INSURER'S
 21 LIABILITIES EQUALS OR EXCEEDS FIVE PERCENT OF THE
 22 INSURER'S SURPLUS THAT PERTAINS TO POLICYHOLDER
 23 SURPLUS, CALCULATED UNDER AS 21.21.020(D), INCLUDING AN
 24 AGREEMENT THAT MAY REQUIRE AS CONSIDERATION THE
 25 TRANSFER OF ASSETS FROM AN INSURER TO A NONAFFILIATE IF
 26 AN AGREEMENT OR UNDERSTANDING EXISTS BETWEEN THE
 27 INSURER AND NONAFFILIATE THAT A PORTION OF THE ASSETS
 28 WILL BE TRANSFERRED TO AN AFFILIATE OF THE INSURER];

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

31 (5) a material transaction specified by regulation that the director

1 determines may adversely affect the interests of the insurer's policyholders;

2 (6) a guarantee if made by a domestic insurer; provided, however,
 3 that a guarantee that is quantifiable as to amount is not subject to the notice
 4 requirements of this subsection unless it exceeds the lesser of one-half of one
 5 percent of the insurer's admitted assets or 10 percent of surplus that pertains to
 6 policyholders as of the 31st day of December of the calendar year in which the
 7 transaction took place; a guarantee that is not quantifiable as to amount is
 8 subject to the notice requirements of this subsection; and

9 (7) a direct or an indirect acquisition or investment in a person
 10 that controls an insurer or in an affiliate of the insurer in an amount that,
 11 together with the person's present holdings in such investment, exceeds two and
 12 one-half percent of the insurer's surplus to policyholders; direct or indirect
 13 acquisitions or investments in subsidiaries authorized under this title or
 14 regulations adopted by the director or in nonsubsidiary insurance affiliates that
 15 are subject to the provisions of this chapter are exempt from this requirement.

16 * **Sec. 38.** AS 21.22.105 is amended by adding new subsections to read:

17 (c) Not less than one-third of the directors of a domestic insurer and not less
 18 than one-third of the members of each committee of the board of directors of any
 19 domestic insurer may be persons who are not officers or employees of the insurer or of
 20 any entity controlling, controlled by, or under common control with the insurer and
 21 who are not beneficial owners of a controlling interest in the voting stock of the
 22 insurer or entity. At least one person must be included in a quorum for the transaction
 23 of business at any meeting of the board of directors or a committee thereof.

24 (d) The board of directors of a domestic insurer shall establish one or more
 25 committees comprised solely of directors who are not officers or employees of the
 26 insurer or of any entity controlling, controlled by, or under common control with the
 27 insurer and who are not beneficial owners of a controlling interest in the voting stock
 28 of the insurer or the entity. The committee or committees shall have responsibility for
 29 nominating candidates to be a director for election by shareholders or policyholders,
 30 evaluating the performance of officers deemed to be principal officers of the insurer,
 31 and recommending to the board of directors the selection and compensation of the

1 principal officers.

2 (e) The provisions of (c) and (d) of this section do not apply to a domestic
3 insurer if a person controlling the insurer has a board of directors and committees
4 thereof that meet the requirements of (c) and (d) of this section with respect to a
5 controlling person. In this section, "person" may include an insurer, a mutual
6 insurance holding company, or a publicly held corporation.

7 (f) An insurer may make application to the director for a waiver from the
8 requirements of this section, if the insurer's annual direct written and assumed
9 premium, excluding premiums reinsured with the Federal Crop Insurance Corporation
10 and the National Flood Insurance Program, is less than \$300,000,000. An insurer may
11 make application to the director for a waiver from the requirements of this section
12 based on an insurer's unique circumstances. The director may consider various factors,
13 including the type of business entity, volume of business written, availability of
14 qualified board members, or the ownership or organizational structure of the entity.

15 * **Sec. 39.** AS 21.22.110(a) is repealed and reenacted to read:

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

22 * **Sec. 40.** AS 21.22.110(b) is repealed and reenacted to read:

23 (b) The director may

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

27 (2) order an insurer registered under AS 21.22.060 to produce
28 information not in the possession of the insurer if the insurer can obtain access to the
29 information under contractual relationships, statutory obligations, or other method; in
30 the event the insurer cannot obtain the information requested by the director, the
31 insurer shall provide the director a detailed explanation of the reason that the insurer

1 cannot obtain the information and the identity of the holder of information; if it
 2 appears to the director that the detailed explanation is without merit, the director may
 3 require, after notice and hearing, the insurer to pay a penalty of \$250 for each day's
 4 delay in providing the requested information, or may suspend or revoke the insurer's
 5 license;

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

9 * **Sec. 41.** AS 21.22 is amended by adding a new section to read:

10 **Sec. AS 21.22.115. Supervisory colleges.** (a) With respect to an insurer
 11 registered under AS 21.22.060, and in accordance with (c) of this section, the director
 12 may participate in a supervisory college for a domestic insurer that is part of an
 13 insurance holding company system with international operations to determine the
 14 insurer's compliance with this chapter. The director may

15 (1) initiate the establishment of a supervisory college;

16 (2) clarify the membership and participation of other supervisors in the
 17 supervisory college;

18 (3) clarify the functions of the supervisory college and the role of other
 19 regulators, including the establishment of a group-wide supervisor;

20 (4) coordinate the ongoing activities of the supervisory college,
 21 including planning meetings, supervisory activities, and processes for information
 22 sharing; and

23 (5) establish a crisis management plan.

24 (b) Each registered insurer subject to this section shall be liable for and shall
 25 pay the reasonable expenses of the director's participation in a supervisory college in
 26 accordance with (c) of this section, including reasonable travel expenses. Under this
 27 section, a supervisory college may be convened as either a temporary or permanent
 28 forum for communication and cooperation between the regulators charged with the
 29 supervision of the insurer or its affiliates, and the director may establish a regular
 30 assessment to the insurer for the payment of these expenses.

31 (c) To assess the business strategy, financial position, legal and regulatory

1 position, risk exposure, risk management, and governance processes, and as part of the
 2 examination of individual insurers in accordance with AS 21.22.110, the director may
 3 participate in a supervisory college with other regulators charged with supervision of
 4 the insurer or its affiliates, including other state, federal, and international regulatory
 5 agencies. The director may enter into agreements in accordance under AS 21.06.060
 6 and AS 21.22.120 to share confidential information between the director and
 7 regulatory agencies or other members of the supervisory college. Nothing in this
 8 section delegates to the supervisory college the director's authority to regulate or
 9 supervise an insurer or its affiliates under this title.

10 * **Sec. 42.** AS 21.22.120 is amended to read:

11 **Sec. 21.22.120. Confidentiality.** All information, documents, **holding**
 12 **company analyses, insurer profile summaries,** and copies of the information and
 13 documents obtained by or disclosed to the director or any other person in the course of
 14 an examination or investigation under AS 21.22.110 and all information reported
 15 under **AS 21.22.020(b), 21.22.060, and 21.22.085 - 21.22.105,** [AS 21.22.060] and all
 16 preacquisition notification information received under AS 21.22.065 shall be given
 17 confidential **and privileged** treatment **under AS 21.06.060 and is not subject to**
 18 **discovery or admissible in evidence in a private civil action** [AND MAY NOT BE
 19 MADE PUBLIC BY THE DIRECTOR OR ANY OTHER PERSON, EXCEPT TO
 20 INSURANCE AGENCIES OF OTHER STATES WITHOUT THE PRIOR
 21 WRITTEN CONSENT OF THE INSURER TO WHICH IT PERTAINS]. However, if
 22 the director, after giving the insurer and its affiliates who would be affected by
 23 publication of the information notice and opportunity to be heard, determines that the
 24 interests of policyholders, shareholders, or the public will be served by the publication
 25 of the information, the director may publish all or part of the information in the
 26 manner the director considers appropriate.

27 * **Sec. 43.** AS 21.22.120 is amended by adding a new subsection to read:

28 (b) The director may

29 (1) share documents, materials, or other information, including the
 30 confidential and privileged information under (a) of this section, with state, federal,
 31 and international regulatory agencies, with the National Association of Insurance

1 Commissioners and its affiliates and subsidiaries, and with state, federal, and
2 international law enforcement authorities, including members of a supervisory college
3 described in AS 21.22.115, provided that the recipient agrees in writing to maintain
4 the confidentiality of the document, material, or other information and has verified in
5 writing the legal authority to maintain confidentiality;

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

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

13 (A) specify procedures and protocols regarding the
14 confidentiality and security of information shared with the National
15 Association of Insurance Commissioners and its affiliates and subsidiaries
16 under this chapter, including procedures and protocols for sharing by the
17 National Association of Insurance Commissioners with state, federal, or
18 international regulators;

19 (B) specify that ownership of information shared with the
20 National Association of Insurance Commissioners and its affiliates and
21 subsidiaries under this chapter remains with the director and National
22 Association of Insurance Commissioners' use of the information is subject to
23 the direction of the director;

24 (C) require prompt notice to be given to an insurer whose
25 confidential information in possession of the National Association of Insurance
26 Commissioners under this chapter is subject to a request or subpoena to the
27 National Association of Insurance Commissioners for disclosure or production;
28 and

29 (D) require the National Association of Insurance
30 Commissioners and its affiliates and subsidiaries to consent to intervention by
31 an insurer in a judicial or administrative action in which the National

1 Association of Insurance Commissioners and affiliates and subsidiaries may be
2 required to disclose confidential information about the insurer shared with the
3 National Association of Insurance Commissioners and its affiliates and
4 subsidiaries under this chapter.

5 * **Sec. 44.** AS 21.22.170 is repealed and reenacted to read:

6 **Sec. 21.22.170. Civil penalties for violations.** (a) An insurer failing, without
7 just cause, to file a registration statement required under this chapter shall be required,
8 after notice and hearing under AS 21.06.170 - 21.06.240, to pay a \$200 fine for each
9 day the insurer fails to file the registration. The maximum penalty under this section is
10 \$50,000. The director may reduce the penalty if the insurer demonstrates to the
11 director that the imposition of the penalty would be a financial hardship to the insurer.

12 (b) A director or officer of an insurance holding company system who
13 knowingly violates, participates in, or assents to, or who knowingly permits an officer
14 or agent of an insurer to engage in transactions or make investments that have not been
15 properly reported or submitted under AS 21.22.060, 21.22.085, or 21.22.100, or that
16 violate this chapter, shall pay, in the director's or officer's individual capacity, a fine of
17 not more than \$50,000 for each violation, after notice and hearing under AS 21.06.170
18 - 21.06.240. In determining the amount of the fine, the director shall take into account
19 the appropriateness of the fine with respect to the gravity of the violation, the history
20 of previous violations, and other matters as justice may require.

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

29 (d) If the director has reason to believe that a person has committed a violation
30 of AS 21.22.010 or 21.22.020 that prevents the full understanding of the enterprise
31 risk to an insurer by its affiliates or by the insurance holding company system, the

1 violation may serve as an independent basis for disapproving dividends or
 2 distributions and for placing the insurer under an order of rehabilitation in accordance
 3 with AS 21.78.090.

4 * **Sec. 45.** AS 21.22 is amended by adding a new section to read:

5 **Sec. 21.22.175. Criminal penalties.** (a) An insurer or a director, officer,
 6 employee, or agent of an insurer who commits a wilful violation of this chapter is
 7 guilty of a class C felony.

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

12 (c) An insurer may not pay a fine imposed by a court on a director, officer,
 13 employee, or agent that is sentenced under (a) or (b) of this section. The fine must be
 14 paid by the officer, director, employee, or agent in the officer's, director's, or
 15 employee's individual capacity.

16 * **Sec. 46.** AS 21.22.200(10) is amended to read:

17 (10) "person" means an individual, a corporation, a limited liability
 18 company, a partnership, an association, a joint stock company, a trust, an
 19 unincorporated organization, any similar entity or any combination of these entities
 20 acting in concert, but does not include **a joint venture partnership exclusively**
 21 **engaged in owning, managing, leasing, or developing real or tangible personal**
 22 **property, or** a securities broker performing **not** [NO] more than the usual and
 23 customary broker's function;

24 * **Sec. 47.** AS 21.22.200 is amended by adding new paragraphs to read:

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

1 director;

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

6 * **Sec 48.** AS 21 is amended by adding a new chapter to read:

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

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

13 **Sec. 21.23.020. Own risk and solvency assessment requirement.** Unless
14 exempted under AS 21.23.040, an insurer or the insurance group of which the insurer
15 is a member shall regularly conduct an own risk and solvency assessment consistent
16 with the own risk and solvency assessment guidance manual. The assessment shall be
17 conducted annually, but also at any time when there are significant changes to the risk
18 profile of the insurer or the insurance group of which the insurer is a member.

19 **Sec. 21.23.030. Own risk and solvency assessment summary report.** (a) If
20 requested by the director, an insurer shall submit an own risk and solvency assessment
21 summary report or any combination of reports that together contain the information
22 described in the own risk and solvency assessment guidance manual that is applicable
23 to the insurer or the insurance group of which it is a member. The director's request for
24 a report from an insurer is limited to one request a year. The report must be submitted
25 to the director within 30 days of the request, unless the insurer requests an extension
26 of time in writing and the director grants the request. If an insurer is a member of an
27 insurance group, the insurer shall submit the report required by this subsection more
28 than annually if the director is the lead state regulator of the insurance group as
29 determined by the procedures in the Financial Analysis Handbook adopted by the
30 National Association of Insurance Commissioners.

31 (b) For a report submitted under this section, an insurer or insurance group's

1 chief risk officer or other executive having responsibility for the oversight of the
2 insurer's enterprise risk management process shall sign the report and attest to the best
3 of the officer's or executive's belief and knowledge that the insurer applies the
4 enterprise risk management process described in the report and that a copy of the
5 report has been provided to the insurer's board of directors or the appropriate
6 committee of the board.

7 (c) An insurer may comply with (a) of this section by providing the most
8 recent and substantially similar report or reports provided by the insurer or another
9 member of the insurance group of which the insurer is a member to the insurance
10 regulator of another state or a foreign jurisdiction, if that report provides information
11 that is comparable to the information described in the own risk and solvency
12 assessment guidance manual. A report in a language other than English must be
13 accompanied by a translation of that report into the English language.

14 **Sec 21.23.040. Exemption.** (a) An insurer is exempt from the requirements of
15 this chapter, if

16 (1) the insurer has annual direct written and unaffiliated assumed
17 premium, including international direct and assumed premium but excluding
18 premiums reinsured with the Federal Crop Insurance Corporation and the National
19 Flood Insurance Program, less than \$500,000,000; and

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

24 (b) If an insurer qualifies for exemption under (a)(1) of this section, but the
25 insurance group of which the insurer is a member does not qualify for exemption
26 under (a)(2) of this section, then the own risk and solvency assessment summary
27 report required under AS 21.23.030 must include every insurer within the insurance
28 group. This requirement may be satisfied by the submission of more than one own risk
29 and solvency assessment summary report for a combination of insurers provided the
30 combination of reports includes every insurer within the insurance group.

31 (c) If an insurer does not qualify for exemption under to (a)(1) of this section,

1 but the insurance group of which it is a member qualifies for exemption under (a)(2)
 2 of this section, then the only own risk and solvency assessment summary report that
 3 may be required under AS 21.23.030 is the report applicable to that insurer.

4 (d) An insurer that does not qualify for exemption under (a) of this section
 5 may apply to the director for a waiver from the requirements of this chapter based on
 6 unique circumstances. In deciding whether to grant the insurer's request for a waiver,
 7 the director may consider the type and volume of business written, ownership and
 8 organizational structure, and any other factor that the director considers relevant to the
 9 insurer or insurance group of which the insurer is a member. If the insurer is part of an
 10 insurance group with insurers domiciled in more than one state, the director shall
 11 coordinate with the lead state regulator and with the other domiciliary regulators in
 12 considering whether to grant the insurer's request for a waiver.

13 (e) Notwithstanding the exemptions stated in this section, the director may
 14 require that an insurer maintain a risk management framework, conduct an own risk
 15 and solvency assessment, and file an own risk and solvency assessment summary
 16 report

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

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

25 (f) If an insurer that qualified for exemption under (a) of this section no longer
 26 qualifies for that exemption due to changes in premium as reflected in the insurer's
 27 most recent annual statement or in the most recent annual statements of the insurers
 28 within the insurance group of which the insurer is a member, the insurer shall have
 29 one year following the year the threshold in (a) of this section is exceeded to comply
 30 with the requirements of this chapter.

31 **Sec 21.23.050. Contents of own risk and solvency assessment summary**

1 **report.** (a) The own risk and solvency assessment summary report under
2 AS 21.22.030 must be prepared in compliance with the own risk and solvency
3 assessment guidance manual, subject to the requirements of (b) of this section. The
4 insurer shall maintain documentation and supporting information relating to the
5 assessment and make them available on examination or on request of the director.

6 (b) The director's review of the report and additional requests for information
7 shall be made using procedures currently used in the analysis and examination of
8 multistate or global insurers and insurance groups.

9 **Sec 21.23.060. Confidentiality.** Documents, materials, or other information,
10 including the own risk and solvency assessment summary report, that are obtained by,
11 created by, or disclosed to the director or another person under this chapter are
12 confidential and privileged and are considered trade secrets and proprietary business
13 information subject to AS 21.06.060 and AS 21.22.120. A third-party consultant is
14 subject to the information sharing requirements of AS 21.22.120(b).

15 **Sec 21.23.070. Penalties.** An insurer shall pay to the director \$1,000 for each
16 day the insurer fails to file the report within the time required in AS 21.23.030(a), not
17 to exceed \$365,000. The director may reduce the penalty if the insurer demonstrates to
18 the director that the imposition of the penalty is a financial hardship to the insurer.

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

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

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

24 (2) "insurer" has the meaning given in AS 21.97.900, except that it
25 shall not include agencies, authorities, or instrumentalities of the United States, its
26 possessions and territories, the Commonwealth of Puerto Rico, the District of
27 Columbia, or a state or political subdivision of a state;

28 (3) "own risk and solvency assessment" means a confidential internal
29 assessment, appropriate to the nature, scale, and complexity of an insurer or insurance
30 group, conducted by that insurer or insurance group of the material and relevant risks
31 associated with the insurer or insurance group's current business plan and the

1 sufficiency of capital resources to support those risks;

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

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

8 (6) "risk management framework" means a set of internal policies or
9 procedures that address an insurer's or insurance group's risk culture and governance,
10 risk identification and prioritization, risk appetite, tolerance and limits, risk
11 management controls, and risk reporting and communication as described in the
12 National Association of Insurance Commissioners Own Risk and Solvency
13 Assessment Guidance Manual.

14 * **Sec. 49.** AS 21.27.570(a) is amended to read:

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

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

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

27 (3) contains the following minimum provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (O) the controlling insurance producer may negotiate but may
30 not bind reinsurance on behalf of the controlled insurer on insurance that the
31 controlling insurance producer places with the controlled insurer, except that

1 the controlling insurance producer may bind facultative reinsurance contracts
 2 under obligatory agreements if the contract with the controlled insurer contains
 3 reinsurance underwriting guidelines including, for both reinsurance assumed
 4 and ceded, a list of reinsurers with which automatic agreements are in effect,
 5 the coverage and amounts or percentages that may be reinsured, and
 6 commission schedules; and

7 (4) provides that the controlled insurer has an audit committee
 8 composed of independent members of the board of directors that meet at least annually
 9 with management, the insurer's independent certified public accountants, and an
 10 independent actuary specialist acceptable to the director to review the adequacy of the
 11 insurer's reserves for losses incurred and outstanding.

12 * **Sec. 50.** 21.27.570 is amended by adding new subsections to read:

13 (i) Except as provided in this section, AS 21.22 applies to all parties within a
 14 holding company system subject to this section.

15 (j) A controlling insurance producer may not be appointed as a broker by a
 16 client in this state or relative to a subject resident, located, or to be performed in this
 17 state unless, in a form acceptable to the director, the controlling insurance producer
 18 has disclosed in writing to the client the relationship between the controlling insurance
 19 producer and controlled insurer, each client has acknowledged receipt of the
 20 disclosure, and a copy of the acknowledged disclosure is maintained by the controlling
 21 insurance producer in its records. The records shall be available for inspection by the
 22 director.

23 * **Sec. 51.** 21.27.900(8) is amended to read:

24 (8) "controlled insurer" means an admitted insurer **domiciled in this**
 25 **state or domiciled in a state that is not an accredited state having a law**
 26 **substantially similar to AS 21.27.570** that is controlled, directly or indirectly, by an
 27 insurance producer **and includes a risk retention group as defined in 15 U.S.C.**
 28 **3901, but not a captive insurer;**

29 * **Sec. 51.** 21.27.900 is amended by adding new paragraphs to read:

30 (32) "accredited state" means a state in which the insurance department
 31 or regulatory agency has qualified as meeting the minimum financial regulatory

1 standards adopted and established by the National Association of Insurance
2 Commissioners;

3 (33) "captive insurer" means an insurer owned by another organization
4 whose exclusive purpose is to insure risks of the parent organization and affiliated
5 companies or, in the case of groups and associations, an insurance organization owned
6 by the insureds whose exclusive purpose is to insure risks of member organizations
7 and group members and their affiliates.

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

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

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

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