

CS FOR HOUSE BILL NO. 310(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 2/23/00

Referred: Judiciary

Sponsor(s): HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to the Alaska Insurance Guaranty Association."

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

3 * Section 1. AS 21.80.010 is amended to read:

4 Sec. 21.80.010. Purposes [PURPOSE]. The **purposes** [PURPOSE] of this
5 chapter are [IS] to provide a mechanism for the payment of covered claims under
6 certain insurance policies to avoid excessive delay in payment and, to the extent
7 provided in this chapter, to minimize [AVOID] financial loss to claimants or
8 policyholders because of the insolvency of an insurer, [TO ASSIST IN THE
9 DETECTION AND PREVENTION OF INSURER INSOLVENCIES,] and to provide
10 an association to assess the cost of this protection among insurers.

11 * Sec. 2. AS 21.80.020 is repealed and reenacted to read:

12 Sec. 21.80.020. Applicability. This chapter applies to all kinds of direct
13 insurance written by an admitted insurer, except that this chapter does not apply to the
14 following:

15 (1) life, annuity, health, or disability insurance;

(2) residual value, mortgage guaranty, or financial guaranty of other forms of insurance offering protection against investment risks;

(3) bonding obligations, including fidelity or surety bonds;

(4) insurance protecting the interests of a creditor arising out of a creditor-debtor transaction, including credit insurance, vendors' single interest insurance, or collateral protection insurance;

(5) insurance of warranties or service contracts, including insurance providing for

(A) the repair, replacement, or service of goods or property;

(B) indemnification for repair, replacement, or service of goods or property; or

(C) reimbursement for liability incurred by a person issuing a warranty or service contract;

(6) title insurance;

(7) a transaction or combination of transactions between a person, including the person's affiliates, and an insurer, including the insurer's affiliates, that involves the transfer of investment or credit risk unaccompanied by the transfer of insurance risk;

(8) insurance provided by or guaranteed by a government;

(9) a risk retention group formed under 15 U.S.C. 3901 - 3906 (Liability Risk Retention Act);

(10) insurance written on a retroactive basis to cover known losses for which a claim has already been made and the claim is known to the insurer at the time the insurance is bound.

* **Sec. 3.** AS 21.80.030 is amended to read:

Sec. 21.80.030. Construction. This chapter shall be [LIBERALLY] construed to effect the purposes under AS 21.80.010, which constitute an aid and guide to interpretation.

* **Sec. 4.** AS 21.80.040 is amended to read:

Sec. 21.80.040. Creation of association. There is created a nonprofit incorporated legal entity to be known as the Alaska Insurance Guaranty Association.

1 All insurers defined as member insurers in AS 21.80.180 shall be and remain members
 2 of the association as a condition of their authority to transact insurance in this state.
 3 The association shall perform its functions under a plan of operation established and
 4 approved under AS 21.80.070 and shall exercise its powers through a board of
 5 **governors** [DIRECTORS] established under AS 21.80.050. For purposes of
 6 administration and assessment, the association shall be divided into three separate
 7 accounts: the workers' compensation insurance account; the automobile insurance
 8 account; and the account for all other insurance to which this chapter applies.

9 * **Sec. 5.** AS 21.80.040 is amended by adding a new subsection to read:

10 (b) A member insurer ceases to be a member on the day following the
 11 termination or expiration of the member insurer's license to transact the kinds of
 12 insurance to which this chapter applies; however, the insurer remains liable as a
 13 member insurer for any and all obligations, including obligations for assessments
 14 levied before the termination or expiration of the member insurer's license and
 15 assessments levied after the termination or expiration with respect to an insurer that
 16 became an insolvent insurer before the termination or expiration of the insurer's
 17 license.

18 * **Sec. 6.** AS 21.80.050 is amended to read:

19 **Sec. 21.80.050. Board of governors [DIRECTORS].** (a) The board of
 20 **governors** [DIRECTORS] of the association consists of not fewer than five nor more
 21 than nine **members as specified in and** [PERSONS] serving terms as established in
 22 the plan of operation. **The director may appoint two individuals as members of the**
 23 **board to represent the public.** The **insurer** members of the board shall be selected
 24 by member insurers, subject to the approval of the director. **A vacancy in a board**
 25 **membership held by an insurer member** [VACANCIES OF THE BOARD] shall be
 26 filled for the remaining period of the term **by a majority vote of the remaining**
 27 **board members, subject to the approval of the director** [IN THE SAME MANNER
 28 AS INITIAL APPOINTMENTS]. If **an insurer** [A] member is not selected to fill a
 29 vacancy on the board of **governors** [DIRECTORS] within 90 days of the vacancy, the
 30 director may appoint a member for the remaining period of the term. **A vacancy in**
 31 **a board membership held by a representative of the public may be filled by the**

director. A board member who represents the public may not be an officer, director, or employee of an insurer and may not be engaged in the business of insurance.

(b) In approving member insurer selections to the board, the director shall consider among other things whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of **governors** [DIRECTORS].

* **Sec. 7.** AS 21.80.060 is amended to read:

Sec. 21.80.060. Powers and duties of the association. (a) The association

(1) is obligated to pay [THE EXTENT OF THE] covered claims existing before the order of liquidation [DETERMINATION OF INSOLVENCY] and arising within 30 days after the order of liquidation [DETERMINATION OF INSOLVENCY BY A COURT OF COMPETENT JURISDICTION IF THE INSOLVENT INSURER OR RECEIVER CEASES TO PAY ANY OR ALL CLAIMS WHILE PREPARING AND ADOPTING A PLAN OF LIQUIDATION OR HAVING ENTERED INTO A PLAN OF LIQUIDATION APPROVED BY THE COURT UNDER AS 21.78], or before the policy expiration date if less than 30 days after the order of liquidation [DETERMINATION], or before the insured replaces the policy or causes its cancellation if the insured does so within 30 days after [OF] the order of liquidation [DETERMINATION], but this obligation includes only that amount of each covered claim that is [IN EXCESS OF \$100 AND IS] less than \$500,000, except that a covered claim for return of unearned premium may not exceed \$10,000 for each policy, and except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy; [IN NO EVENT IS] the association is not obligated

(A) to a policyholder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy from which the claim arises; or

(B) to pay a claim filed with the association after the final date set by the court for the filing of claims against the liquidator or receiver of an insolvent insurer;

1 (2) is considered the insurer to the extent of its obligation on the
 2 covered claims and to that extent has all rights, duties, and obligations of the insolvent
 3 insurer as if the insurer had not become insolvent;

4 (3) shall allocate claims paid and expenses incurred among the three
 5 accounts separately, and assess member insurers separately for each account amounts
 6 necessary to pay the obligation of the association under (1) of this subsection
 7 subsequent to an insolvency, the expenses of handling covered claims subsequent to
 8 an insolvency, [THE COST OF EXAMINATIONS UNDER AS 21.80.110,] and other
 9 expenses authorized by this chapter; **under this paragraph,**

10 **(A)** the assessments of each member insurer must be in the
 11 proportion that the net direct written premiums of the member insurer for the
 12 [PRECEDING] calendar year **preceding the assessment** on the kinds of
 13 insurance in the account bears to the net direct written premiums of all member
 14 insurers for the [PRECEDING] calendar year **preceding the assessment** on the
 15 kinds of insurance in the account; each member insurer shall be notified of the
 16 assessment not later than 30 days before it is due;

17 **(B)** a member insurer may not be assessed in any year on any
 18 account an amount greater than two percent of the member insurer's net direct
 19 written premiums for the [PRECEDING] calendar year **preceding the**
 20 **assessment** on the kinds of insurance in the account;

21 **(C)** **the association may pay claims in any order that it**
 22 **determines reasonable, including the payment of claims as they are**
 23 **received from claimants or in groups or categories of claims; however,** if
 24 the maximum assessment, together with the other assets of the association in
 25 any account, does not provide in any one year in any account an amount
 26 sufficient to make all necessary payments from that account, the funds
 27 available shall be prorated, and the unpaid portion shall be paid as soon
 28 thereafter as funds become available;

29 **(D)** the association may [EXEMPT OR] defer, in whole or in
 30 part, an assessment of any member insurer [,] if the assessment would endanger
 31 the ability of the member insurer to fulfill the insurer's contractual obligations

or cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; however, during the period of deferment, the member insurer may not pay dividends to shareholders or policyholders; a deferred assessment may only be paid when the payment does not reduce capital or surplus below minimums required by law; a member insurer who pays a larger assessment as a result of a deferment given to another member insurer shall receive a refund when the deferment ends or, at the election of the member insurer, receive a credit against future assessments;

(E) each member insurer may set off against an assessment [,] authorized payments made on covered claims and expenses incurred in the payment of these claims by the member insurer if they are chargeable to the account for which the assessment is made;

(4) shall investigate claims brought against the association, [AND] adjust, compromise, settle, and pay covered claims to the extent of the association's obligation, and deny all other claims, and may review settlements, releases, and judgments to which the insolvent insurer or its insureds were parties to determine the extent to which settlements, releases, and judgments may be properly contested;

(5) may, subject to AS 21.89.100, appoint, substitute, or direct legal counsel retained under an insurance policy for the defense of a covered claim [SHALL NOTIFY PERSONS UNDER AS 21.80.080(b)(1)];

(6) shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities; a servicing facility shall operate and maintain its principal office in this state unless the use of a servicing facility located outside of the state would result in operating cost savings of at least 10 percent and would not result in material delay in claim payments; designation of a servicing facility is subject to the approval of the director, but designation may be declined by a member insurer;

(7) shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling

claims on behalf of the association and shall pay the other expenses of the association authorized by this chapter.

(b) The association may

(1) employ or retain those persons necessary to handle claims and perform other duties of the association;

(2) borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation;

(3) sue or be sued;

(4) negotiate and become a party to those contracts **that** [AS] are necessary to carry out the purposes of this chapter;

(5) perform all other acts necessary or proper to **carry out** [EFFECTUATE] the purposes of this chapter;

(6) refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of any calendar year, the board of **governors** [DIRECTORS] finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of **governors** [DIRECTORS] for the coming year [;

(7) APPEAR IN, DEFEND, AND APPEAL ANY ACTION ON A CLAIM BROUGHT AGAINST THE ASSOCIATION].

* **Sec. 8.** AS 21.80.070(c) is amended to read:

(c) The plan of operation must

(1) establish the procedures whereby all the powers and duties of the association under AS 21.80.060 will be performed;

(2) establish procedures for handling assets of the association, **including procedures for handling assets received from the estate of an insolvent insurer;**

(3) establish the amount and method of reimbursing members of the board of **governors** [DIRECTORS] under AS 21.80.050;

(4) establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims; notice of claims

to the receiver or liquidator of the insolvent insurer is considered notice to the association or its agent, and a list of these claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator;

(5) establish regular places and times for meetings of the board of **governors** [DIRECTORS];

(6) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of **governors** [DIRECTORS];

(7) provide that any member insurer aggrieved by a final action or decision of the association may appeal to the director within 30 days after the action or decision;

(8) establish the procedures whereby selections for the board of **governors** [DIRECTORS] will be submitted to the director;

(9) **provide for a member insurer serving on the board of governors to appoint an individual to represent the member insurer on the board, including appointment of an alternate or substitute representative for the appointed person;**

(10) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

* **Sec. 9.** AS 21.80.080 is amended to read:

Sec. 21.80.080. Duties and powers of the director. (a) The director shall

(1) notify the association of the existence of an insolvent insurer no later than three days after the director receives notice of the determination of the insolvency;

(2) upon request of the board of **governors** [DIRECTORS], provide the association with a statement of the net direct written premiums of each member insurer.

(b) The director may

(1) [REQUIRE THAT THE ASSOCIATION NOTIFY THE INSURED OF THE INSOLVENT INSURER AND ANY OTHER INTERESTED PARTIES OF THE DETERMINATION OF INSOLVENCY AND OF THEIR RIGHTS UNDER THIS CHAPTER; THIS NOTIFICATION SHALL BE BY MAIL AT THEIR LAST KNOWN ADDRESS, WHEN AVAILABLE, BUT IF SUFFICIENT

1 INFORMATION FOR NOTIFICATION BY MAIL IS NOT AVAILABLE, NOTICE
 2 BY PUBLICATION IN A NEWSPAPER OF GENERAL CIRCULATION IS
 3 SUFFICIENT;

4 (2)] suspend or revoke, after notice and hearing, the certificate of
 5 authority to transact insurance in this state of any member insurer that fails to pay an
 6 assessment when due or fails to comply with the plan of operation; as an alternative,
 7 the director may levy a fine on any member insurer that fails to pay an assessment
 8 when due; this fine may not exceed five percent of the unpaid assessment per month
 9 or portion of a month, except that a fine may not be less than \$250 a month;

10 (2) [(3)] revoke the designation of any servicing facility upon a finding
 11 that claims are being handled unsatisfactorily;

12 (3) [(4)] upon a finding by the superior court that the board of
 13 governors [DIRECTORS] has failed to comply with a requirement of this chapter or
 14 the plan of operation, assume the powers of the board of governors [DIRECTORS]
 15 under AS 21.80.060.

16 * **Sec. 10.** AS 21.80.090(a) is amended to read:

17 (a) A person recovering under this chapter is considered to have assigned the
 18 person's rights under the policy to the association to the extent of the recovery from
 19 the association. Every insured or claimant seeking the protection of this chapter shall
 20 cooperate with the association to the same extent as the person would have been
 21 required to cooperate with the insolvent insurer. The association **does not have a**
 22 **[HAS NO]** cause of action against the insured of the insolvent insurer for any sums
 23 **the association** [IT] has paid out except **a cause** [THOSE CAUSES] of action [AS]
 24 the insolvent insurer would have had if the sums had been paid by the insolvent
 25 insurer **and except as provided under (b) of this section.** In the case of an insolvent
 26 insurer operating on a plan with assessment liability, payments of claims of the
 27 association do not operate to reduce the liability of insured to the receiver, liquidator,
 28 or statutory successor for unpaid assessments.

29 * **Sec. 11.** AS 21.80.090(b) is amended to read:

30 (b) **The association or a similar organization in another state shall be**
 31 **recognized as a claimant in the liquidation of an insolvent insurer for amounts**

paid by the association or the similar organization on covered claims as determined by this chapter or a similar law of another state and shall receive distributions as provided under AS 21.78.260 or a similar law of another state.

The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state to the extent the settlement satisfies obligations of the association. The receiver may not be bound in any way by a settlement of covered claims to the extent there remains a claim that exceeds the claims limit imposed under AS 21.80.060. The court having jurisdiction shall grant these claims priority against the assets of the insolvent insurer equal to the priority that [WHICH] the claimant would have been entitled to in the absence of this chapter [AGAINST THE ASSETS OF THE INSOLVENT INSURER]. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

* **Sec. 12.** AS 21.80 is amended by adding a new section to read:

Sec. 21.80.095. Prohibited claims. An insurer, reinsurer, insurance pool, or underwriting association may not assert a claim against a person insured under a policy issued by an insolvent insurer except for an amount not covered by the claims limit established under AS 21.80.060.

* **Sec. 13.** AS 21.80.100(a) is amended to read:

(a) A person having a claim against an insurer, whether or not the insurer is a member insurer, under a provision in an insurance policy other than a policy of an insolvent insurer that [WHICH] is also a covered claim [,] is required to exhaust first the person's right under the policy. An [ANY] amount payable on a covered claim under this chapter shall be reduced by the amount of recovery under the insurance policy.

* **Sec. 14.** AS 21.80.110 is repealed and reenacted to read:

Sec. 21.80.110. Prevention of insolvencies. The board of governors may

(1) upon a majority vote, make recommendations to the director regarding matters generally related to improving or enhancing regulation for insurer solvency; or

(2) at the conclusion of an insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of the insolvency, based on the information available to the association, and submit this report to the director.

* **Sec. 15.** AS 21.80.120 is amended to read:

Sec. 21.80.120. Examination of the association. The association is subject to examination and regulation by the director. The board of **governors** [DIRECTORS] shall submit, not later than **June** [MARCH] 30 of each year, a certified financial report for the preceding calendar year in a form approved by the director.

* **Sec. 16.** AS 21.80.150 is amended to read:

Sec. 21.80.150. Immunity. There is no liability on the part of and a cause of action of any nature may not arise against a member insurer, the association or its agents or employees, the board of **governors or a person serving as an alternate or substitute representative of a governor** [DIRECTORS], or the director or representatives of the director for action taken **or a failure to act** by them in the performance of their powers and duties under this chapter. However, [THIS] immunity from liability **under this section** does not apply to wilful or wanton misconduct.

* **Sec. 17.** AS 21.80.160 is amended to read:

Sec. 21.80.160. Stay of proceedings and reopening of default judgments. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in a court in this state shall, **subject to waiver by the board of governors of the association in specific cases involving covered claims**, be stayed for **90** [60] days **or additional time as ordered by a court** from the date the insolvency is determined **or an ancillary proceeding is instituted in this state, whichever is later**, to permit proper defense by the association for all pending causes of action as to any covered claims arising from a judgment under a decision, verdict, or finding based on the default of the insolvent insurer or its failure to defend an insured. The association, either on its own behalf or on behalf of the insured, may apply to have this judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and shall be permitted to defend against the claim on the merits.

1 * **Sec. 18.** AS 21.80.180 is repealed and reenacted to read:

2 **Sec. 21.80.180. Definitions.** In this chapter, unless the context requires
3 otherwise,

4 (1) "account" means any one of the three accounts created by
5 AS 21.80.040(a);

6 (2) "affiliate of an insolvent insurer" means a person who directly or
7 indirectly, through one or more intermediaries, controls, is controlled by, or is under
8 common control with an insolvent insurer on December 31 of the year immediately
9 preceding the date the insurer becomes an insolvent insurer;

10 (3) "association" means the Alaska Insurance Guaranty Association;

11 (4) "claimant" means an insured making a first party claim or a person
12 making a liability claim; "claimant" does not include a person who is an affiliate of
13 an insolvent insurer;

14 (5) "control" has the meaning given in AS 21.22.200;

15 (6) "covered claim" means an unpaid claim, including one of unearned
16 premiums, that arises out of and is within the coverage and not in excess of the
17 applicable limits of an insurance policy issued by an insurer to which this chapter
18 applies if the insurer becomes an insolvent insurer and (A) the claimant or insured is
19 a resident of this state at the time of the insured event, or (B) the claim is a first party
20 claim for damage to property that is permanently located in this state; "covered claim"
21 does not include an amount awarded for punitive or exemplary damages, an amount
22 sought as a return of premium under a retroactive rating plan, or an amount due a
23 reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries
24 or otherwise;

25 (7) "insolvent insurer" means an insurer

26 (A) authorized to transact insurance in this state either at the
27 time the policy was issued or when the insured event occurred, except an
28 assessable reciprocal insurer formed by and insuring only municipalities or
29 nonprofit public utilities, a reciprocal insurer formed under AS 21.75 to provide
30 marine insurance, and a joint insurance arrangement formed under AS 21.76,
31 either at the time the policy was issued or when the insured event occurred,

1 and

2 (B) against which a court of competent jurisdiction in the
3 insurer's state of domicile has made a final order of liquidation with a finding
4 of insolvency;

5 (8) "member insurer" means a person, except an assessable reciprocal
6 insurer formed by and insuring only municipalities or nonprofit public utilities, a
7 reciprocal insurer formed under AS 21.75 to provide marine insurance, and a joint
8 insurance arrangement formed under AS 21.76, who

9 (A) writes insurance to which this chapter applies under
10 AS 21.80.020, including the exchange of reciprocal or interinsurance contracts;
11 and

12 (B) is authorized to transact insurance in the state;

13 (9) "net direct written premiums" means direct gross premiums written
14 in this state on insurance policies to which this chapter applies, less return premiums
15 thereon and dividends paid or credited to policyholders on direct business; "net direct
16 written premiums" does not include premiums on contracts between insurers or
17 reinsurers;

18 (10) "resident" means, for a person other than an individual, the state
19 in which the person's principal place of business is located at the time of the insured
20 event.

21 * **Sec. 19.** The uncoded law of the State of Alaska is amended by adding a new section
22 to read:

23 **TRANSITIONAL PROVISIONS.** The terms of the members of the board of governors
24 of the Alaska Insurance Guaranty Association who are serving on the effective date of this Act
25 are not affected by this Act. Their terms expire as provided before the enactment of this Act.