

CS FOR HOUSE BILL NO. 398(L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIRST LEGISLATURE - SECOND SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE

Offered: 3/17/00

Referred: Judiciary

Sponsor(s): REPRESENTATIVE HARRIS

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Life and Health Insurance Guaranty Association."**

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

3 * **Section 1.** AS 21.79.010 is repealed and reenacted to read:

4 **Sec. 21.79.010. Purpose.** The purpose of this chapter is to protect, subject to
5 certain limitations, the persons specified in AS 21.79.020(a) against failure in the
6 performance of contractual obligations under life insurance and health insurance
7 policies and annuity contracts specified in AS 21.79.020(b) because of the impairment
8 or insolvency of the member insurer that issued the policies or contracts. To provide
9 this protection, an association of insurers is created under AS 21.79.040 to pay benefits
10 and continue coverages as limited by this chapter, and members of the association are
11 subject to assessment to provide funds to carry out the purpose of this chapter.

12 * **Sec. 2.** AS 21.79.020(a) is amended to read:

13 (a) This chapter applies to a policy and contract specified in (b) of this section
14 and to a person who

15 (1) except for a nonresident certificate holder under a group policy or

1 contract, is the beneficiary, assignee, or payee of a person described in (2) of this
2 subsection; and

3 (2) **except in the case of an unallocated annuity contract or a**
4 **structured settlement annuity,** is the owner of, or a certificate holder under, the
5 policy or contract, [OR, IN THE CASE OF AN UNALLOCATED ANNUITY
6 CONTRACT, IS THE CONTRACT HOLDER,] and who

7 (A) is a resident; [,] or

8 (B) is not a resident, if the following conditions are satisfied:

9 (i) the insurer that issued the policy or contract is
10 domiciled in this state;

11 (ii) [THE INSURER NEVER HELD A LICENSE OR
12 CERTIFICATE OF AUTHORITY IN THE STATE IN WHICH THE
13 PERSON RESIDES;

14 (iii)] the state in which the person resides has an
15 association similar to the association created by this chapter; and

16 **(iii) [(iv)] the person is not eligible for coverage by an**
17 **association in any other state due to the fact that the insurer was**
18 **not licensed as required by law in that state** [OF THE
19 ASSOCIATION OF THE STATE IN WHICH THE PERSON
20 RESIDES].

21 * **Sec. 3.** AS 21.79.020(c) is amended to read:

22 (c) This chapter does not apply to

23 (1) that part of a policy or contract that is not guaranteed by the
24 insurer;

25 (2) that part of the risk borne by the policy or contract holder;

26 (3) a policy or contract of reinsurance, unless an assumption certificate
27 has been issued;

28 (4) that part of a policy or contract **to the extent that** [ON WHICH]
29 the rate of interest **on which it is based, or the interest rate, crediting rate, or**
30 **similar factor determined by use of an index or other external reference stated in**
31 **the policy or contract employed in calculating returns or changes in value,**

1 (A) averaged over the period of four years before the date on
 2 which the member insurer becomes an impaired or insolvent insurer under
 3 this chapter, whichever occurs first [ASSOCIATION BECOMES
 4 OBLIGATED WITH RESPECT TO THE POLICY OR CONTRACT], exceeds
 5 the [A] rate of interest determined by subtracting two percentage points from
 6 the published monthly average for that same four-year period or for a lesser
 7 period if the policy or contract was issued less than four years before the
 8 member insurer becomes an impaired or insolvent insurer under this
 9 chapter [ASSOCIATION BECAME OBLIGATED]; and

10 (B) on and after the date on which the member insurer
 11 becomes an impaired or insolvent insurer under this chapter, whichever
 12 occurs first [ASSOCIATION BECOMES OBLIGATED WITH RESPECT TO
 13 THE POLICY OR CONTRACT], exceeds the rate of interest determined by
 14 subtracting three percentage points from the most recent published monthly
 15 average;

16 (5) a plan or program of an employer, association, or similar entity to
 17 provide life, health, or an annuity benefit to an employee or member, to the extent that
 18 the plan or program is self-funded or uninsured, including a benefit payable by the
 19 employer, association, or similar entity under

20 (A) a multiple employer welfare arrangement as defined in 29
 21 U.S.C. 1002 [26 U.S.C. 414] (Employee Retirement Income Security Act of
 22 1974);

23 (B) a minimum premium group insurance plan;

24 (C) a stop-loss group insurance plan; or

25 (D) an administrative services only contract;

26 (6) that part of a policy or contract that provides a dividend or
 27 experience rating credit or voting rights, or provides that a fee or allowance be paid
 28 to a person, including the policy or contract holder, in connection with the service to
 29 or administration of the policy or contract; [AND]

30 (7) a policy or contract issued in this state by a member insurer at a
 31 time when it was not licensed or did not have a certificate of authority to issue the

1 policy or contract in this state;

2 (8) a person who is a payee or beneficiary of a contract holder who
3 is a resident of this state if the payee or beneficiary is provided coverage by the
4 association of another state;

5 (9) a person covered under (e) of this section if any coverage is
6 provided by the association of another state to that person;

7 (10) an unallocated annuity contract issued to or in connection with
8 a plan protected under the United States Pension Benefit Guaranty Corporation,
9 regardless of whether the United States Pension Benefit Guaranty Corporation
10 has become liable to make any payments with respect to the benefit plan;

11 (11) that part of an unallocated annuity contract that is not issued
12 to or in connection with a specific employee, union, or association of natural
13 persons benefit plan or a government lottery;

14 (12) that part of a policy or contract to the extent that assessments
15 required by AS 21.79.070 with respect to the policy or contract are preempted by
16 law;

17 (13) an obligation that does not arise under the express written
18 terms of the policy or contract issued by the insurer to the contract owner or
19 policy owner, including, without limitation,

20 (A) a claim based on marketing materials;

21 (B) a claim based on a side letter or other document that
22 was issued by the insurer without meeting applicable policy form filing or
23 approval requirements;

24 (C) a misrepresentation of or regarding policy benefits;

25 (D) an extra contractual claim; or

26 (E) a claim for penalties or consequential or incidental
27 damages;

28 (14) a contractual agreement that establishes the member insurer's
29 obligations to provide a book value accounting guaranty for defined contribution
30 benefit plan participants by reference to a portfolio of assets that is owned by the
31 benefit plan or its trustee, which, in each case, is not an affiliate of the member

1 insurer; or

2 (15) that part of a policy or contract to the extent the part of the
 3 policy or contract provides for interest or other changes in value to be determined
 4 by the use of an index or other external reference stated in the policy or contract,
 5 but that have not been credited to the policy or contract, or as to which the policy
 6 or contract owner's rights are subject to forfeiture, as of the date the member
 7 insurer becomes an impaired or insolvent insurer under this chapter, whichever
 8 is earlier; if a policy's or contract's interest or changes in value are credited less
 9 frequently than annually, then, for purposes of determining the values that have
 10 been credited and are not subject to forfeiture under this paragraph, the interest
 11 or change in value determined by using the procedures defined in the policy or
 12 contract shall be credited as if the contractual date of crediting interest or
 13 changing values was the date of impairment or insolvency, whichever is earlier,
 14 and will not be subject to forfeiture.

15 * **Sec. 4.** AS 21.79.020 is amended by adding new subsections to read:

16 (e) This chapter, except for (a) of this section, applies to an unallocated
 17 annuity contract specified under (b) of this section, and shall provide coverage to a
 18 person who is the owner of

19 (1) the unallocated annuity contract if the contract is issued to or in
 20 connection with a specific benefit plan whose plan sponsor has its principal place of
 21 business in this state; and

22 (2) an unallocated annuity contract issued to or in connection with a
 23 government lottery if the owner is a resident.

24 (f) This chapter, except for (a) of this section, applies to a structured settlement
 25 annuity specified under (b) of this section, and shall provide coverage to a person who
 26 is a payee under a structured settlement annuity, or the beneficiary of a payee if the
 27 payee is deceased, if the payee is

28 (1) a resident, regardless of where the contract owner resides; or

29 (2) not a resident, but only if both of the following conditions exists:

30 (A) the contract owner of the structured settlement annuity is

31 (i) a resident; or

1 (ii) not a resident, but the insurer that issued the
 2 structured settlement annuity is domiciled in this state, and the state in
 3 which the contract owner resides has an association similar to the
 4 association created by this chapter; and

5 (B) the payee, or the payee's beneficiary, and the contract owner
 6 are not eligible for coverage by the association of the state in which the payee
 7 or contract owner resides.

8 * **Sec. 5.** AS 21.79.025 is amended to read:

9 **Sec. 21.79.025. Liability limits.** The benefits for which the association may
 10 become liable may not exceed the lesser of

11 (1) the contractual obligations for which the insurer is liable or would
 12 have been liable if it were not an impaired or insolvent insurer;

13 (2) with respect to any one life, regardless of the number of policies
 14 or contracts, [AND SUBJECT TO AN AGGREGATE OF \$300,000,]

15 (A) \$300,000 in life insurance death benefits, but not more than
 16 \$100,000 in net cash surrender and net cash withdrawal values for life
 17 insurance;

18 (B) [\$100,000] in health insurance benefits,

19 **(i) \$100,000 for coverage not defined as disability**
 20 **insurance or basic hospital, medical, and surgical insurance or**
 21 **major medical insurance,** including any net cash **surrender and net**
 22 **cash** withdrawal values;

23 **(ii) \$300,000 for disability insurance;**

24 **(iii) \$500,000 for basic hospital, medical, and surgical**
 25 **insurance or major medical insurance;**

26 (C) \$100,000 in the present value of annuity benefits, including
 27 net cash surrender and net cash withdrawal values; [OR]

28 (3) with respect to any one contract holder **or plan sponsor whose**
 29 **plan owns directly or in trust one or more unallocated annuity contracts not**
 30 **included in (4) of this subsection,** \$5,000,000 in unallocated annuity contract benefits,
 31 irrespective of the number of contracts held by that contract holder **or plan sponsor**

1 except that, in the case of one or more unallocated annuity contracts that are
 2 covered under this chapter and that are owned by a trust or other entity for the
 3 benefit of two or more plan sponsors, coverage shall be provided by the
 4 association if the largest interest in the trust or entity owning the contract is held
 5 by a plan sponsor whose principal place of business is in this state; however, the
 6 association is not liable to cover more than \$5,000,000 in benefits with respect to
 7 an unallocated annuity contract not included in (4) of this subsection;

8 (4) with respect to an individual participating in a governmental
 9 retirement benefit plan established under 26 U.S.C. 401, 26 U.S.C. 403(b), or 26
 10 U.S.C. 457 and covered by an unallocated annuity contract, or to a beneficiary of
 11 the individual if the individual is deceased, in the aggregate, \$100,000 in present-
 12 value annuity benefits, including net cash surrender and net cash withdrawal
 13 values; or

14 (5) with respect to each payee of a structured settlement annuity,
 15 or beneficiary of the payee if the payee is deceased, \$100,000 in present-value
 16 annuity benefits in the aggregate, including net cash surrender and net cash
 17 withdrawal values, if any.

18 * **Sec. 6.** AS 21.79.025 is amended by adding new subsections to read:

19 (b) The limitations imposed under this section are limitations on the benefits
 20 for which the association is obligated before taking into account either its subrogation
 21 and assignment rights or the extent to which those benefits could be provided out of
 22 the assets of an impaired or insolvent insurer attributable to covered policies. The
 23 costs of the association's obligations under this chapter may be met by the use of
 24 assets attributable to covered policies or reimbursed to the association under its
 25 subrogation and assignment rights.

26 (c) In providing coverage required under AS 21.79.060, the association may
 27 not be required to guarantee, assume, reinsure, or perform, or cause to be guaranteed,
 28 assumed, reinsured, or performed, the contractual obligations of an insolvent or
 29 impaired insurer under a covered policy or contract when the obligations do not
 30 materially affect the economic values or economic benefits of the covered policy or
 31 contract.

1 (d) The association may not be required to cover more than
2 (1) an aggregate of \$300,000 in benefits with respect to any one life
3 under (a)(2), (4), and (5) of this section, except that, with respect to benefits for basic
4 hospital, medical, and surgical insurance or major medical insurance under (a)(2)(B)
5 of this section, the aggregate liability of the association may not exceed \$500,000 for
6 any one individual; or

7 (2) \$5,000,000 in benefits with respect to one owner or multiple
8 nongroup policies of life insurance, whether the policy owner is an individual, firm,
9 corporation, or other person, and whether the persons insured are officers, managers,
10 employees, or other persons, regardless of the number of policies and contracts held
11 by the owner.

12 * **Sec. 7.** AS 21.79.030 is amended to read:

13 **Sec. 21.79.030. Construction.** This chapter shall be [LIBERALLY] construed
14 to achieve the purposes set out in AS 21.79.010.

15 * **Sec. 8.** AS 21.79.030 is amended by adding a new subsection to read:

16 (b) This chapter is intended to provide coverage to a person who is a resident
17 of this state and, in special circumstances, to a nonresident. In order to avoid duplicate
18 coverage, if a person who would otherwise receive coverage under this chapter is
19 provided coverage under the law of any other state, the person may not be provided
20 coverage under this chapter. In determining the application of the provisions of this
21 subsection, in situations where a person could be covered by the association of more
22 than one state, whether as an owner, payee, beneficiary, or assignee, this chapter shall
23 be construed in conjunction with other state laws to result in coverage by only one
24 association.

25 * **Sec. 9.** AS 21.79.040(a) is amended to read:

26 (a) There is established as a nonprofit legal entity the Alaska Life and Health
27 Insurance Guaranty Association. An insurer that issues an insurance policy described
28 in AS 21.79.020(b) shall be a member of the association as a condition of the insurer's
29 authority to transact insurance in this state. The association shall perform its functions
30 under a plan of operation established and approved under AS 21.79.080 and shall
31 exercise its powers through the Board of Governors established under AS 21.79.050.

1 For purposes of administration and assessment, the association shall maintain the
2 following accounts:

3 (1) the health insurance account; and

4 (2) the life insurance and annuity account, including the following
5 subaccounts:

6 (A) life insurance account;

7 (B) annuity account **that must include annuity contracts**
8 **owned by a governmental retirement benefit plan, or its trustee, qualified**
9 **under 26 U.S.C. 401, 26 U.S.C. 403(b), or 26 U.S.C. 457 (Internal Revenue**
10 **Code), but that otherwise excludes unallocated annuities;**

11 (C) unallocated annuity account that **must exclude** [SHALL
12 INCLUDE] contracts **owned by a governmental retirement benefit plan, or**
13 **its trustee, qualified under 26 U.S.C. 401, 26 U.S.C. 403(b), or 26 U.S.C. 457**
14 (Internal Revenue Code).

15 * **Sec. 10.** AS 21.79.050(a) is amended to read:

16 (a) The Board of Governors of the association consists of not less than five nor
17 more than nine representatives of member insurers. **The director may appoint two**
18 **individuals as members of the board to represent the public.** Terms of office for
19 board members shall be established in the plan of operation submitted under
20 AS 21.79.080. Member insurers shall select the **insurer** board members, subject to the
21 approval of the director. A vacancy **in a board membership held by an insurer**
22 **member** [ON THE BOARD] shall be filled for the unexpired term by a majority vote
23 of the remaining board members, subject to the approval of the director. **A vacancy**
24 **in a board membership held by a representative of the public shall be filled by**
25 **the director. A board member who represents the public may not be an officer,**
26 **director, or employee of an insurer and may not be engaged in the business of**
27 **insurance.**

28 * **Sec. 11.** AS 21.79.050(b) is amended to read:

29 (b) Before the director approves the selection of **an insurer** [A] board member
30 [OR APPOINTS A BOARD MEMBER], the director shall consider whether all
31 member insurers are fairly represented on the board.

1 * **Sec. 12.** AS 21.79.060(a) is amended to read:

2 (a) If a **member** [DOMESTIC] insurer becomes impaired, the association may,
3 with the approval of the director **and subject to any conditions imposed by the**
4 **association that do not impair the contractual obligations of the impaired insurer,**

5 (1) guarantee, assume, reinsure, or provide for the guarantee,
6 assumption, or reinsurance of the policies or contracts of the impaired insurer; **or**

7 (2) provide money, pledges, notes, guarantees, or other means that are
8 necessary to act under (1) of this subsection and to assure payment of the contractual
9 obligations of the impaired insurer until those obligations are guaranteed, reinsured,
10 or assumed [; OR

11 (3) LOAN MONEY TO THE IMPAIRED INSURER].

12 * **Sec. 13.** AS 21.79.060(c) is amended to read:

13 (c) The actions specified in **(a)** [(b)] of this section may not be taken unless

14 (1) the law of the impaired insurer's state of domicile provides that until
15 all payments of or on account of a contractual obligation of the impaired insurer by
16 a guaranty association, along with all expenses and interest on all payments and
17 expenses, have been repaid to the guaranty association or a repayment plan by the
18 impaired insurer has been approved by a guaranty association,

19 (A) a delinquency proceeding may not be dismissed;

20 (B) neither the impaired insurer nor its assets may be returned
21 to the control of its shareholders or private management; and

22 (C) solicitation or acceptance of new business or restoration of
23 a suspended or revoked license may not be permitted; and

24 (2) if the impaired insurer is a

25 (A) domestic insurer, the insurer has been placed under an order
26 of rehabilitation by a superior court in this state; or

27 (B) foreign or alien insurer,

28 (i) the insurer has been prohibited from soliciting or
29 accepting new business in this state;

30 (ii) the insurer's certificate of authority has been
31 suspended or revoked in this state; and

(iii) a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in the insurer's state of domicile by the insurance commissioner of that state.

* **Sec. 14.** AS 21.79.060(d) is amended to read:

(d) If a member insurer becomes insolvent, the association shall, **in its discretion and** with the approval of the director,

(1) guarantee, assume, reinsure, or provide for the guarantee, assumption, or reinsurance of the covered policies of the insolvent insurer held by residents;

(2) assure payment to residents of the contractual obligations of the insolvent insurer;

(3) provide money, pledges, notes, guarantees, or other means necessary to discharge the **association's** [INSURER'S] duties under this subsection; or

(4) with respect only to life and health insurance policies **and annuities**, provide benefits and coverages required under (e) of this section.

* **Sec. 15.** AS 21.79.060(e) is amended to read:

(e) When proceeding under [(b)(2) OR] (d)(4) of this section, the association shall, with respect to a life or health insurance policy **and an annuity**,

(1) assure payment of benefits, other than terms of conversion and renewability, for a premium identical to the premium that would have been payable under a policy of the insolvent insurer for claims incurred with respect to

(A) a group policy, not later than the earlier of the next renewal date under the policy or contract or 45 days, but in no event less than 30 days, after the date on which the association becomes obligated with respect to the policy;

(B) an individual policy **or annuity**, not later than the earlier of the next renewal date, if any, under the policy **or contract** or one year, but in no event less than 30 days, from the date on which the association becomes obligated with respect to the policy **or contract**;

(2) make a diligent effort to provide a known insured, **an annuitant**, or a group policyholder **or contract holder**, with respect to a group policy **or**

1 contract, 30 days' [DAYS] notice of the termination of the benefits provided;

2 (3) with respect to an individual policy or annuity, make available to
 3 each known insured or annuitant, or owner if other than the insured or annuitant,
 4 and with respect to an individual formerly insured under a group policy or contract
 5 who is not eligible for replacement group coverage, substitute coverage on an
 6 individual basis under the provisions of (f) of this section, if the insured had a right
 7 under law or the terminated policy or contract to convert coverage to individual
 8 coverage, to continue an individual policy or contract in force until a specified age,
 9 or for a specific time during which the insurer did not have the unilateral right to make
 10 changes in any provision of the policy or contract or had a right only to make
 11 changes in premium by class.

12 * **Sec. 16.** AS 21.79.060(h) is amended to read:

13 (h) If the association elects to reissue terminated coverage at a premium rate
 14 different from that charged under the terminated policy, the premium shall be set by
 15 the association according to the amount of insurance provided and [,] the age and class
 16 of risk, and is subject to the approval of the director and the receivership [OR BY
 17 A] court [OF COMPETENT JURISDICTION].

18 * **Sec. 17.** AS 21.79.060(j) is amended to read:

19 (j) When proceeding under [(b)(2) OR] (d) of this section with respect to a
 20 policy or contract carrying guaranteed minimum interest rates, the association shall
 21 assure the payment or crediting of a rate of interest consistent with AS 21.79.020(c)(4).

22 * **Sec. 18.** AS 21.79.060(n) is amended to read:

23 (n) In carrying out its duties under (a) [(b)], (c), and (d) of this section, the
 24 association may impose a permanent policy or contract lien under a guarantee,
 25 assumption, or reinsurance agreement [,] if the policy or contract lien is approved by
 26 a court [,] and the association [COURT] finds that

27 (1) the amount that may be assessed under this chapter is less than the
 28 amount needed to assure full and prompt performance of the insolvent insurer's
 29 contractual obligations; or

30 (2) the economic or financial condition that affects member insurers is
 31 sufficiently adverse that the imposition of a policy or contract lien is in the public

1 interest.

2 * **Sec. 19.** AS 21.79.060(o) is amended to read:

3 (o) Before taking action under (a) - (e) [(b) - (e)] of this section, the
 4 association may request the superior court to impose an injunction against the payment
 5 of a cash value and policy loan, or the exercise of another right to withdraw funds held
 6 in connection with a policy or contract, in addition to a contractual provision for
 7 deferral of a cash or policy loan value. **In addition, if the receivership court**
 8 **imposes an injunction on payment of cash values or policy loans or on any other**
 9 **right to withdraw funds of an impaired or insolvent insurer held in conjunction**
 10 **with a policy or contract, the association may defer payment of cash values, policy**
 11 **loans, or other rights for the period of the injunction, except for claims covered**
 12 **by the association to be paid as required by a hardship procedure established by**
 13 **the liquidator or rehabilitator and approved by the receivership court.**

14 * **Sec. 20.** AS 21.79.060(p) is amended to read:

15 (p) If the association fails to take action under (a) - (e) [(b) - (e)] of this
 16 section within a reasonable period of time after a member insurer becomes insolvent,
 17 the director shall assume the powers of the association under (a) - (e) [(b) - (e)] of this
 18 section.

19 * **Sec. 21.** AS 21.79.060(r) is amended to read:

20 (r) The association is entitled to appear **or intervene** in a court **or agency**
 21 proceeding in **this** [THE] state involving an impaired or insolvent insurer **that the**
 22 **association is or may be obligated to or involving a person or property against**
 23 **which the association may have rights.** The standing conferred by this subsection
 24 extends to all matters germane to the powers and duties of the association, including
 25 proposals to reinsure or guarantee a covered policy of the impaired or insolvent insurer
 26 and the determination of a covered policy and a contractual obligation. **The**
 27 **association also has the right to appear or intervene before a court or agency in**
 28 **another state in a proceeding involving an impaired or insolvent insurer that the**
 29 **association is or may be obligated to or involving a person or property against**
 30 **which the association may have rights.**

31 * **Sec. 22.** AS 21.79.060(s) is amended to read:

1 (s) A person who receives benefits under this chapter is considered to have
2 assigned the rights under, and any cause of action against a person for losses
3 arising under, resulting from, or otherwise relating to, the covered policy to the
4 association to the extent of the benefits received under this chapter, whether the
5 benefits are payment of or on account of contractual obligations, continuations of
6 coverage, or provisions of substitute or alternative coverage. The association may
7 require an assignment to the association of those rights by the payees, policy or
8 contract owner, beneficiary, insured, or annuitant before a person receives the rights
9 or benefits conferred by this chapter. [THE ASSOCIATION IS SUBROGATED TO
10 THESE RIGHTS AGAINST THE ASSETS OF AN INSOLVENT INSURER.] The
11 priority of the association's subrogation right to the assets of the insolvent insurer is
12 the same as the priority of the person entitled to benefits under this chapter. In
13 addition to the rights described in this subsection, the association has common law
14 rights of subrogation and any other equitable or legal remedy that would have
15 been available to the impaired or insolvent insurer or owner, beneficiary, or payee
16 of a policy with respect to the policy. These rights include, in the case of a
17 structured settlement annuity, the rights of the owner, beneficiary, or payee of the
18 annuity, to the extent of benefits received under this chapter, against a person
19 originally or by succession responsible for the losses arising from the personal
20 injury relating to the annuity or annuity payment, except for a person responsible
21 solely by reason of being an assignee in respect to a qualified assignment under
22 26 U.S.C. 130 (Internal Revenue Code). If the provisions of this subsection are
23 invalid with respect to a person or claim, the amount payable by the association
24 with respect to the related coverage obligation shall be reduced by the amount
25 realized by another person from the person or claim covered by the association.
26 If the association has provided benefits with respect to a covered obligation and
27 a person recovers amounts to which the association has rights as described in this
28 subsection, the person recovering the amounts shall pay to the association the
29 portion of the recovery attributable to the policy covered by the association.

30 * Sec. 23. AS 21.79.060(t) is amended to read:

31 (t) In addition to the rights and powers otherwise established in this

1 **chapter, the** [THE] association may

2 (1) enter into contracts that are necessary or proper to carry out the
3 provisions of this chapter;

4 (2) sue or be sued, and take legal action necessary or proper for
5 recovery of an unpaid assessment under AS 21.79.070 **or settlement of a claim or**
6 **potential claim;**

7 (3) borrow money to carry out the purposes of this chapter; **notes or**
8 **other evidence of indebtedness of the association not in default are legal**
9 **investments for domestic insurers and may be carried as admitted assets;**

10 (4) employ or retain those persons necessary to handle the financial
11 transactions of the association and other functions under this chapter;

12 (5) negotiate and contract with a liquidator, rehabilitator, conservator,
13 or ancillary receiver to carry out the powers and duties of the association;

14 (6) exercise, for the purposes of this chapter and to the extent approved
15 by the director, the powers of a domestic life or health insurer; however, the
16 association may not issue insurance policies or annuity contracts other than those
17 issued to perform the contractual obligations of an impaired or insolvent insurer;

18 (7) take legal action to prevent the payment of improper claims;

19 (8) join an organization of one or more other state associations with
20 similar purposes; [AND]

21 (9) **determine, using reasonable business judgment, the means by**
22 **which the association is to provide the benefits of this chapter in an economical**
23 **and efficient manner;**

24 (10) **request information from a person seeking coverage from the**
25 **association in order to determine the obligations of the association under this**
26 **chapter; a person receiving a request under this paragraph shall promptly comply**
27 **with the request;**

28 (11) **request information from a member insurer in order to aid in**
29 **the exercise of a power under this section; a member insurer receiving a request**
30 **under this paragraph shall promptly comply with the request; and**

31 (12) perform all other acts necessary or proper to implement this

1 chapter.

2 * **Sec. 24.** AS 21.79.060 is amended by adding new subsections to read:

3 (u) At any time within one year after the date with the association becomes
4 responsible for the obligations of a member insurer, the association may elect to
5 succeed to the rights and obligations of the member insurer that accrue on or after that
6 date and that relate to contracts covered, in whole or in part, by the association, under
7 one or more indemnity reinsurance agreements entered into by the member insurer as
8 a ceding insurer and selected by the association. However, the association may not
9 exercise an election with respect to a reinsurance agreement if the receiver,
10 rehabilitator, or liquidator of the member insurer has previously and expressly
11 disaffirmed the reinsurance agreement. The election shall be made by a notice to the
12 receiver, rehabilitator, or liquidator and to the affected reinsurer. If the association
13 makes an election, the following paragraphs apply with respect to the agreement
14 selected by the association:

15 (1) the association is responsible for all unpaid premiums due under the
16 agreement for periods both before and after the coverage date, and shall be responsible
17 for the performance of all other obligations to be performed after the coverage date in
18 each case that relates to contracts covered, in whole or in part, by the association; the
19 association may, through reasonable allocation methods, charge contracts covered in
20 part by the association for the costs for reinsurance in excess of the obligations of the
21 association;

22 (2) the association is entitled to any amounts payable by the reinsurer
23 under the agreement with respect to losses or events that occur in periods after the
24 coverage date and that related to the contracts covered by the association, in whole or
25 in part, except that, upon receipt of any amounts, the association shall pay to the
26 beneficiary under the policy or contract on account of which the amounts were paid
27 a portion of the amount equal to the amount received by the association less

28 (A) the benefits paid by the association on account of the policy
29 or contract; and

30 (B) the retention of the impaired or insolvent member insurer
31 applicable to the loss or event;

1 (3) within 30 days after the association's election, the association and
2 each indemnity reinsurer shall calculate the net balance due to or from the association
3 under each reinsurance agreement as of the date of the association's election; the
4 calculation shall give full credit to all items paid by either the member insurer, its
5 receiver, rehabilitator, or liquidator, or the indemnity reinsurer during the period
6 between the coverage date and the date of the association's election; either the
7 association or the indemnity reinsurer shall pay the net balance due the other within
8 five days of the completion of the calculation described in this paragraph; if the
9 receiver, rehabilitator, or liquidator has received any amounts due to the association
10 under (2) of this subsection, the receiver, rehabilitator, or liquidator shall remit the
11 same to the association as promptly as practicable; and

12 (4) if the association, within 60 days of the election, pays the premiums
13 due for periods both before and after the coverage date that relate to the contracts
14 covered by the association, in whole or in part, the reinsurer may not terminate the
15 reinsurance agreement to the extent the agreement relates to contracts covered by the
16 association, in whole or in part, and may not set off any unpaid premium due for the
17 periods before the coverage date against amounts due to the association.

18 (v) In the event the association transfers its obligations to another insurer, and
19 if the association and the other insurer agree, the other insurer shall succeed to the
20 rights and obligations of the association under (u) of this section, effective as of the
21 date agreed upon by the association and the other insurer. The other insurer shall
22 succeed regardless of whether the association has made the election referred to in (u)
23 of this section if (1) the indemnity reinsurance agreement automatically terminates
24 former reinsurance unless the indemnity reinsurer and the other insurer agree to the
25 contrary, and (2) the obligations described in (u)(2) of this section no longer apply on
26 and after the date the indemnity reinsurance agreement is transferred to the third-party
27 insurer. This subsection does not apply if the association has previously expressly
28 determined in writing that it will not exercise the election referred to in (u) of this
29 section.

30 (w) The provisions of this section apply notwithstanding any other provisions
31 of law or any provisions of an affected reinsurance agreement that provide for or

1 require a payment of reinsurance proceeds, on account of losses or events that occur
 2 in periods after the coverage date, to the receiver, liquidator, or rehabilitator of the
 3 insolvent member insurer. The receiver, liquidator, or rehabilitator remains entitled to
 4 any amounts payable by the reinsurer under the reinsurance agreement with respect to
 5 losses or events that occur in periods before the coverage date, subject to applicable
 6 setoff provisions.

7 (x) Except as otherwise expressly provided in this section, nothing in this
 8 section alters or modifies the terms and conditions of indemnity reinsurance
 9 agreements of an insolvent member insurer. Nothing in this section

10 (1) abrogates or limits the right of a reinsurer to claim that the reinsurer
 11 is entitled to rescind a reinsurance agreement; or

12 (2) gives a policy owner or beneficiary an independent cause of action
 13 against an indemnity reinsurer that is not otherwise established in the indemnity
 14 reinsurance agreement.

15 (y) When the association has arranged or offered to provide the benefits of this
 16 chapter to a covered person under a plan or arrangement that fulfills the association's
 17 obligations under this chapter, the covered person is not entitled to benefits from the
 18 association in addition to or other than those provided under the plan or arrangement.

19 (z) In carrying out its duties in connection with guaranteeing, assuming, or
 20 reinsuring a policy or contract, the association may, subject to approval of the
 21 receivership court, issue substitute coverage for a policy or contract that provides an
 22 interest rate, crediting rate, or similar factor determined by use of an index or other
 23 external reference stated in the policy or contract employed in calculating returns or
 24 changes in value by issuing an alternative policy or contract under the following
 25 provisions:

26 (1) in place of the index or other external reference provided for in the
 27 original policy or contract, the alternative policy or contract provides for

28 (A) a fixed interest rate;

29 (B) payment of dividends with minimum guarantees; or

30 (C) a different method for calculating interest or changes in

31 value;

1 (2) there is no requirement for evidence of insurability, waiting period,
2 or other exclusion that would not have applied under the replaced policy or contract;
3 and

4 (3) the alternative policy or contract is substantially similar to the
5 replaced policy or contract in all other material terms.

6 * **Sec. 25.** AS 21.79.070(b) is amended to read:

7 (b) There shall be two assessments as follows:

8 (1) class A assessments shall be **authorized and called** [MADE] for
9 the purpose of meeting administrative and legal costs and other expenses and
10 examinations conducted under the authority of AS 21.79.060; class A assessments may
11 be **authorized and called** [MADE] whether or not related to a particular impaired or
12 insolvent insurer;

13 (2) class B assessments [ARE POST ASSESSMENT CHARGES AND]
14 shall be **authorized and called** [MADE] only as necessary to carry out the powers and
15 duties of the association with regard to an impaired or an insolvent insurer.

16 * **Sec. 26.** AS 21.79.070(c) is amended to read:

17 (c) The amount of a class A assessment shall be determined by the board and
18 may be made on a pro rata or **non pro** [NONPRO] rata basis. If a pro rata assessment
19 is made, the board may provide that it be credited against future class B assessments.
20 A **non pro** [NONPRO] rata assessment may not exceed \$250 per member insurer in
21 a calendar year. The amount of a class B assessment shall be allocated for assessment
22 purposes among the accounts under an allocation formula that may be based on the
23 premiums or reserves of the impaired or insolvent insurer or by another standard
24 determined by the board **in its sole discretion** as being fair and reasonable under the
25 circumstances.

26 * **Sec. 27.** AS 21.79.070(d) is amended to read:

27 (d) Class B assessments shall be based on the premiums received on business
28 in this state by each assessed member insurer **on** [OR FOR] policies or contracts
29 covered by each account in proportion to the premiums received on business in this
30 state by all assessed member insurers during the three calendar years preceding the
31 year in which the insolvency or impairment occurred.

1 * **Sec. 28.** AS 21.79.070(e) is amended to read:

2 (e) The association may abate or defer, in whole or in part, the assessment of
 3 a member insurer if, **in the opinion of the board,** a payment of the assessment would
 4 endanger the ability of the member insurer to fulfill its contractual obligations. The
 5 amount by which an assessment against a member insurer is abated or deferred may
 6 be assessed against the other member insurers in a manner consistent with the basis
 7 for assessments set forth in (c) of this section. **Once the conditions that caused a**
 8 **deferral are removed or rectified, the member insurer shall pay all assessments**
 9 **that were deferred under a repayment plan approved by the association.**

10 * **Sec. 29.** AS 21.79.070(f) is amended to read:

11 (f) **Except as provided in this subsection, the** [THE] total of all assessments
 12 on a member insurer for **each subaccount of** the life and annuity account and for **the**
 13 **health account** [EACH SUBACCOUNT] may not in any one calendar year exceed
 14 two percent **of the insurer's average annual premiums received in this state on**
 15 **policies or contracts covered by the account or subaccount during the three**
 16 **calendar years preceding the year in which the insurer became an impaired or**
 17 **insolvent insurer. If two or more assessments are authorized in one calendar year**
 18 **with respect to insurers that become impaired or insolvent in different calendar**
 19 **years, the average annual premiums for purposes of the aggregate assessment**
 20 **percentage limitation imposed under this subsection shall be limited to the highest**
 21 **of the average annual premiums during the preceding three calendar years for the**
 22 **applicable subaccount or account as calculated under this section.** [THE TOTAL
 23 OF ALL ASSESSMENTS ON A MEMBER INSURER FOR THE HEALTH
 24 ACCOUNT MAY NOT IN ANY ONE CALENDAR YEAR EXCEED TWO
 25 PERCENT OF THE INSURER'S AVERAGE PREMIUMS RECEIVED IN THIS
 26 STATE ON A POLICY OR CONTRACT COVERED BY THE ACCOUNT DURING
 27 THE THREE CALENDAR YEARS PRECEDING THE YEAR IN WHICH THE
 28 INSURER BECAME AN IMPAIRED OR INSOLVENT INSURER.] If the maximum
 29 assessment, together with the other assets of the association in an account, does not
 30 provide in any one year in either account an amount sufficient to carry out the
 31 responsibilities of the association, the necessary additional funds shall be assessed as

1 soon as permitted by this chapter.

2 * **Sec. 30.** AS 21.79.070(h) is amended to read:

3 (h) If **the maximum** [A ONE PERCENT] assessment for a subaccount of the
4 life and annuity account in any one year does not provide an amount sufficient to carry
5 out the responsibilities of the association, the board shall, as provided under (d) of this
6 section, **access** [ASSESS] all subaccounts of the life and annuity account for the
7 necessary additional amount, subject to the assessment limit provided in (f) of this
8 section.

9 * **Sec. 31.** AS 21.79.070 is amended by adding new subsections to read:

10 (i) Assessments for funds to meet the requirements of the association with
11 respect to an impaired or insolvent insurer may not be authorized or called until
12 necessary to implement the purposes of this chapter. Classification of assessments
13 under (b) of this section and computation of assessments under this section shall be
14 made with a reasonable degree of accuracy, recognizing that exact determinations may
15 not always be possible. The association shall notify each member insurer of its
16 anticipated pro rata share of an authorized assessment not yet called within 180 days
17 after the assessment is authorized.

18 (j) The board may, by an equitable method as established in the plan of
19 operation, refund to member insurers, in proportion to the contribution of each insurer
20 to that account, the amount by which the assets of the account exceed the amount the
21 board finds is necessary to carry out during the coming year the obligations of the
22 association with regard to that account, including assets accruing from assignment,
23 subrogation, net realized gains, and income from investments. A reasonable amount
24 may be retained in any account to provide funds for the continuing expenses of the
25 association and for future losses claims.

26 (k) A member insurer may, in determining its premium rates and policy owner
27 dividends as to any kind of insurance within the scope of this chapter, consider the
28 amount reasonably necessary to meet its assessment obligations under this chapter.

29 (l) A member insurer that wishes to protest all or part of an assessment shall
30 pay when due the full amount of the assessment as set out in the notice provided by
31 the association. The payment shall be available to meet association obligations during

1 the pendency of the protest or any subsequent appeal. If a payment is made under
 2 protest, payment must be accompanied by a statement in writing that the payment is
 3 made under protest and setting out a brief statement of the grounds for the protest.
 4 Within 60 days following the payment of an assessment under protest by a member
 5 insurer, the association shall notify the member insurer in writing of its determination
 6 with respect to the protest unless the association notifies the member insurer that
 7 additional time is required to resolve the issues raised by the protest. Within 30 days
 8 after a final decision has been made, the association shall notify the protesting member
 9 insurer in writing of that final decision. Within 60 days of receipt of notice of the
 10 final decision, the protesting member insurer may appeal that final action to the
 11 director. In the alternative to rendering a final decision with respect to a protest based
 12 on a question regarding the assessment base, the association may refer protests to the
 13 director for a final decision with or without recommendation from the association. If
 14 a protest or appeal on an assessment is upheld, the amount paid in error or excess shall
 15 be returned to the member company. Interest on a refund due a protesting member
 16 shall be paid at the rate actually earned by the association.

17 * **Sec. 32.** AS 21.79.080(a) is amended to read:

18 (a) The association shall submit to the director a plan of operation and any
 19 amendments to assure the fair, reasonable, and equitable administration of the
 20 association. The plan of operation and any amendments take effect on the written
 21 approval of the plan by the director **or 30 days after receipt by the director if not**
 22 **disapproved by the director.**

23 * **Sec. 33.** AS 21.79.080(b) is amended to read:

24 (b) **If** [NOTWITHSTANDING (a) OF THIS SECTION, IF THE
 25 ASSOCIATION FAILS TO SUBMIT A PLAN OF OPERATION ACCEPTABLE TO
 26 THE DIRECTOR BY JULY 1, 1991, OR IF AT A LATER TIME] the association
 27 fails to submit suitable amendments to the plan, the director shall, after notice and
 28 hearing, adopt regulations to implement this chapter. These regulations remain in
 29 effect until amended or repealed by the director [OR SUPERSEDED BY A PLAN
 30 SUBMITTED BY THE ASSOCIATION THAT IS APPROVED BY THE
 31 DIRECTOR].

1 * **Sec. 34.** AS 21.79.080(c) is amended to read:

2 (c) A member insurer shall comply with the plan of operation. The plan of
3 operation must

4 (1) establish procedures for handling assets of the association;

5 (2) establish the amount and method of reimbursing members of the
6 board under AS 21.79.050(c);

7 (3) establish regular places and times for meetings of the board in the
8 state; **the board may conduct meetings telephonically;**

9 (4) establish procedures for keeping records of all financial transactions
10 of the association, its agents, and the board;

11 (5) establish terms of office for members of the board, and establish
12 procedures for the selection of the members of the board and for the director's approval
13 of the members selected;

14 (6) establish additional procedures for assessments under AS 21.79.070;
15 and

16 (7) contain additional provisions necessary or proper for the association
17 to exercise its powers and duties.

18 * **Sec. 35.** AS 21.79.100(f) is amended to read:

19 (f) The board **may** [SHALL]

20 (1) make reports and recommendations to the director relating to the
21 solvency, liquidation, rehabilitation, or conservation of a member insurer or the
22 solvency of insurers who apply to transact insurance business in the state; the director
23 and the board shall keep the reports and recommendations confidential;

24 (2) notify the director of any information that indicates that a member
25 insurer may be impaired or insolvent.

26 * **Sec. 36.** AS 21.79.110(b) is amended to read:

27 (b) The association shall keep records of [NEGOTIATIONS AND] meetings
28 relating to its activities. Records of [NEGOTIATIONS OR] meetings may only be
29 made public under AS 21.79.040(b)

30 (1) after the termination of a liquidation, rehabilitation, or conservation
31 proceeding that involves the impaired or insolvent insurer;

- 1 (2) after the insurer is no longer impaired or insolvent; or
 2 (3) upon the order of a court of competent jurisdiction.

3 * **Sec. 37.** AS 21.79.110(c) is amended to read:

4 (c) The association is considered to be a creditor of the impaired or insolvent
 5 insurer to the extent of assets attributable to covered policies that are reduced by an
 6 amount to which the association is entitled under AS 21.79.060(s). Assets of the
 7 impaired or insolvent insurer that are attributable to covered policies shall be used to
 8 continue all covered policies and pay all contractual obligations of the impaired or
 9 insolvent insurer as required by this chapter. Assets attributable to covered policies
 10 include those assets that should have been established as reserves for the covered
 11 policies. These assets are determined by multiplying the total assets of the impaired
 12 or insolvent insurer by a fraction, the numerator of which is the amount that should
 13 have been established as reserves for the covered policies of the impaired or insolvent
 14 insurer, and the denominator of which is the amount that should have been established
 15 as reserves for all policies of insurance issued in all states by that insurer. **As a**
 16 **creditor of the impaired or insolvent insurer, the association and other similar**
 17 **entities in other states are entitled to receive a disbursement of assets out of the**
 18 **marshaled assets as a credit against contractual obligations under this chapter**
 19 **from time to time as the assets become available. If the liquidator has not, within**
 20 **120 days of the date of a final determination of insolvency of an insurer by the**
 21 **court, made an application to the court for the approval of a proposal to disburse**
 22 **assets, the association may make application to the court for the approval of the**
 23 **association's proposal to disburse assets.**

24 * **Sec. 38.** AS 21.79.110 is amended by adding new subsections to read:

25 (f) A deposit in this state, held by law or required by the director for the
 26 benefit of creditors, including policy owners, not turned over to the domiciliary
 27 liquidator upon the entry of a final order of liquidation or order approving a
 28 rehabilitation plan of an insurer domiciled in this state or in a reciprocal state shall
 29 be promptly paid to the association. The association

30 (1) is entitled to retain a portion of any amount paid to it equal to the
 31 percentage determined by dividing the aggregate amount of policy owners' claims

1 related to that insolvency for which the association has provided statutory benefits by
 2 the aggregate amount of all policy owners' claims in this state related to that
 3 insolvency; and

4 (2) shall remit to the domiciliary receiver the amount paid to the
 5 association and retained under (1) of this subsection; any amount paid to the
 6 association not retained by it under (1) of this subsection shall be treated as a
 7 distribution of state assets under AS 21.78.294 or a similar provision of the state of
 8 domicile of the impaired or insolvent insurer.

9 (g) The association may not be required to give an appeal bond in an appeal
 10 of a civil action arising under this chapter.

11 * **Sec. 39.** AS 21.79.120 is amended to read:

12 **Sec. 21.79.120. Examination of the association, annual report.** The
 13 association may be examined by the director. The board shall submit to the director,
 14 not later than **July** [MAY] 1 of each year, a certified financial report for the preceding
 15 calendar year in a form approved by the director and a report of its activities during
 16 the preceding calendar year. Nothing in AS 21.79.110(b) limits the duty of the
 17 association to report under this section. **Upon request, the association shall provide**
 18 **a copy of the report to a member insurer.**

19 * **Sec. 40.** AS 21.79.140 is amended to read:

20 **Sec. 21.79.140. Civil immunity.** The association and its agents and
 21 employees, members of the Board of Governors, **member insurers, and agents and**
 22 **employees of member insurers,** and the director and the director's representatives are
 23 not civilly liable for **an action or omission in performing** [TAKEN BY THEM TO
 24 PERFORM] duties under this chapter. **In this section, "duties" includes**
 25 **participation in an organization of one or more state associations of life or health**
 26 **insurers.**

27 * **Sec. 41.** AS 21.79.150 is repealed and reenacted to read:

28 **Sec. 21.79.150. Stay of proceedings; default judgment.** Proceedings
 29 involving an insolvent insurer shall be stayed at least 60 days after the date of a final
 30 order of liquidation, rehabilitation, or conservation in order to allow the association to
 31 exercise a power or duty authorized under this chapter. If a default judgment is

1 entered against an insolvent insurer, the association may apply to have the judgment
2 set aside or may defend against the action on its merits.

3 * **Sec. 42.** AS 21.79 is amended by adding new sections to read:

4 **Sec. 21.79.160. Prohibited advertisement of insurance sales; required**
5 **notice.** (a) A person, including an insurer, agent, or affiliate of an insurer, may not
6 make, publish, disseminate, circulate, or place before the public, or cause, directly or
7 indirectly, to be made, published, disseminated, circulated, or placed before the public,
8 in any newspaper, magazine, or other publication, or in the form of a notice, circular,
9 pamphlet, letter, or poster, or over any radio station or television station, or in any
10 other way, an advertisement, announcement, or statement, written or oral, that uses the
11 existence of the association for the purpose of sales, solicitation, or inducement to
12 purchase any form of insurance covered by the association. However, this section does
13 not apply to the association or any other entity that does not sell or solicit insurance.

14 (b) The association shall prepare a summary document describing the general
15 purposes and current limitations of this chapter and complying with (c) of this section.
16 This document shall be submitted to the director for approval. Beginning 60 days after
17 the date on which the director approves the document, an insurer may not deliver a
18 policy or contract to a policy or contract owner unless the summary document is
19 delivered to the policy or contract owner at the time of delivery of the policy or
20 contract. The document shall also be available upon request by a policy owner. The
21 distribution, delivery, contents, or interpretation of this document does not guarantee
22 that either the policy or the contract, or the owner of the policy or contract, is covered
23 in the event of the impairment or insolvency of a member insurer. The description
24 document shall be revised by the association as amendments to this chapter may
25 require. Failure to receive this document does not give the policy owner, contract
26 owner, certificate holder, or insured any greater rights than those stated in this chapter.

27 (c) The document prepared under (b) of this section must contain a clear and
28 conspicuous disclaimer on its face. The director shall establish the form and content
29 of the disclaimer. The disclaimer must

30 (1) state the name and address of the association and the division of
31 insurance;

1 (2) prominently warn the policy or contract owner that the association
2 may not cover the policy or, if coverage is available, that the policy will be subject to
3 substantial limitations and exclusions and conditioned on continued residence in this
4 state;

5 (3) state the types of policies for which guaranty funds will provide
6 coverage;

7 (4) state that the insurer and its agents are prohibited by law from using
8 the existence of the association for the purpose of sales, solicitation, or inducement to
9 purchase any form of insurance;

10 (5) state that the policy or contract owner should not rely on coverage
11 under the association when selecting and insurer;

12 (6) explain rights available and procedures for filing a complaint to
13 allege a violation of a provision of this chapter; and

14 (7) provide other information as required by the director, including
15 sources for information about the financial condition of insurers if the information is
16 not proprietary and is subject by law to disclosure.

17 (d) A member insurer shall retain evidence of compliance with (b) of this
18 section for so long as the policy or contract for which the notice is given remains in
19 effect.

20 **Sec. 21.79.170. Determination of principal place of business.** (a) Except
21 as provided under (b) of this section, the principal place of business of a plan sponsor
22 or a person other than a natural person is that state in which the plan sponsor or person
23 exercises the direction, control, and coordination of the operations of the entity, as
24 determined by the association in its reasonable judgment by considering the following
25 factors:

26 (1) the state in which the primary executive and administrative
27 headquarters of the entity are located;

28 (2) the state in which the principal office of the chief executive officer
29 of the entity is located;

30 (3) the state in which the board of directors or a similar governing body
31 of the entity conducts the majority of its meetings;

1 (4) the state in which the executive or management committee of the
2 board of directors or a similar governing body of the entity conducts the majority of
3 its meetings;

4 (5) the state from which the management of the overall operations of
5 the entity is directed; and

6 (6) in the case of a benefit plan sponsored by affiliated companies
7 making up a consolidated corporation, the state in which the holding company or
8 controlling affiliate has its principal place of business as determined using the factors
9 described in this subsection.

10 (b) In the case of a plan sponsor, if more than 50 percent of the participants
11 in the benefit plan are employed in a single state, that state is the principal place of
12 business of the plan sponsor.

13 **Sec. 21.79.180. Determination of residency of certain individuals.** A citizen
14 of the United States that is either a (1) resident of a foreign country, or (2) resident of
15 a United States possession, territory, or protectorate that does not have an association
16 similar to the association created by this chapter is, for purposes of this chapter, a
17 resident of the state of domicile of the insurer that issued the policy or contract.

18 * **Sec. 43.** AS 21.79.900(6) is amended to read:

19 (6) "member insurer" means an insurer licensed to transact insurance
20 in the state that issues a policy described in AS 21.79.020(a) and (b), or a subscriber
21 contract providing benefits described in AS 21.87.120(a)(2) - (4) or 21.87.130(a)(2)
22 and (3), and includes an insurer whose license or certificate of authority in this state
23 may have been suspended, revoked, not renewed, or voluntarily withdrawn; "member
24 insurer" does not include

25 (A) a health maintenance organization licensed under AS 21.86;

26 (B) a fraternal benefit society licensed under AS 21.84;

27 (C) a mandatory state pooling plan;

28 (D) a mutual assessment company or an entity that operates on
29 an assessment basis;

30 (E) an insurance exchange licensed under AS 21.75; [OR]

31 (F) a [NONPROFIT] hospital or medical service organization

1 licensed under AS 21.87;

2 **(G) an organization that has a license or certificate limited**
 3 **to the issuance of charitable gift annuities; or**

4 **(H) an entity similar to one described under (A) - (G) of this**
 5 **paragraph;**

6 * **Sec. 44.** AS 21.79.900(9) is amended to read:

7 (9) "resident" means a person **to whom a contractual obligation is**
 8 **owed under this chapter and** who resides in this state **on the date of entry of a**
 9 **court order that determines a member insurer to be an impaired or insolvent**
 10 **insurer, whichever occurs first** [AT THE TIME A MEMBER INSURER IS
 11 DETERMINED TO BE AN IMPAIRED OR INSOLVENT INSURER AND TO
 12 WHICH A CONTRACTUAL OBLIGATION IS OWED]; a person may be a resident
 13 of only one state, which, in the case of a person other than a natural person, shall be
 14 the principal place of business;

15 * **Sec. 45.** AS 21.79.900 is amended by adding new paragraphs to read:

16 (12) "authorized assessment" means an assessment approved by a
 17 resolution by the board that will be called immediately or in the future from member
 18 insurers for a specified amount;

19 (13) "called" means that a notice has been issued by the association to
 20 member insurers requiring that an authorized assessment be paid within the time set
 21 out in the notice;

22 (14) "impaired insurer" means a member insurer that is not an insolvent
 23 insurer and that is placed under an order of rehabilitation or conservation by a court
 24 of competent jurisdiction;

25 (15) "insolvent insurer" means a member insurer that is placed under
 26 an order of liquidation by a court of competent jurisdiction with a finding of
 27 insolvency;

28 (16) "owner," in relation to a policy or contract,

29 (A) means the person who is identified as the legal owner under
 30 the terms of the policy or contract, or who is otherwise vested with legal title
 31 to the policy or contract through a valid assignment completed under the terms

1 of the policy or contract and who is properly recorded as the owner on the
2 records of the insurer;

3 (B) does not include a person with a mere beneficial interest in
4 a policy or contract;

5 (17) "plan sponsor" means, in the case of a benefit plan established or
6 maintained by

7 (A) a single employer, the employer;

8 (B) an employee organization, the employee organization; or

9 (C) two or more employers or jointly by one or more employers
10 and one or more employee organizations, the association, committee, joint
11 board of trustees, or other group of representatives of the parties who establish
12 or maintain the benefit plan;

13 (18) "receivership court" means the court in the insolvent or impaired
14 insurer's state having jurisdiction over the conservation, rehabilitation, or liquidation
15 of the insurer;

16 (19) "structured settlement annuity" means an annuity purchased in
17 order to fund periodic payments for a plaintiff or other claimant in payment for or with
18 respect to personal injury suffered by the plaintiff or other claimant;

19 (20) "state" means a state of the United States, the District of
20 Columbia, Puerto Rico, or a United States possession, territory, or protectorate.

21 * **Sec. 46.** AS 21.36.035, AS 21.79.060(b), 21.79.100(g), and 21.79.100(i) are repealed.

22 * **Sec. 47.** The uncodified law of the State of Alaska is amended by adding a new section
23 to read:

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