

SENATE BILL NO. 228

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SECOND LEGISLATURE - FIRST SESSION

BY SENATOR TAYLOR

Introduced: 5/8/01

Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Insurance Guaranty Association and to liquidation of an**
2 **insurer; and amending Rule 24, Alaska Rules of Civil Procedure."**

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

4 * **Section 1.** AS 21.78.294 is amended by adding a new subsection to read:

5 (b) Upon request, a receiver may make an advance payment on a claim to a
6 guaranty association or a foreign guaranty association. A receiver who denies a
7 request for an advance payment shall provide a written notice of the reason for the
8 denial. A claimant that receives an advance payment in excess of the covered claims
9 due the claimant shall promptly refund the difference to the receiver.

10 * **Sec. 2.** AS 21.80.060 is amended to read:

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

12 (1) is obligated to pay covered claims existing before the order of
13 liquidation and arising within 30 days after the order of liquidation, or before the
14 policy expiration date if less than 30 days after the order of liquidation, or before the

1 insured replaces the policy or causes its cancellation if the insured does so within 30
 2 days after the order of liquidation, but this obligation includes only that amount of
 3 each covered claim that is less than \$500,000, except that a covered claim for return of
 4 unearned premium may not exceed \$10,000 for each policy, and except that the
 5 association shall pay the full amount of any covered claim arising out of a workers'
 6 compensation policy; the association is not obligated

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

10 (B) to pay a claim filed with the association

11 (i) after **the earlier of 18 months after the date of the**
 12 **order of liquidation or** the final date set by the court for the filing of
 13 claims against the liquidator or receiver of an insolvent insurer;

14 (ii) **arising under a policy of an insolvent insurer and**
 15 **the association or the association and an insurance guaranty**
 16 **association of another state has paid \$10,000,000 on covered claims**
 17 **or allowed claims; this sub-subparagraph does not apply to a claim**
 18 **for workers' compensation benefits; or**

19 (iii) **by an insured that, on December 31 of the year**
 20 **preceding the date the insurer becomes an insolvent insurer, had a**
 21 **net worth exceeding \$25,000,000; for purposes of this sub-**
 22 **subparagraph, the insured's net worth shall be considered to**
 23 **include the aggregate net worth of the insured and all subsidiaries**
 24 **calculated on a consolidated basis; or**

25 (C) **to defend an insured on a covered claim after the**
 26 **association's**

27 (i) **payment, by settlement releasing the insured or**
 28 **on a judgment, of an amount equal to the lesser of the association's**
 29 **covered claim obligation limit or the applicable limit payable under**
 30 **the policy; or**

31 (ii) **tender of the amount described under (i) of this**

1 **subparagraph:**

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

5 (3) shall allocate claims paid and expenses incurred among the three
6 accounts separately, and assess member insurers separately for each account amounts
7 necessary to pay the obligation of the association under (1) of this subsection
8 subsequent to an insolvency, the expenses of handling covered claims subsequent to
9 an insolvency, and other 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 calendar year preceding the assessment on the kinds of insurance in the
13 account bears to the net direct written premiums of all member insurers for the
14 calendar year preceding the assessment on the kinds of insurance in the
15 account; each member insurer shall be notified of the assessment not later than
16 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 calendar year preceding the assessment on the kinds
20 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 received
23 from claimants or in groups or categories of claims; however, if the maximum
24 assessment, together with the other assets of the association in any account,
25 does not provide in any one year in any account an amount sufficient to make
26 all necessary payments from that account, the funds available shall be prorated,
27 and the unpaid portion shall be paid as soon thereafter as funds become
28 available;

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

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

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

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

20 (5) may, subject to AS 21.89.100, appoint, substitute, or direct legal
21 counsel retained under an insurance policy for the defense of a covered claim;

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

29 (7) shall reimburse each servicing facility for obligations of the
30 association paid by the facility and for expenses incurred by the facility while handling
31 claims on behalf of the association and shall pay the other expenses of the association

1 authorized by this chapter.

2 (b) The association may

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

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

7 (3) sue or be sued; **this power includes the power and right to**
8 **intervene as a party before a court in this state that has jurisdiction over an**
9 **insolvent insurer;**

10 (4) negotiate and become a party to those contracts that are necessary
11 to carry out the purposes of this chapter;

12 (5) perform all other acts necessary or proper to carry out the purposes
13 of this chapter;

14 (6) refund to the member insurers in proportion to the contribution of
15 each member insurer to that account that amount by which the assets of the account
16 exceed the liabilities if, at the end of any calendar year, the board of governors finds
17 that the assets of the association in any account exceed the liabilities of that account as
18 estimated by the board of governors for the coming year.

19 * **Sec. 3.** AS 21.80.080(a) is amended to read:

20 (a) The director shall

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

24 (2) upon request of the board of governors, provide the association
25 with a statement of the net direct written premiums of each member insurer;

26 **(3) before approving any transaction or series of transactions**
27 **within the same insurance holding company system permitting one or more**
28 **insurance companies to transfer substantially all existing insurance policy**
29 **liabilities or a class of policies to another company that is not expected to issue**
30 **any new policies, make a full, detailed disclosure, including the mode of transfer,**
31 **the loss reserve, and the asset analysis of the proposed transaction, to the**

1 **association for review; after receiving the information required in this paragraph**
2 **about the transaction, the association may request a public hearing to ascertain**
3 **whether the risk to the association will unreasonably increase as the result of the**
4 **company assuming the existing liabilities becoming insolvent.**

5 * **Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to
6 read:

7 INDIRECT COURT RULE AMENDMENT. AS 21.80.060(b)(3), as amended by
8 sec. 2 of this Act, has the effect of amending Rule 24, Alaska Rules of Civil Procedure, by
9 giving the Alaska Insurance Guaranty Association the right to intervene in certain civil
10 actions.

11 * **Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to
12 read:

13 CONDITIONAL EFFECT. The amendment to AS 21.80.060(b)(3), made by sec. 2 of
14 this Act, takes effect only if sec. 4 of this Act receives the two-thirds majority vote of each
15 house required by art. IV, sec. 15, Constitution of the State of Alaska.