



# LAWS OF ALASKA

2004

**Source**

HCS CSSB 276(JUD)

**Chapter No.**

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**AN ACT**

Relating to the Alaska Insurance Guaranty Association; relating to the powers of the Alaska Industrial Development and Export Authority concerning the association; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1



**AN ACT**

1 Relating to the Alaska Insurance Guaranty Association; relating to the powers of the Alaska  
2 Industrial Development and Export Authority concerning the association; and providing for  
3 an effective date.

4



5 \* **Section 1.** AS 21.80.060(a) is amended to read:

6 (a) The association

7 (1) is obligated to pay covered claims existing before the order of  
8 liquidation and arising within 30 days after the order of liquidation, or before the  
9 policy expiration date if less than 30 days after the order of liquidation, or before the  
10 insured replaces the policy or causes its cancellation if the insured does so within 30  
11 days after the order of liquidation, but this obligation includes only that amount of  
12 each covered claim that is less than \$500,000, except that a covered claim for return of  
13 unearned premium may not exceed \$10,000 for each policy, and except that the  
14 association shall pay the full amount of any covered claim arising out of a workers'

1 compensation policy; the association is not obligated

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

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

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

11 (3) shall allocate claims paid and expenses incurred among the three  
12 accounts separately, and assess member insurers separately for each account amounts  
13 necessary to pay the obligation of the association under (1) of this subsection  
14 subsequent to an insolvency, the expenses of handling covered claims subsequent to  
15 an insolvency, and other expenses authorized by this chapter; under this paragraph,

16 (A) the assessments of each member insurer must initially be  
17 based on a uniform percentage, as determined by the association, of the net  
18 direct written premiums of each member insurer for the last year for which  
19 annual statements have been filed on the kinds of insurance in the account; this  
20 initial assessment shall be adjusted by applying the same uniform percentage  
21 as initially used to each member insurer's net direct written premiums for the  
22 calendar year following the year in which the initial assessment was issued;  
23 any difference between the initial assessment amount and the adjusted  
24 assessment amount allocated to a member insurer shall be levied against or  
25 credited back to the member insurer, as appropriate, by the association; the  
26 association shall calculate and issue all appropriate levies and credits as soon  
27 as practical after all member insurers have filed their annual statements for the  
28 calendar year following the year in which the initial assessment was issued;

29 (B) on an annual basis, the association shall determine if  
30 funding is required for any of the three accounts; based on this determination,  
31 the association shall, during November of each year, issue initial assessments

1 as may be necessary to cover the projected reasonable costs of claims and  
2 expenses to administer the association for the following year; **under this**  
3 **subparagraph,**

4 (i) the association shall use the services of an  
5 independent actuary to assist the association to evaluate and make the  
6 projection;

7 (ii) an initial assessment may be made at any other time  
8 if the association determines funding is necessary, except that a  
9 member insurer may not be assessed initial assessments on any account  
10 in an amount greater than **four** [TWO] percent of the member insurer's  
11 net direct written premiums for the applicable calendar year; **and**

12 **(iii) if an account has insufficient funds to pay**  
13 **covered claims under this section, the association shall assess each**  
14 **member insurer subject to assessment in the other two accounts an**  
15 **additional amount not to exceed two percent of the member**  
16 **insurer's net direct written premiums for the applicable calendar**  
17 **year;**

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

26 (D) the association may defer, in whole or in part, an  
27 assessment of any member insurer if the assessment would endanger the ability  
28 of the member insurer to fulfill the insurer's contractual obligations or cause  
29 the member insurer's financial statement to reflect amounts of capital or  
30 surplus less than the minimum amounts required for a certificate of authority  
31 by any jurisdiction in which the member insurer is authorized to transact

1 insurance; however, during the period of deferment, the member insurer may  
2 not pay dividends to shareholders or policyholders; a deferred assessment may  
3 only be paid when the payment does not reduce capital or surplus below  
4 minimums required by law; a member insurer who pays a larger assessment as  
5 a result of a deferment given to another member insurer shall receive a refund  
6 when the deferment ends or, at the election of the member insurer, receive a  
7 credit against future assessments;

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

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

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

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

26 (7) shall reimburse each servicing facility for obligations of the  
27 association paid by the facility and for expenses incurred by the facility while handling  
28 claims on behalf of the association and shall pay the other expenses of the association  
29 authorized by this chapter.

30 \* **Sec. 2.** AS 21.80.060(a) is amended to read:

31 (a) The association

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

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

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

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

19 (3) shall allocate claims paid and expenses incurred among the three  
20 accounts separately, and assess member insurers separately for each account amounts  
21 necessary to pay the obligation of the association under (1) of this subsection  
22 subsequent to an insolvency, the expenses of handling covered claims subsequent to  
23 an insolvency, and other expenses authorized by this chapter; under this paragraph,

24 (A) the assessments of each member insurer must initially be  
25 based on a uniform percentage, as determined by the association, of the net  
26 direct written premiums of each member insurer for the last year for which  
27 annual statements have been filed on the kinds of insurance in the account; this  
28 initial assessment shall be adjusted by applying the same uniform percentage  
29 as initially used to each member insurer's net direct written premiums for the  
30 calendar year following the year in which the initial assessment was issued;  
31 any difference between the initial assessment amount and the adjusted

1 assessment amount allocated to a member insurer shall be levied against or  
2 credited back to the member insurer, as appropriate, by the association; the  
3 association shall calculate and issue all appropriate levies and credits as soon  
4 as practical after all member insurers have filed their annual statements for the  
5 calendar year following the year in which the initial assessment was issued;

6 (B) on an annual basis, the association shall determine if  
7 funding is required for any of the three accounts; based on this determination,  
8 the association shall, during November of each year, issue initial assessments  
9 as may be necessary to cover the projected reasonable costs of claims and  
10 expenses to administer the association for the following year; under this  
11 subparagraph,

12 (i) the association shall use the services of an  
13 independent actuary to assist the association to evaluate and make the  
14 projection; **and**

15 (ii) an initial assessment may be made at any other time  
16 if the association determines funding is necessary, except that a  
17 member insurer may not be assessed initial assessments on any account  
18 in an amount greater than **two** [FOUR] percent of the member insurer's  
19 net direct written premiums for the applicable calendar year; [AND

20 (iii) IF AN ACCOUNT HAS INSUFFICIENT FUNDS  
21 TO PAY COVERED CLAIMS UNDER THIS SECTION, THE  
22 ASSOCIATION SHALL ASSESS EACH MEMBER INSURER  
23 SUBJECT TO ASSESSMENT IN THE OTHER TWO ACCOUNTS  
24 AN ADDITIONAL AMOUNT NOT TO EXCEED TWO PERCENT  
25 OF THE MEMBER INSURER'S NET DIRECT WRITTEN  
26 PREMIUMS FOR THE APPLICABLE CALENDAR YEAR;]

27 (C) the association may pay claims in any order that it  
28 determines reasonable, including the payment of claims as they are received  
29 from claimants or in groups or categories of claims; however, if the maximum  
30 of all assessments made under this section, together with the other assets of the  
31 association in any account, does not provide, in any one year, in any account,

1 an amount sufficient to make all necessary payments from that account, the  
2 funds available shall be prorated, and the unpaid portion shall be paid as soon  
3 thereafter as funds become available;

4 (D) the association may defer, in whole or in part, an  
5 assessment of any member insurer if the assessment would endanger the ability  
6 of the member insurer to fulfill the insurer's contractual obligations or cause  
7 the member insurer's financial statement to reflect amounts of capital or  
8 surplus less than the minimum amounts required for a certificate of authority  
9 by any jurisdiction in which the member insurer is authorized to transact  
10 insurance; however, during the period of deferment, the member insurer may  
11 not pay dividends to shareholders or policyholders; a deferred assessment may  
12 only be paid when the payment does not reduce capital or surplus below  
13 minimums required by law; a member insurer who pays a larger assessment as  
14 a result of a deferment given to another member insurer shall receive a refund  
15 when the deferment ends or, at the election of the member insurer, receive a  
16 credit against future assessments;

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

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

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

28 (6) shall handle claims through its employees or through one or more  
29 insurers or other persons designated as servicing facilities; a servicing facility shall  
30 operate and maintain its principal office in this state unless the use of a servicing  
31 facility located outside of the state would result in operating cost savings of at least 10

1 percent and would not result in material delay in claim payments; designation of a  
2 servicing facility is subject to the approval of the director, but designation may be  
3 declined by a member insurer;

4 (7) shall reimburse each servicing facility for obligations of the  
5 association paid by the facility and for expenses incurred by the facility while handling  
6 claims on behalf of the association and shall pay the other expenses of the association  
7 authorized by this chapter.

8 \* **Sec. 3.** AS 21.80.060(b) is amended to read:

9 (b) The association may

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

12 (2) borrow funds necessary to effect the purposes of this chapter in  
13 accord with the plan of operation **and secure guarantees from the Alaska Industrial**  
14 **Development and Export Authority for association loans that are necessary to**  
15 **make the association financially able to meet cash flow needs;**

16 (3) sue or be sued;

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

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

21 (6) retain amounts excess of claims, expenses, credits, and other  
22 liabilities in any account to be applied to reduce future assessments in that account,  
23 except that, if, in any year, the association determines that significant funds in excess  
24 of projected claims, expenses, credits, and other liabilities exist in an account, the  
25 association shall return amounts to policyholders, through procedures established by  
26 the association, whereby the association reimburses member insurers for providing  
27 uniform credits against rates and premiums charged for all policies applicable to the  
28 account issued during the next calendar year.

29 \* **Sec. 4.** AS 44.88.080 is amended by adding a new paragraph to read:

30 (27) to guarantee loans made to the Alaska Insurance Guaranty  
31 Association (AS 21.80.040), with these guarantees limited to loans necessary to make

1           the association financially able to meet cash flow needs up to a maximum outstanding  
2           principal balance at any time of \$30,000,000.

3       \* **Sec. 5.** Section 2 of this Act takes effect July 1, 2010.

4       \* **Sec. 6.** Except as provided in sec. 5 of this Act, this Act takes effect immediately under  
5       AS 01.10.070(c).