

**CS FOR SENATE BILL NO. 276(L&C)**

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

**BY THE SENATE LABOR AND COMMERCE COMMITTEE**

**Offered: 2/18/04**

**Referred: Finance**

**Sponsor(s): SENATE RULES COMMITTEE BY REQUEST OF THE GOVERNOR**

**A BILL**

**FOR AN ACT ENTITLED**

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

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

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 two percent of the member insurer's net  
 11 direct written premiums for the applicable calendar year;

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

20 (D) the association may defer, in whole or in part, an  
 21 assessment of any member insurer if the assessment would endanger the ability  
 22 of the member insurer to fulfill the insurer's contractual obligations or cause  
 23 the member insurer's financial statement to reflect amounts of capital or  
 24 surplus less than the minimum amounts required for a certificate of authority  
 25 by any jurisdiction in which the member insurer is authorized to transact  
 26 insurance; however, during the period of deferment, the member insurer may  
 27 not pay dividends to shareholders or policyholders; a deferred assessment may  
 28 only be paid when the payment does not reduce capital or surplus below  
 29 minimums required by law; a member insurer who pays a larger assessment as  
 30 a result of a deferment given to another member insurer shall receive a refund  
 31 when the deferment ends or, at the election of the member insurer, receive a

1 credit against future assessments;

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

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

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

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

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

24 \* **Sec. 2.** AS 21.80.060(b) is amended to read:

25 (b) The association may

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

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

- 1 (3) sue or be sued;
- 2 (4) negotiate and become a party to those contracts that are necessary  
3 to carry out the purposes of this chapter;
- 4 (5) perform all other acts necessary or proper to carry out the purposes  
5 of this chapter;
- 6 (6) retain amounts excess of claims, expenses, credits, and other  
7 liabilities in any account to be applied to reduce future assessments in that account,  
8 except that, if, in any year, the association determines that significant funds in excess  
9 of projected claims, expenses, credits, and other liabilities exist in an account, the  
10 association shall return amounts to policyholders, through procedures established by  
11 the association, whereby the association reimburses member insurers for providing  
12 uniform credits against rates and premiums charged for all policies applicable to the  
13 account issued during the next calendar year.

14 \* **Sec. 3.** AS 21.80.080(b) is amended to read:

15 (b) The director may

16 (1) suspend or revoke, after notice and hearing, the certificate of  
17 authority to transact insurance in this state of any member insurer that fails to pay an  
18 assessment when due or fails to comply with the plan of operation; as an alternative,  
19 the director may levy a fine on any member insurer that fails to pay an assessment  
20 when due; this fine may not exceed five percent of the unpaid assessment per month or  
21 portion of a month, except that a fine may not be less than \$250 a month;

22 (2) revoke the designation of any servicing facility upon a finding that  
23 claims are being handled unsatisfactorily;

24 (3) upon a finding by the superior court that the board of governors has  
25 failed to comply with a requirement of this chapter or the plan of operation, assume  
26 the powers of the board of governors under AS 21.80.060;

27 (4) **subject to an appropriation by the legislature from the**  
28 **earnings reserve account established under AS 37.13.145, make a grant or grants**  
29 **to the association as may be required to ensure the long-term solvency of the**  
30 **association.**

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

1                   (27) to guarantee loans made to the Alaska Insurance Guaranty  
2 Association (AS 21.80.040), with these guarantees limited to loans necessary to make  
3 the association financially able to meet cash flow needs up to a maximum outstanding  
4 principal balance at any time of \$30,000,000.

5 \* **Sec. 5.** This Act takes effect immediately under AS 01.10.070(c).