

HOUSE CS FOR CS FOR SENATE BILL NO. 276(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 4/22/04

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 **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).