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Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

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HOUSE BILL NO. 782

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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SIXTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to guaranteeing certain insurance
7 contracts."

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

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* Section 1. AS 21 is amended by adding a new chapter to read:

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CHAPTER 80. ALASKA INSURANCE GUARANTY ASSOCIATION ACT.

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Sec. 21.80.010. PURPOSE. The purpose of this chapter is to pro-

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vide a mechanism for the payment of covered claims under certain insurance

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policies to avoid excessive delay in payment and to avoid financial loss

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to claimants or policyholders because of the insolvency of an insurer,

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to assist in the detection and prevention of insurer insolvencies, and

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to provide an association to assess the cost of this protection among

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insurers.

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Sec. 21.80.020. SCOPE. This chapter applies to all kinds of

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direct insurance, except life, title, surety, disability, credit,

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mortgage guaranty, and ocean marine insurance.

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Sec. 21.80.030. CONSTRUCTION. This chapter shall be liberally

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construed to effect the purpose under sec. 10 of this chapter which

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constitute an aid and guide to interpretation.

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Sec. 21.80.040. CREATION OF ASSOCIATION. There is created a non-

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profit incorporated legal entity to be known as the Alaska Insurance

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Guaranty Association. All insurers defined as member insurers in sec.

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190(6) of this chapter shall be and remain members of the association

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as a condition of their authority to transact insurance in this state.

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The association shall perform its functions under a plan of operation

1 established and approved under sec. 70 of this chapter and shall exer-
2 cise its powers through a board of directors established under sec. 50
3 of this chapter. For purposes of administration and assessment, the
4 association shall be divided into three separate accounts; the work-
5 men's compensation insurance account; the automobile insurance account;
6 and the account for all other insurance to which this chapter applies.

7 Sec. 21.80.050. BOARD OF DIRECTORS. (a) The board of directors
8 of the association shall consist of not less than five nor more than nine
9 persons serving terms as established in the plan of operation. The
10 members of the board shall be selected by member insurers subject to
11 the approval of the commissioner. Vacancies of the board shall be
12 filled for the remaining period of the term in the same manner as
13 initial appointments. If no members are selected within 60 days after
14 the effective date of this chapter, the commissioner may appoint the
15 initial members of the board of directors.

16 (b) In approving selections to the board, the commissioner shall
17 consider among other things whether all member insurers are fairly
18 represented.

19 (c) Members of the board may be reimbursed from the assets of the
20 association for expenses incurred by them as members of the board of
21 directors.

22 Sec. 21.80.060. POWERS AND DUTIES OF THE ASSOCIATION. (a) The
23 association shall

24 (1) be obligated to the extent of the covered claims exist-
25 ing prior to the determination of insolvency and arising within 30
26 days after the determination of insolvency, or before the policy expira-
27 tion date if less than 30 days after the determination, or before the
28 insured replaces the policy or causes its cancellation, if he does so
29 within 30 days of the determination, but this obligation shall include

1 only that amount of each covered claim which is in excess of \$100 and is
2 less than \$300,000, except that the association shall pay the full
3 amount of any covered claim arising out of a workmen's compensation
4 policy; in no event shall the association be obligated to a policy
5 holder or claimant in an amount in excess of the obligation of the in-
6 solvent insurer under the policy form which the claim arises;

7 (2) be considered the insurer to the extent of its obliga-
8 tion on the covered claims and to that extent shall have all rights,
9 duties, and obligations of the insolvent insurer as if the insurer had
10 not become insolvent;

11 (3) allocate claims paid and expenses incurred among the
12 three accounts separately, and assess member insurers separately for
13 each account amounts necessary to pay the obligation of the association
14 under (a)(1) of this section subsequent to an insolvency, the expenses
15 of handling covered claims subsequent to an insolvency, the cost of
16 examinations under sec. 110 of this chapter and other expenses autho-
17 rized by this chapter; the assessments of each member insurer shall be
18 in the proportion that the net direct written premiums of the member
19 insurer for the preceding calendar year on the kinds of insurance in the
20 account bears to the net direct written premiums of all member insurers
21 for the preceding calendar year on the kinds of insurance in the
22 account; each member insurer shall be notified of the assessment not
23 later than 30 days before it is due; no member insurer may be assessed
24 in any year on any account an amount greater than two per cent of the
25 member insurer's net direct written premiums for the preceding calendar
26 year on the kinds of insurance in the account. If the maximum assessment,
27 together with the other assets of the association in any account, does
28 not provide in any one year in any account an amount sufficient to make
29 all necessary payments from that account, the funds available shall be

1 prorated and the unpaid portion shall be paid as soon thereafter as
2 funds become available; the association may exempt or defer, in whole
3 or in part, the assessment of any member insurer, if the assessment would
4 cause the member insurer's financial statement to reflect amounts of
5 capital or surplus less than the minimum amounts required for a certi-
6 ficate of authority by any jurisdiction in which the member insurer
7 is authorized to transact insurance; each member insurer may set off
8 against an assessment, authorized payments made on covered claims and
9 expenses incurred in the payment of these claims by the member insurer
10 if they are chargeable to the account for which the assessment is
11 made;

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

18 (5) notify persons as the commissioner directs under sec.
19 80(b)(1) of this chapter;

20 (6) handle claims through its employees or through one or
21 more insurers or other persons designated as servicing facilities;
22 designation of a servicing facility is subject to the approval of the
23 commissioner, but designation may be declined by a member insurer;

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

28 (b) The association may

29 (1) employ or retain those persons necessary to handle

1 claims and perform other duties of the association;

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

4 (3) sue or be sued;

5 (4) negotiate and become a party to those contracts as are
6 necessary to carry out the purposes of this chapter;

7 (5) perform all other acts necessary or proper to effectuate
8 the purposes of this chapter;

9 (6) refund to the member insurers in proportion to the con-
10 tribution of each member insurer to that account that amount by which
11 the assets of the account exceed the liabilities if, at the end of any
12 calendar year, the board of directors finds that the assets of the
13 association in any account exceed the liabilities of that account as
14 estimated by the board of directors for the coming year;

15 (7) appear in, defend, and appeal any action on a claim
16 brought against the association.

17 Sec. 21.80.070. PLAN OF OPERATION. (a) The association shall
18 submit to the commissioner a plan of operation and any amendments
19 necessary or suitable to assure the fair, reasonable, and equitable
20 administration of the association. The plan of operation and amendments
21 shall become effective upon approval in writing by the commissioner.
22 If the association fails to submit a suitable plan of operation within
23 90 days following the effective date of this chapter or if at any sub-
24 sequent time the association fails to submit suitable amendments to
25 the plan, the commissioner shall, after notice and hearing, adopt and
26 promulgate reasonable rules necessary or advisable to effectuate the
27 provisions of this chapter. These rules shall continue in force until
28 modified by the commissioner or superceded by a plan submitted by the
29 association and approved by the commissioner.

1 (b) All member insurers shall comply with the plan of operation.

2 (c) The plan of operation shall

3 (1) establish the procedures whereby all the powers and
4 duties of the association under sec. 60 of this chapter will be per-
5 formed;

6 (2) establish procedures for handling assets of the associ-
7 ation;

8 (3) establish the amount and method of reimbursing members
9 of the board of directors under sec. 50 of this chapter;

10 (4) establish procedures by which claims may be filed with
11 the association and establish acceptable forms of proof of covered
12 claims; notice of claims to the receiver or liquidator of the insolvent
13 insurer shall be deemed notice to the association or its agent and a
14 list of these claims shall be periodically submitted to the association
15 or similar organization in another state by the receiver or liquidator;

16 (5) establish regular places and times for meetings of the
17 board of directors;

18 (6) establish procedures for records to be kept of all
19 financial transactions of the association, its agents, and the board
20 of directors;

21 (7) provide that any member insurer aggrieved by a final
22 action or decision of the association may appeal to the commissioner
23 within 30 days after the action or decision;

24 (8) establish the procedures whereby selections for the
25 board of directors will be submitted to the commissioner;

26 (9) contain additional provisions necessary or proper for
27 the execution of the powers and duties of the association.

28 (d) The plan of operation may provide that any or all powers and
29 duties of the association, except those under secs. 60(a)(3) and

1 60(b)(2) are delegated to a corporation, association, or other
2 organization which performs or will perform functions similar to those
3 of this association, or its equivalent, in two or more states. Such a
4 corporation, association or organization shall be reimbursed as a
5 servicing facility would be reimbursed and shall be paid for its
6 performance of any other functions of the association. A delegation
7 under this subsection shall take effect only with the approval of both
8 the board of directors and the commissioner, and may be made only to a
9 corporation, association, or organization which extends protection not
10 substantially less favorable and effective than that provided by this
11 chapter.

12 Sec. 21.80.080. DUTIES AND POWERS OF THE COMMISSIONER. (a) The
13 commissioner shall

14 (1) notify the association of the existence of an insolvent
15 insurer no later than three days after he receives notice of the
16 determination of the insolvency;

17 (2) upon request of the board of directors, provide the
18 association with a statement of the net direct written premiums of
19 each member insurer.

20 (b) The commissioner may

21 (1) require that the association notify the insureds of the
22 insolvent insurer and any other interested parties of the determination
23 of insolvency and of their rights under this chapter; this notification
24 shall be by mail at their last known address, when available, but if
25 sufficient information for notification by mail is not available,
26 notice by publication in a newspaper of general circulation shall be
27 sufficient;

28 (2) suspend or revoke, after notice and hearing, the
29 certificate of authority to transact insurance in this state of any

1 member insurer which fails to pay an assessment when due or fails to
2 comply with the plan of operation. As an alternative, the commissioner
3 may levy a fine on any member insurer which fails to pay an assessment
4 when due; this fine may not exceed five per cent of the unpaid assess-
5 ment per month, except that no fine may be less than \$100 a month;

6 (3) revoke the designation of any servicing facility if
7 he finds claims are being handled unsatisfactorily.

8 Sec. 21.80.090. EFFECT OF PAID CLAIMS. (a) A person recovering
9 under this chapter shall be considered to have assigned his rights under
10 the policy to the association to the extent of his recovery from the
11 association. Every insured or claimant seeking the protection of this
12 chapter shall cooperate with the association to the same extent as the
13 person would have been required to cooperate with the insolvent insurer.
14 The association shall have no cause of action against the insured of
15 the insolvent insurer for any sums it has paid out except those causes
16 of action as the insolvent insurer would have had if the sums had been
17 paid by the insolvent insurer. In the case of an insolvent insurer
18 operating on a plan with assessment liability, payments of claims of the
19 association shall not operate to reduce the liability of insured to the
20 receiver, liquidator, or statutory successor for unpaid assessments.

21 (b) The receiver, liquidator, or statutory successor of an in-
22 solvent insurer shall be bound by settlements of covered claims by the
23 association or a similar organization in another state. The court
24 having jurisdiction shall grant these claims priority equal to that which
25 the claimant would have been entitled in the absence of this chapter
26 against the assets of the insolvent insurer. The expenses of the as-
27 sociation or similar organization in handling claims shall be accorded
28 the same priority as the liquidator's expenses.

29 (c) The association shall periodically file with the receiver or

1 liquidator of the insolvent insurer statements of the covered claims
2 paid by the association and estimates of anticipated claims on the
3 association which shall preserve the rights of the association against
4 the assets of the insolvent insurer.

5 Sec. 21.80.100. NONDUPLICATION OF RECOVERY. (a) A person having
6 a claim against an insurer under a provision in an insurance policy
7 other than a policy of an insolvent insurer which is also a covered
8 claim, shall be required to exhaust first his right under the policy.
9 Any amount payable on a covered claim under this chapter shall be
10 reduced by the amount of recovery under the insurance policy.

11 (b) A person having a claim which may be recovered under more than
12 one insurance guaranty association or its equivalent shall seek recovery
13 first from the association of the place of residence of the insured
14 except that if it is a first party claim for damage to property with a
15 permanent location, he shall seek recovery first from the association
16 of the location of the property, and if it is a workmen's compensation
17 claim, he shall seek recovery first from the association of the resi-
18 dence of the claimant. A recovery under this chapter shall be reduced
19 by the amount of recovery from any other insurance guaranty association
20 or its equivalent.

21 Sec. 21.80.110. PREVENTION AND DETECTION OF INSOLVENCIES. (a) It
22 is the duty of the board of directors, upon majority vote, to notify
23 the commissioner of information indicating that a member insurer may be
24 insolvent or in a financial condition hazardous to the policyholders or
25 the public.

26 (b) The board of directors may, upon majority vote, request that
27 the commissioner order an examination of a member insurer which the
28 board in good faith believes may be in a financial condition hazardous
29 to the policyholders or the public. Within 30 days of the receipt of

1 the request, the commissioner shall begin the examination. The examina-
2 tion may be conducted as a National Association of Insurance Commissioners
3 Examination or may be conducted by those persons the commissioner
4 designates. The cost of the examination shall be paid by the association
5 and the examination report shall be treated as are other examination
6 reports. In no event may the examination report be released to the
7 board of directors before its release to the public, but this does not
8 preclude the commissioner from complying with (c) of this section. The
9 commissioner shall notify the board of directors when the examination is
10 completed. The request for an examination shall be kept on file by the
11 commissioner but it shall not be open to public inspection before the
12 release of the examination report to the public.

13 (c) It is the duty of the commissioner to report to the board of
14 directors when he has reasonable cause to believe that a member insurer
15 examined or being examined at the request of the board of directors
16 may be insolvent or in a financial condition hazardous to the policy-
17 holders or the public.

18 (d) The board of directors may, upon majority vote, make reports
19 and recommendations to the commissioner upon any matter germane to the
20 solvency, liquidation, rehabilitation or conservation of a member in-
21 surer. These reports and recommendations shall not be considered public
22 documents.

23 (e) The board of directors may, upon majority vote, make recom-
24 mendations to the commissioner for the detection and prevention of
25 insurer insolvencies.

26 (f) The board of directors shall, at the conclusion of an insurer
27 insolvency in which the association was obligated to pay covered claims,
28 prepare a report on the history and causes of the insolvency, based on
29 the information available to the association, and submit this report

1 to the commissioner.

2 Sec. 21.80.120. EXAMINATION OF THE ASSOCIATION. The association
3 shall be subject to examination and regulation by the commissioner.
4 The board of directors shall submit, not later than March 30 of each
5 year, a financial report for the preceding calendar year in a form
6 approved by the commissioner.

7 Sec. 21.80.130. TAX EXEMPTION. The association shall be exempt
8 from payment of all fees and all taxes levied by the state or any of
9 its subdivisions except taxes levied on real or personal property.

10 Sec. 21.80.140. RECOGNITION OF ASSESSMENTS IN RATES. The rates
11 and premiums charged for insurance policies to which this chapter
12 applies shall include amounts sufficient to recoup a sum equal to the
13 amounts paid to the association by the member insurer less any amounts
14 returned to the member insurer by the association and these rates shall
15 not be considered excessive because they contain an amount reasonably
16 calculated to recoup assessments paid by the member insurer.

17 Sec. 21.80.150. IMMUNITY. There shall be no liability on the part
18 of and no cause of action of any nature shall arise against a member
19 insurer, the association or its agents or employees, the board of
20 directors, or the commissioner or his representatives for action taken
21 by them in the performance of their powers and duties under this
22 chapter.

23 Sec. 21.80.160. STAY OF PROCEEDINGS AND REOPENING OF DEFAULT
24 JUDGMENTS. All proceedings in which the insolvent insurer is a party
25 or is obligated to defend a party in a court in this state shall be
26 stayed for 60 days from the date the insolvency is determined to permit
27 proper defense by the association for all pending causes of action as
28 to any covered claims arising from a judgment under a decision, verdict
29 or finding based on the default of the insolvent insurer or its failure

1 to defend an insured. The association either on its own behalf or on
2 behalf of the insured may apply to have this judgment, order, decision,
3 verdict or finding set aside by the same court or administrator that
4 made the judgment, order, decision, verdict or finding and shall be
5 permitted to defend against the claim on the merits.

6 Sec. 21.80.170. TERMINATION AND DISTRIBUTION OF FUNDS. (a) The
7 commissioner shall by order terminate the operation of the Alaska
8 Insurance Guaranty Association as to any kind of insurance covered
9 by this chapter with respect to which he has found, after hearing,
10 that there is in effect a statutory or voluntary plan which

11 (1) is a permanent plan which is adequately funded or for
12 which adequate funding is provided; and

13 (2) extends, or will extend to the Alaska policyholders and
14 residents protection and benefits with respect to insolvent insurers
15 not substantially less favorable and effective to the policyholders
16 and residents than the protection and benefits provided with respect
17 to the kinds of insurance under this chapter.

18 (b) The commissioner shall by the same order authorize discontinu-
19 ance of future payments by insurers to the Alaska Insurance Guaranty
20 Association with respect to the same kinds of insurance so long as the
21 assessments and payments continue, as necessary, to liquidate covered
22 claims of insurers adjudged insolvent before the order and the related
23 expenses not covered by the other plan.

24 (c) If the operation of the Alaska Insurance Guaranty Association
25 is terminated as to all kinds of insurance otherwise within its scope,
26 the association, as soon as possible thereafter, shall distribute the
27 balance of money and assets remaining (after discharge of the functions
28 of the association with respect to prior insurer insolvencies not
29 covered by the other plan, together with related expenses) to the

1 insurers which are then writing in this state policies of the kinds of
2 insurance covered by this chapter and which had made payments to the
3 association, pro rata upon the basis of the aggregate of the payments
4 made by the respective insurers during the period of five years next
5 preceding the date of the termination order. Upon completion of this
6 distribution with respect to all of the kinds of insurance covered by
7 this chapter, this chapter shall be considered to have expired.

8 Sec. 21.80.180. TITLE. This chapter may be known and cited as
9 the Alaska Insurance Guaranty Association Act.

10 Sec. 21.80.190. DEFINITIONS. In this chapter, unless the context
11 requires otherwise,

12 (1) "account" means any one of the three accounts created by
13 sec. 40 of this chapter;

14 (2) "association" means the Alaska Insurance Guaranty As-
15 sociation;

16 (3) "commissioner" means the commissioner of the Department
17 of Commerce or his representative;

18 (4) "covered claim" means an unpaid claim, including one of
19 unearned premiums, which arises out of and is within the coverage and
20 not in excess of the applicable limits of an insurance policy to which
21 this chapter applies issued by an insurer, if the insurer becomes an
22 insolvent insurer after the effective date of this chapter and (A) the
23 claimant or insured is a resident of this state at the time of the
24 insured event; or (B) the property from which the claim arises is
25 permanently located in this state; "covered claim" does not include
26 any amount due a reinsurer, insurer, insurance pool, or underwriting
27 association, as subrogation recoveries or otherwise;

28 (5) "insolvent insurer" means an insurer (A) authorized to
29 transact insurance in this state either at the time the policy was

1 issued or when the insured event occurred and (B) determined to be
2 insolvent by a court of competent jurisdiction;

3 (6) "member insurer" means a person who (A) writes any kind
4 of insurance to which this chapter applies under sec. 20 of this
5 chapter including the exchange of reciprocal or inter-insurance
6 contracts, and (B) is licensed to transact insurance in this state;

7 (7) "net direct written premiums" means direct gross
8 premiums written in this state on insurance policies to which this
9 chapter applies, less return premiums thereon and dividends paid or
10 credited to policyholders on direct business; "net direct written
11 premiums" does not include premiums on contracts between insurers or re-
12 insurers.
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