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Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2  HOUSE BILL NO. 79

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act amending the Alaska Insurance Guaranty
7 Association Act."

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

9 * Section 1. AS 21.80.050 is amended to read:

10 Sec. 21.80.050. BOARD OF DIRECTORS. (a) The board of directors
11 of the association consists of not less than five nor more than nine
12 persons serving terms as established in the plan of operation. The
13 members of the board shall be selected by member insurers subject to
14 the approval of the director. In case of a vacancy for any reason on
15 the board, the director shall appoint a member to fill the unexpired
16 term [COMMISSIONER. VACANCIES OF THE BOARD SHALL BE FILLED FOR THE
17 REMAINING PERIOD OF THE TERM IN THE SAME MANNER AS INITIAL APPOINT-
18 MENTS]. If no members are selected by October 5, 1970, the director
19 [COMMISSIONER] may appoint the initial members of the board of directors.

20 (b) In making appointments and in approving selections to the
21 board, the director [COMMISSIONER] shall consider among other things
22 whether all member insurers are fairly represented.

23 (c) Members of the board may be reimbursed from the assets of
24 the association for expenses incurred by them as members of the board
25 of directors.

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

27 (a) The association shall

28 (1) be obligated to the extent of the covered claims existing
29 before the determination of insolvency and arising within 30 days

1 after the determination of insolvency, or before the policy expiration
2 date if less than 30 days after the determination, or before the
3 insured replaces the policy or causes its cancellation, if he does so
4 within 30 days of the determination and if those claims are presented
5 as claims to the liquidator in this state or to the association on or
6 before the last date fixed for the filing of claims by the director;
7 however, [BUT] this obligation includes only that amount of each
8 covered claim which is in excess of \$100 and is less than \$300,000,
9 except that the association shall pay the full amount of any covered
10 claim arising out of a workmen's compensation policy; in no event is
11 the association obligated to a policyholder or claimant in an amount
12 in excess of the obligation of the insolvent insurer under the policy
13 from which the claim arises;

14 (2) be considered the insurer to the extent of its obliga-
15 tion on the covered claims and to that extent has all rights, duties,
16 and obligations of the insolvent insurer as if the insurer had not
17 become insolvent;

18 (3) allocate claims paid and expenses incurred among the
19 three accounts separately, and assess member insurers separately for
20 each account amounts necessary to pay the obligation of the association
21 under (a)(1) of this section subsequent to an insolvency, the expenses
22 of handling covered claims subsequent to an insolvency, the cost of
23 examinations under sec. 110 of this chapter and other expenses autho-
24 rized by this chapter; the assessments of each member insurer to cover
25 claims and claim expenses shall be in the proportion that the net
26 direct written premiums of the member insurers for the preceding
27 calendar year on the kinds of insurance in the account; each member
28 insurer shall pay, in addition, an assessment to cover the administra-
29 tion of the association in amounts approved by the board of directors

1 and the director; each member insurer shall be notified of the assess-
2 ment not later than 30 days before it is due; no member insurer may be
3 assessed for claims in any year on any account an amount greater than
4 two per cent of the member insurer's net direct written premiums for
5 the preceding calendar year on the kinds of insurance in the account;
6 if the maximum assessment, together with the other assets of the
7 association in any account, does not provide in any one year in any
8 account an amount sufficient to make all necessary payments from that
9 account, the funds available may [SHALL] be prorated and the unpaid
10 portion shall be paid as soon thereafter as funds become available;
11 the association may exempt or defer, in whole or in part, the assess-
12 ment of any member insurer, if the assessment would cause the member
13 insurer's financial statement to reflect amounts of capital or surplus
14 less than the minimum amounts required for a certificate of authority
15 by any jurisdiction in which the member insurer is authorized to
16 transact insurance; covered claims may not include set-offs or subroga-
17 tion claims of member insurers except that each member insurer may set
18 off against an assessment, authorized payments made on covered claims
19 and expenses incurred in the payment of these claims by the member
20 insurer if they are chargeable to the account for which the assessment
21 is made;

22 (4) investigate claims brought against the association and
23 adjust, compromise, settle and pay covered claims to the extent of the
24 association's obligation and deny all other claims and may review
25 settlements, releases and judgments to which the insolvent insurer or
26 its insureds were parties to determine the extent to which settlements,
27 releases and judgments may be properly contested; but covered claims
28 may not include adjustment expense and attorney's fees incurred by the
29 insolvent insurer before the appointment of the liquidator;

1 (5) notify persons as the director [COMMISSIONER] directs
2 under sec. 80(b)(1) of this chapter; but the association may, at its
3 option, require that producers of record of the insurer give prompt
4 written notice to their insureds in the same manner as the director
5 has directed;

6 (6) handle claims through its employees or through one or
7 more insurers or other persons designated as servicing facilities;
8 designation of a servicing facility is subject to the approval of the
9 director [COMMISSIONER], but designation may be declined by a member
10 insurer;

11 (7) reimburse each servicing facility for obligations of
12 the association paid by the facility and for expenses incurred by the
13 facility while handling claims on behalf of the association and shall
14 pay the other expenses of the association authorized by this chapter;

15 (8) refund all unused funds to the member insurers in pro-
16 portion to the contribution of each member insurer to each account
17 after all covered claims of the insolvent insurer and expenses of ad-
18 ministration have been paid.

19 * Sec. 3. AS 21.80.060(b) is amended by adding a paragraph to read:

20 (8) enter into a contract with the liquidator, upon terms
21 satisfactory to the association and to the liquidator, under which
22 payments on covered claims would be made by the liquidator using funds
23 provided by the association.

24 * Sec. 4. AS 21.80.070(a) is amended to read:

25 (a) The association shall submit to the director [COMMISSIONER]
26 a plan of operation and any amendments necessary or suitable to assure
27 the fair, reasonable, and equitable administration of the association.
28 The plan of operation and amendments become effective upon approval in
29 writing by the director [COMMISSIONER]. If the association fails to

1 submit a suitable plan of operation by November 4, 1970 or if at any
2 subsequent time the association fails to submit suitable amendments to
3 the plan, the director [COMMISSIONER] shall, after notice and hearing,
4 adopt and promulgate reasonable rules necessary or advisable to effec-
5 tuate the provisions of this chapter. These rules shall continue in
6 force until modified by the director [COMMISSIONER] or superseded by
7 a plan submitted by the association and approved by the director
8 [COMMISSIONER].

9 * Sec. 5. AS 21.80.070(c)(7) is amended to read:

10 (7) provide that any member insurer aggrieved by a final
11 action or decision of the association may appeal to the director
12 [COMMISSIONER] within 30 days after the action or decision;

13 * Sec. 6. AS 21.80.070(c)(8) is amended to read:

14 (8) establish the procedures whereby selections for the
15 board of directors will be submitted to the director [COMMISSIONER];

16 * Sec. 7. AS 21.80.070(d) is amended to read:

17 (d) The plan of operation may provide that any or all powers and
18 duties of the association, except those under secs. 60(a)(3) and
19 60(b)(2) are delegated to a corporation, association, or other organi-
20 zation which performs or will perform functions similar to those of
21 this association, or its equivalent, in two or more states. Such a
22 corporation, association or organization shall be reimbursed as a
23 servicing facility would be reimbursed and shall be paid for its per-
24 formance of any other functions of the association. A delegation
25 under this subsection takes effect only with the approval of both the
26 board of directors and the director [COMMISSIONER], and may be made
27 only to a corporation, association, or organization which extends
28 protection not substantially less favorable and effective than that
29 provided by this chapter.

1 * Sec. 8. AS 21.80.080 is amended to read:

2 Sec. 21.80.080. DUTIES AND POWERS OF THE DIRECTOR [COMMISSIONER].

3 (a) The director [COMMISSIONER] shall

4 (1) notify the association of the existence of an insolvent
5 insurer no later than three days after he receives notice of the
6 determination of the insolvency;

7 (2) upon request of the board of directors, provide the
8 association with a statement of the net direct written premiums of
9 each member insurer.

10 (b) The director [COMMISSIONER] may

11 (1) require that the association notify the insureds of the
12 insolvent insurer and any other interested parties of the determination
13 of insolvency and of their rights under this chapter; this notification
14 shall be by mail at their last known address, when available, but if
15 sufficient information for notification by mail is not available,
16 notice by publication in a newspaper of general circulation is suffi-
17 cient;

18 (2) suspend or revoke, after notice and hearing, the certi-
19 ficate of authority to transact insurance in this state of any member
20 insurer which fails to pay an assessment when due or fails to comply
21 with the plan of operation; as an alternative, the director [COMMIS-
22 SIONER] may levy a fine on any member insurer which fails to pay an
23 assessment when due; this fine may not exceed five per cent of the
24 unpaid assessment per month, except that no fine may be less than \$100
25 a month;

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

28 * Sec. 9. AS 21.80.110 is amended to read:

29 Sec. 21.80.110. PREVENTION AND DETECTION OF INSOLVENCIES. (a)

1 It is the duty of the board of directors, upon majority vote, to
2 notify the director [COMMISSIONER] of information indicating that a
3 member insurer may be insolvent or in an financial condition hazardous
4 to the policyholders or the public.

5 (b) The board of directors may, upon majority vote, request that
6 the director [COMMISSIONER] order an examination of a member insurer
7 which the board in good faith believes may be in a financial condition
8 hazardous to the policyholders or the public. Within 30 days of the
9 receipt of the request, the director [COMMISSIONER] shall begin the
10 examination. The examination may be conducted [AS A NATIONAL ASSOCIA-
11 TION OF INSURANCE COMMISSIONERS EXAMINATION OR MAY BE CONDUCTED] by
12 those persons the director [COMMISSIONER] designates. The cost of the
13 examination shall be paid by the association and the examination
14 report shall be treated as are other examination reports. In no event
15 may the examination report be released to the board of directors
16 before its release to the public, but this does not preclude the
17 director [COMMISSIONER] from complying with (c) of this section. The
18 director [COMMISSIONER] shall notify the board of directors when the
19 examination is completed. The request for an examination shall be
20 kept on file by the director [COMMISSIONER] but it shall not be open
21 to public inspection before the release of the examination report to
22 the public.

23 (c) It is the duty of the director [COMMISSIONER] to report to
24 the board of directors when he has reasonable cause to believe that a
25 member insurer examined or being examined at the request of the board
26 of directors may be insolvent or in a financial condition hazardous to
27 the policyholders or the public.

28 (d) The board of directors may, upon majority vote, make reports
29 and recommendations to the director [COMMISSIONER] upon any matter

1 germane to the solvency, liquidation, rehabilitation or conservation
2 of a member insurer. These reports and recommendations shall not be
3 considered public documents.

4 (e) The board of directors may, upon majority vote, make recom-
5 mendations to the director [COMMISSIONER] for the detection and pre-
6 vention of insurer insolvencies.

7 (f) The board of directors may, upon majority vote, authorize
8 the director to take steps to prevent or minimize losses from insurers
9 in apparent financial trouble, and the expense shall be borne by the
10 association.

11 (g) [(f)] The board of directors shall, at the conclusion of an
12 insurer insolvency in which the association was obligated to pay
13 covered claims, prepare a report on the history and causes of the
14 insolvency, based on the information available to the association, and
15 submit this report to the director [COMMISSIONER].

16 * Sec. 10. AS 21.80.120 is amended to read:

17 Sec. 21.80.120. EXAMINATION OF THE ASSOCIATION. The association
18 is subject to examination and regulation by the director [COMMISSIONER].
19 The board of directors shall submit, not later than March 30 of each
20 year, a financial report for the preceding calendar year in a form
21 approved by the director [COMMISSIONER].

22 * Sec. 11. AS 21.80.150 is amended to read:

23 Sec. 21.80.150. IMMUNITY. There is no liability on the part of
24 and no cause of action of any nature may arise against a member insurer,
25 the association or its agents or employees, the board of directors, or
26 the director [COMMISSIONER] or his representatives for action taken by
27 them in the performance of their powers and duties under this chapter.
28 However, this immunity from liability does not apply to wilful or
29 wanton misconduct.

1 * Sec. 12. AS 21.80.160 is amended to read:

2 Sec. 21.80.160. STAY OF PROCEEDINGS AND REOPENING OF DEFAULT
3 JUDGMENTS. All proceedings in which the insolvent insurer is a party
4 or is obligated to defend a party in a court in this state shall be
5 stayed for four months and such additional time as may be determined
6 by the court [60 DAYS] from the date the insolvency is determined to
7 permit proper defense by the association for all pending causes of
8 action as to any covered claims arising from a judgment under a decision,
9 verdict or finding based on the default of the insolvent insurer or
10 its failure to defend an insured. The association, either on its own
11 behalf or on behalf of the insured, may apply to have this judgment,
12 order, decision, verdict or finding set aside by the same court or
13 administrator that made the judgment, order, decision, verdict or
14 finding and shall be permitted to defend against the claim on the
15 merits.

16 * Sec. 13. AS 21.80.170(a) is amended to read:

17 (a) The director [COMMISSIONER] shall by order terminate the
18 operation of the Alaska Insurance Guaranty Association as to any kind
19 of insurance covered by this chapter with respect to which he has
20 found, after hearing, that there is in effect a statutory or voluntary
21 plan which

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

24 (2) extends, or will extend to the Alaska policyholders and
25 residents protection and benefits with respect to insolvent insurers
26 not substantially less favorable and effective to the policyholders
27 and residents than the protection and benefits provided with respect
28 to the kinds of insurance under this chapter.

29 * Sec. 14. AS 21.80.170(b) is amended to read:

1 (b) The director [COMMISSIONER] shall by the same order authorize
2 discontinuance of future payments by insurers to the Alaska Insurance
3 Guaranty Association with respect to the same kinds of insurance so
4 long as the assessments and payments continue, as necessary, to liqui-
5 date covered claims of insurers adjudged insolvent before the order
6 and the related expenses not covered by the other plan.

7 * Sec. 15. AS 21.80.180(3) is amended to read:

8 (3) "director" means the director of the Division of Insu-
9 rance ["COMMISSIONER" MEANS THE COMMISSIONER OF THE DEPARTMENT OF
10 COMMERCE] or his representative;

11 * Sec. 16. AS 21.80.180(5)(B) is amended to read:

12 (B) for which a domiciliary or ancillary liquidator has
13 been appointed in this state [DETERMINED TO BE INSOLVENT] by a
14 court of competent jurisdiction;

15 * Sec. 17. AS 21.80.180(6)(A) is amended to read:

16 (A) is authorized to write [WRITES] any kind of insu-
17 rance to which this chapter applies under sec. 20 of this chapter
18 including the exchange of reciprocal or inter-insurance contracts,
19 and

20 * Sec. 18. AS 21.80.060(b)(6) is repealed.
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