

Original sponsor: Rules Committee by  
request of the Governor

Offered: 4/7/77  
Referred: Judiciary

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2 CS FOR 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 which date shall not be less than six months after the entry of the order  
8 of insolvency; however, [BUT] this obligation includes only that amount  
9 of each covered claim which is in excess of \$100 and is less than  
10 \$300,000, except that the association shall pay the full amount of any  
11 covered claim arising out of a workmen's compensation policy; in no  
12 event is the association obligated to a policyholder or claimant in an  
13 amount in excess of the obligation of the insolvent insurer under the  
14 policy from which the claim arises;

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

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

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

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

1 may not include adjustment expense and attorney fees incurred by the in-  
2 solvent insurer before the appointment of the liquidator;

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

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

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

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

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

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

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

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

1 writing by the director [COMMISSIONER]. If the association fails to  
2 submit a suitable plan of operation by November 4, 1970 or if at any  
3 subsequent time the association fails to submit suitable amendments to  
4 the plan, the director [COMMISSIONER] shall, after notice and hearing,  
5 adopt and promulgate reasonable regulations [RULES] necessary or advis-  
6 able to effectuate the provisions of this chapter. These regulations  
7 [RULES] shall continue in force until modified by the director [COMMIS-  
8 SIONER] or superseded by a plan submitted by the association and ap-  
9 proved by the director [COMMISSIONER].

10 \* Sec. 5. AS 21.80.070(c)(7) and (8) are amended to read:

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

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

16 \* Sec. 6. 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. 7. 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. 8. 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 a 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 of  
2 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 shall, at the conclusion of an insurer  
8 insolvency in which the association was obligated to pay covered claims,  
9 prepare a report on the history and causes of the insolvency, based on  
10 the information available to the association, and submit this report to  
11 the director [COMMISSIONER].

12 (g) The board of directors may, upon the affirmative vote of all  
13 directors, and with the approval of the director of the division of  
14 insurance, expend funds or guarantee obligations for the purpose of  
15 minimizing potential loss to the association by reason of a pending or  
16 threatened insolvency. Funds so expended by the association shall be  
17 entered by the association as a claim in the liquidation if insolvency  
18 occurs, or shall be an administrative expense if insolvency does not  
19 occur. The association shall have a right of recoupment against the  
20 carrier on whose behalf the funds are expended.

21 \* Sec. 9. AS 21.80.120 is amended to read:

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

27 \* Sec. 10. AS 21.80.150 is amended to read:

28 Sec. 21.80.150. IMMUNITY. There is no liability on the part of  
29 and no cause of action of any nature may arise against a member insurer,

1 the association or its agents or employees, the board of directors, or  
2 the director [COMMISSIONER] or his representatives for action taken by  
3 them in the performance of their powers and duties under this chapter.  
4 However, this immunity from liability does not apply to wilful or  
5 wanton misconduct.

6 \* Sec. 11. AS 21.80.160 is amended to read:

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

21 \* Sec. 12. AS 21.80.170(a) is amended to read:

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

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

29 (2) extends, or will extend to the Alaska policyholders and

1 residents protection and benefits with respect to insolvent insurers  
2 not substantially less favorable and effective to the policyholders  
3 and residents than the protection and benefits provided with respect  
4 to the kinds of insurance under this chapter.

5 \* Sec. 13. AS 21.80.170(b) is amended to read:

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

12 \* Sec. 14. AS 21.80.180(3) is amended to read:

13 (3) "director" means the director of the division of insu-  
14 rance ["COMMISSIONER" MEANS THE COMMISSIONER OF THE DEPARTMENT OF  
15 COMMERCE] or his representative;

16 \* Sec. 15. AS 21.80.180(5)(B) is amended to read:

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

20 \* Sec. 16. AS 21.80.180(6)(A) is amended to read:

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

25 \* Sec. 17. AS 21.80.060(b)(6) is repealed.