

Offered: 2/23/84  
Referred: Judiciary

Original sponsor: Rules/Governor

BY THE LABOR AND  
COMMERCE COMMITTEE

1 IN THE HOUSE

2

CS FOR HOUSE BILL NO. 283 (L&C)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

THIRTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

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For an Act entitled: "An Act relating to the creation of the Alaska Life and Disability Insurance Guaranty Association; changing Rule 62(a), Rules of Civil Procedure, by providing for an automatic stay of 60 days in a liquidation, rehabilitation, or conservation proceeding; and providing for an effective date."

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

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\* Section 1. AS 21.21.050 is amended to read:

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Sec. 21.21.050. DIVERSIFICATION OF INVESTMENTS. An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

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(1) one person: an insurer may not, except with the consent of the director, have at any one time a combination of investments in or loans upon the security of the obligations, property, or securities of any one person, or insurer, aggregating an amount exceeding five percent of the insurer's assets; this restriction does not apply to general obligations of the United States of America or of a state or include policy loans made under AS 21.21.210;

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(2) voting stock: an insurer may not invest in or hold at any one time more than 10 percent of the outstanding voting stock of a corporation, except with the consent of the director given with respect to voting rights of preference stock during default of dividends; this provision does not apply to stock of a wholly owned subsidiary of the insurer or to controlling stock of an insurer acquired

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1 under AS 21.21.170;

2 (3) minimum capital: an insurer (other than title insurer)  
3 shall invest and maintain invested funds not less in amount than the  
4 minimum paid-in capital stock required under this title of a domestic  
5 stock insurer transacting like kinds of insurance, only in cash and  
6 the securities provided for under AS 21.21.060, 21.21.080, and 21.21.-  
7 260;

8 (4) life insurance reserves: a life insurer shall also  
9 invest and keep invested its funds in an amount not less than the  
10 reserves under its life insurance policies and annuity contracts  
11 (other than variable annuities) in force, in cash and/or the securi-  
12 ties or investments provided for under this chapter;

13 (5) corporate obligations: except with the director's  
14 consent, an insurer may not have invested at any one time more than 20  
15 percent of its assets in the class of securities described in AS 21.-  
16 21.140, exclusive of obligations of public utilities;

17 (6) common stocks: an insurer may invest and have invested  
18 at any one time in aggregate amount not more than 10 percent of its  
19 assets in all stocks under AS 21.21.160, 21.21.170, and 21.21.200;  
20 determination of the amount that [WHICH] an insurer has invested in  
21 common stocks for the purposes of this provision shall be based on the  
22 cost of the stocks to the insurer; this provision does not apply to  
23 stock of a controlled or subsidiary insurance corporation or other  
24 corporation under AS 21.21.170 and 21.21.180;

25 (7) miscellaneous: except with the director's consent, an  
26 insurer may not have invested at any one time more than 10 percent of  
27 its assets in the class of securities described in any one of the  
28 following sections of this chapter: AS 21.21.100, 21.21.150, [AND]  
29 21.21.190, and 21.21.250(c);



1 insurance policies, disability insurance policies, annuity contracts,  
2 and contracts supplemental to life and disability insurance policies  
3 or annuity contracts when issued directly by a member insurer or by a  
4 licensed agent or broker for a member insurer.

5 (b) This chapter does not apply to

6 (1) the part of a variable life insurance or variable  
7 annuity contract that is not guaranteed by an insurer;

8 (2) the part of a policy or contract under which the risk  
9 is borne by the policyholder;

10 (3) a policy or contract assumed by the impaired or insol-  
11 vent insurer under a contract of reinsurance, other than reinsurance  
12 for which an assumption certificate has been issued; and

13 (4) a policy or contract issued by a fraternal benefit  
14 society under AS 21.84 or a hospital or medical service corporation  
15 under AS 21.87.

16 Sec. 21.79.030. CONSTRUCTION. This chapter shall be liberally  
17 construed to effect the purposes set out in AS 21.79.010.

18 Sec. 21.79.040. CREATION OF THE ASSOCIATION. (a) There is  
19 created a nonprofit legal entity to be known as the Alaska Life and  
20 Disability Insurance Guaranty Association. An insurer that issues an  
21 insurance policy listed in AS 21.79.020(a) must be a member of the  
22 association as a condition of the insurer's authority to transact  
23 insurance in the state. The association shall perform its functions  
24 under a plan of operation established and approved under AS 21.79.080  
25 and shall exercise its powers through a board of governors established  
26 under AS 21.79.050. For purposes of administration and assessment,  
27 the association shall maintain the following accounts:

28 (1) the disability insurance account;

29 (2) the life insurance account; and

1 (3) the annuity account.

2 (b) The association is under the supervision of the director and  
3 is subject to the insurance laws of the state.

4 Sec. 21.79.050. BOARD OF GOVERNORS. (a) The board of governors  
5 of the association consists of at least five but not more than nine  
6 member insurers. Terms of office for members of the board must be  
7 established in the plan of operation submitted under AS 21.79.080.  
8 Member insurers shall select the members of the board, subject to the  
9 approval of the director. A vacancy on the board must be filled for  
10 the unexpired term by a majority vote of the remaining board members,  
11 subject to the approval of the director. To select the first board of  
12 governors and organize the association, the director shall give notice  
13 to all member insurers of the time and place of the organization  
14 meeting. Each member insurer is entitled to one vote in person or by  
15 proxy at the organization meeting. If the members of the board are  
16 not selected within 60 days after notice of the meeting, the director  
17 may appoint the members.

18 (b) Before the director approves the selection of a member or  
19 appoints a member to the board, the director shall consider whether  
20 all member insurers are fairly represented on the board.

21 (c) A member of the board is not entitled to compensation by the  
22 association. However, a member of the board may be reimbursed from  
23 the assets of the association for expenses incurred while performing  
24 duties as a member of the board of governors.

25 Sec. 21.79.060. POWERS AND DUTIES OF THE ASSOCIATION. (a) If a  
26 domestic insurer becomes impaired, the association may, with the  
27 approval of the director,

28 (1) guarantee or reinsure, or provide for the guarantee,  
29 assumption, or reinsurance of the policies of the impaired insurer;

1           (2) provide money, pledges, notes, guarantees, or other  
2 means that are proper to comply with (1) of this subsection and to  
3 assure payment of the contractual obligations of the impaired insurer  
4 until those obligations are guaranteed, reinsured, or assumed; or

5           (3) loan money to the impaired insurer.

6           (b) If a domestic insurer becomes insolvent, the association  
7 shall, with the approval of the director,

8           (1) guarantee, assume, or reinsure, or provide for the  
9 guarantee, assumption, or reinsurance of the covered policies of the  
10 insolvent insurer;

11           (2) assure payment of the contractual obligations of the  
12 insolvent insurer; or

13           (3) provide money, pledges, notes, guarantees, or other  
14 means necessary to discharge the duties imposed by this subsection.

15           (c) If a foreign or alien insurer becomes insolvent, the asso-  
16 ciation shall, with the approval of the director,

17           (1) guarantee, assume, or reinsure or provide for the  
18 guarantee, assumption, or reinsurance of the covered policies of the  
19 insolvent insurer held by residents;

20           (2) assure payment to residents of the contractual obliga-  
21 tions of the insolvent insurer; or

22           (3) provide money, pledges, notes, guarantees, or other  
23 means necessary to discharge its duties under this subsection.

24           (d) The requirements set out in (c) of this section do not apply  
25 if the director determines that the jurisdiction in which the foreign  
26 or alien insurer is domiciled, or the state of entry, provides, by  
27 law, protection that is substantially similar to the protection pro-  
28 vided by this state.

29           (e) In carrying out its duties under (b) and (c) of this

1 section, the association may impose permanent policy liens or contract  
2 liens in connection with a guarantee, assumption, or reinsurance  
3 agreement, if the court

4 (1) finds that

5 (A) the amount that may be assessed under this chapter  
6 is less than the amount needed to assure full and prompt perfor-  
7 mance of the insolvent insurer's contractual obligations; or

8 (B) the economic or financial condition that affects  
9 member insurers is sufficiently adverse that the imposition of a  
10 policy or contract lien is in the public interest; and

11 (2) approves the policy liens or contract liens used.

12 (f) Before becoming obligated under (b) and (c) of this section,  
13 the association may request the court to impose temporary stays on the  
14 payment of cash value and policy loans in addition to an existing  
15 contractual provision for deferral of cash or policy loan values.

16 (g) If the association fails to exercise the authority conferred  
17 in (b) and (c) of this section within a reasonable period of time  
18 after a member insurer becomes insolvent, the director shall assume  
19 the powers of the association under (b) and (c) of this section.

20 (h) If requested by the director, the association may assist and  
21 advise the director concerning rehabilitation, payment of claims,  
22 continuance of coverage, or the performance of other contractual  
23 obligations of any impaired or insolvent insurer.

24 (i) The association may appear in any court proceeding in the  
25 state involving an impaired or insolvent insurer. The standing con-  
26 ferred by this subsection extends to all matters germane to the powers  
27 and duties of the association, including proposals to reinsure or  
28 guarantee the covered policies of the impaired or insolvent insurer  
29 and the determination of the covered policies and contractual

1 obligations.

2 (j) A person who receives benefits under this chapter is con-  
3 sidered to have assigned the rights under the covered policy to the  
4 association to the extent of the benefits received under this chapter.  
5 The association may require an assignment to it of those rights by  
6 payee, policy or contract owner, beneficiary, insured, or annuitant  
7 before a person may receive a right or benefit conferred by this  
8 chapter. The association is subrogated to these rights against the  
9 assets of an insolvent insurer. The priority of the association's  
10 subrogation right to the assets of the insolvent insurer is the same  
11 as the priority of the person entitled to benefits under this chapter.

12 (k) The association may not be held liable for greater contrac-  
13 tual obligations of the insolvent insurer than the insolvent insurer  
14 would have been liable for had that insurer not been insolvent, unless  
15 those obligations are reduced as permitted by (e) and (f) of this  
16 section. However, the aggregate liability of the association to a  
17 person may not exceed \$100,000 in cash value for all covered policies  
18 on one life or \$300,000 for all benefits, including cash value under  
19 any covered policies of the person.

20 (1) The association may

21 (1) enter into contracts that are necessary or proper to  
22 carry out the provisions of this chapter;

23 (2) sue or be sued, and take the legal action necessary or  
24 proper for recovery of unpaid assessments under AS 21.79.070;

25 (3) borrow money to carry out the purposes of this chapter;

26 (4) employ or retain persons necessary to handle the finan-  
27 cial transactions of the association and other functions under this  
28 chapter;

29 (5) negotiate and contract with a liquidator,

1 rehabilitator, conservator, or ancillary receiver to carry out the  
2 powers and duties of the association;

3 (6) exercise, for the purposes of this chapter and to the  
4 extent approved by the director, the powers of a domestic life or  
5 disability insurer; however, the association may not issue insurance  
6 policies or annuity contracts other than those issued to perform the  
7 contractual obligations of an impaired or insolvent insurer;

8 (7) take legal action to prevent the payment of improper  
9 claims; and

10 (8) perform all other acts necessary or proper to implement  
11 the purposes of this chapter.

12 Sec. 21.79.070. ASSESSMENTS. (a) To provide money for the  
13 association, the board of governors shall assess member insurers  
14 separately for each account. The assessment shall be made at times  
15 and for amounts the board finds necessary. An assessment must be paid  
16 not later than 30 days after the association notifies insurers in  
17 writing of the assessment, and accrues interest at 10 percent per year  
18 from the date payment is due.

19 (b) There are the following classes of assessment:

20 (1) a class A assessment may be made to pay administrative  
21 costs and other general expenses of the association and the cost of an  
22 examination conducted under AS 21.79.100(h) that is not related to a  
23 particular impaired or insolvent insurer;

24 (2) a class B assessment may be made to carry out the  
25 powers and duties of the association under AS 21.79.060 with regard to  
26 an impaired or insolvent domestic insurer; and

27 (3) a class C assessment may be made to carry out the  
28 powers and duties of the association under AS 21.79.060 with regard to  
29 an insolvent foreign or alien insurer.

1           (c) The amount of a class A assessment is determined by the  
2 board and may be made on a basis other than a pro rata basis. The  
3 assessment must be credited against future insolvency assessments and  
4 may not exceed \$150 per member insurer in a calendar year. The amount  
5 of a class B or class C assessment must be allocated for assessment  
6 purposes among the accounts according to the proportion that the  
7 premiums received by the impaired or insolvent insurer on the policies  
8 covered by each account for the preceding calendar year bears to the  
9 premiums received by the insurer for the preceding calendar year on  
10 all covered policies.

11           (d) A class B assessment for each account must be made separate-  
12 ly for each state in which the impaired or insolvent domestic insurer  
13 was authorized to transact insurance at any time. The assessment must  
14 be made according to the proportion that the premiums received on  
15 business in the state by the impaired or insolvent insurer on policies  
16 covered by an account for the preceding calendar year bears to similar  
17 premiums received on business in all states by that impaired or insol-  
18 vent insurer for the same calendar year. The assessments against  
19 member insurers must be made according to the proportion that the  
20 premiums received on business in each state by each assessed member  
21 insurer on policies covered by each account for the preceding calendar  
22 year bears to similar premiums received on business in each state for  
23 the preceding calendar year by all assessed member insurers.

24           (e) A class C assessment against member insurers for each ac-  
25 count must be made according to the proportion that the premiums  
26 received on business in this state by each assessed member insurer on  
27 policies covered by each account for the preceding calendar years  
28 bears to the premiums received on business in this state by all as-  
29 sessed member insurers on policies covered by each account for the

1 preceding calendar year.

2 (f) An assessment for money to meet the requirements of the  
3 association with respect to an impaired or insolvent insurer may not  
4 be made until necessary to implement this chapter.

5 (g) The association may abate or defer, in whole or in part, the  
6 assessment of a member insurer if, in the opinion of the board; pay-  
7 ment of the assessment would endanger the ability of the member insurer  
8 to fulfill its contractual obligations. If an assessment against a  
9 member insurer is abated or deferred, in whole or in part, the amount  
10 by which the assessment is abated or deferred may be assessed against  
11 the other member insurers in a manner consistent with this section.

12 (h) A class B or class C assessment upon a member insurer may  
13 not in a calendar year exceed two percent of that insurer's premiums  
14 received in the state during the preceding calendar year on the poli-  
15 cies covered by the account for which the assessment is made. If the  
16 maximum assessment, together with the other assets of the association,  
17 does not provide enough money to carry out the responsibilities of the  
18 association, the association shall make an assessment to obtain addi-  
19 tional money at the earliest time permitted by this chapter.

20 (i) The board may, in accordance with its plan of operation,  
21 refund to member insurers, in proportion to the contribution of each  
22 insurer to that account, the amount by which the assets of that ac-  
23 count exceed the amount the board finds is necessary to meet obliga-  
24 tions of the association for the next year. Assets that accrue from  
25 net gains and income from investments of an account must be included  
26 to determine the amount available in that account for refund to member  
27 insurers. A reasonable amount may be retained in the account to  
28 provide money for the continuing expenses of the association and for  
29 future losses if refunds are impracticable.

1 (j) A member insurer, in determining its premium rates and  
2 dividends for a policy of insurance listed in AS 21.79.020(a), may  
3 consider the amount reasonably necessary to meet its assessment obli-  
4 gations under this chapter.

5 (k) The association shall issue a certificate of contribution,  
6 on a form approved by the director, to each insurer paying either a  
7 class B or class C assessment. All outstanding certificates have  
8 equal priority for money refunded by the association, regardless of  
9 the amount or date of issue. If the director approves of the form,  
10 amount, and length of term, an insurer may show a certificate of  
11 contribution as an asset in its financial statement.

12 Sec. 21.79.080. PLAN OF OPERATION. (a) The association shall  
13 submit to the director a plan of operation, and the amendments, to  
14 assure the fair, reasonable, and equitable administration of the  
15 association. The plan of operation and the amendments take effect on  
16 the approval of the plan, in writing, by the director.

17 (b) Notwithstanding (a) of this section, if the association  
18 fails to submit a plan of operation acceptable to the director within  
19 180 days after the effective date of this chapter, or if at a later  
20 time the association fails to submit suitable amendments to the plan,  
21 the director shall, after notice and hearing, adopt regulations to  
22 implement this chapter. The regulations remain in effect until  
23 amended or repealed by the director or superseded by a plan submitted  
24 by the association that is approved by the director.

25 (c) All member insurers shall comply with the plan of operation.  
26 The plan of operation must

27 (1) establish procedures for handling assets of the asso-  
28 ciation;

29 (2) establish the amount and method of reimbursing members

1 of the board under AS 21.79.050;

2 (3) establish regular places and times for meetings of the  
3 board in the state;

4 (4) establish procedures for keeping records of all finan-  
5 cial transactions of the association, its agents, and the board;

6 (5) establish terms of office for members of the board, and  
7 establish procedures for the selection of the members of the board and  
8 for the director's approval of those selected;

9 (6) establish additional procedures for assessments under  
10 AS 21.79.070; and,

11 (7) contain additional provisions necessary or proper for  
12 the association to exercise its powers and duties.

13 (d) The plan of operation may delegate the powers and duties of  
14 the association, other than those under AS 21.79.060(1)(3) and 21.79.-  
15 070, to a corporation or other organization performing functions  
16 similar to those of the association, or its equivalent, in two or more  
17 states. The association shall reimburse the corporation or organiza-  
18 tion for payments made for the association and for performing function  
19 of the association. A delegation under this subsection takes effect  
20 only with the approval of the board and the director.

21 Sec. 21.79.090. POWERS AND DUTIES OF THE DIRECTOR. (a) Upon  
22 request of the board, the director shall provide the association with  
23 a statement of the premiums in the appropriate states for each member  
24 insurer.

25 (b) When an impairment is declared and the amount of the impair-  
26 ment is determined, the director shall serve a demand upon the impair-  
27 ed insurer to remove the impairment within a reasonable time. Notice  
28 to the impaired insurer constitutes notice to its shareholders. The  
29 failure of the insurer to promptly comply with a demand under this

1 subsection does not excuse the association from performing its duties  
2 under this chapter.

3 (c) The director shall be appointed the liquidator or reha-  
4 bilitator in a liquidation or rehabilitation proceeding that involves  
5 a domestic insurer. If a foreign or alien member insurer is subject  
6 to a liquidation proceeding in its domiciliary jurisdiction or state  
7 of entry, the director shall be appointed conservator of all assets of  
8 the foreign or alien member insurer in this state.

9 (d) The director may

10 (1) after notice and hearing as provided in AS 21.06.180 -  
11 21.06.230, suspend or revoke the certificate of authority to transact  
12 insurance in the state of a member insurer that fails to pay an assess-  
13 ment when due or fails to comply with the plan of operation;

14 (2) levy a penalty on a member insurer that fails to comply  
15 with the plan of operation; or

16 (3) levy a penalty on a member insurer that fails to pay an  
17 assessment when due; if the unpaid assessment is more than \$2,000, the  
18 penalty may not exceed five percent of the unpaid assessment per  
19 month, or be less than \$100 per month; if the unpaid assessment is  
20 \$2,000 or less, the penalty is \$100 per month.

21 (e) An action of the board or the association may be appealed to  
22 the director by a member insurer if the appeal is taken within 30 days  
23 after the date the notice of the action is mailed. A final action or  
24 order of the director may be reviewed by the superior court.

25 (f) The liquidator, rehabilitator, or conservator of an impaired  
26 insurer may notify all interested persons of the effect of this chap-  
27 ter.

28 Sec. 21.79.100. PREVENTION OF INSOLVENCIES. (a) The director  
29 shall notify, by mail, the commissioners, directors, or

1 superintendents of insurance of the other states, territories of the  
2 United States, and the District of Columbia, within 30 days after the  
3 date on which the following actions are taken against a member  
4 insurer:

- 5 (1) revocation of a license;
- 6 (2) suspension of a license; or
- 7 (3) a formal order that a member insurer restrict its  
8 premium writing, obtain additional contributions to surplus, withdraw  
9 from the state, reinsure all or a part of its business, or increase  
10 capital, surplus, or another account for the security of policyholders  
11 or creditors.

12 (b) The director shall report to the board if an action set out  
13 in (a) of this section is taken or a report is received from a state  
14 insurance regulator that similar action has been taken in another  
15 state. The report to the board must contain all significant details  
16 of the action taken or the report received from another insurance  
17 regulator.

18 (c) The director shall report to the board if there is reason-  
19 able cause to believe during or after an examination of a member  
20 insurer that the company may be impaired or insolvent.

21 (d) The director shall furnish the board with the National  
22 Association of Insurance Commissioners' Early Warning Tests and the  
23 board may use that information to carry out its duties and responsi-  
24 bilities under this section. The information must be kept confiden-  
25 tial by the board until it is made public by the director.

26 (e) The director may seek the board's advice and recommendations  
27 concerning the financial condition of member insurers and insurers who  
28 apply for admission to transact insurance business in the state.

29 (f) The board shall, upon majority vote, make reports and

1 recommendations to the director relating to the solvency, liquidation,  
2 rehabilitation, or conservation of a member insurer or the solvency of  
3 insurers who apply to transact insurance business in the state. The  
4 director and the board shall keep the reports and recommendations  
5 confidential.

6 (g) The board, upon a majority vote, shall notify the director  
7 of information that indicates that a member insurer may be impaired or  
8 insolvent.

9 (h) The board, upon a majority vote, may request the director to  
10 examine a member insurer that the board in good faith believes may be  
11 an impaired or insolvent insurer. Within 30 days after receipt of the  
12 request, the director shall begin the examination. The examination  
13 may be conducted as a National Association of Insurance Commissioners'  
14 examination or may be conducted by persons the director designates.  
15 The cost of examination shall be paid by the association and the  
16 examination report will be treated in the same manner as other exami-  
17 nation reports under AS 21.06. The completed examination report may  
18 not be released to the board before it is released to the public, but  
19 this does not preclude the director from complying with (c) of this  
20 section. The director shall notify the board when the examination is  
21 completed. The request for an examination must be kept on file by the  
22 director and may not be released to the public before the release of  
23 the examination report to the public.

24 (i) The board may, upon majority vote, make recommendations to  
25 the director for detecting and preventing insurer insolvencies.

26 (j) The board shall, at the conclusion of an insurer insolvency  
27 in which the association was required to pay covered claims, prepare a  
28 report to the director that sets out information concerning the his-  
29 tory and cause of the insolvency. The board shall cooperate with the

1 boards of guaranty associations in other states in preparing a report  
2 on the history and causes of insolvency of an insurer, and may adopt  
3 by reference a report prepared by other associations.

4 Sec. 21.79.110. MISCELLANEOUS PROVISIONS. (a) This chapter  
5 does not reduce the liability for unpaid assessments of the insureds  
6 of an impaired or insolvent insurer operating under an insurance  
7 policy with assessment liability.

8 (b) The association shall keep records of negotiations and  
9 meetings relating to its activities under AS 21.79.060 in which the  
10 association or its representatives are involved. Records of negoti-  
11 ations or meetings may only be made public (1) after the termination  
12 of a liquidation, rehabilitation, or conservation proceeding that  
13 involves the impaired or insolvent insurer, (2) after the insurer is  
14 no longer impaired or insolvent, or (3) upon the order of a court of  
15 competent jurisdiction. Nothing in this subsection limits the duty of  
16 the association to report its activities under AS 21.79.120.

17 (c) The association is considered to be a creditor of the  
18 impaired or insolvent insurer to the extent of assets attributable to  
19 covered policies reduced by an amount to which the association is  
20 entitled under AS 21.79.060(j). Assets of the impaired or insolvent  
21 insurer that are attributable to covered policies must be used to  
22 continue all covered policies and pay all contractual obligations of  
23 the impaired or insolvent insurer as required by this chapter. Assets  
24 attributable to covered policies include those assets that should have  
25 been established as reserves for the covered policies. These assets  
26 are determined by multiplying the total assets of the impaired or  
27 insolvent insurer by a fraction, the numerator of which is the amount  
28 that should have been established as reserves for the covered policies  
29 of the impaired or insolvent insurer and the denominator of which is

1 the amount that should have been established as reserves for all  
2 policies of insurance issued in all states by that insurer.

3 (d) Before the termination of a liquidation, rehabilitation, or  
4 conservation proceeding, the court may consider the contributions of  
5 the respective parties, including the association, the shareholders  
6 and policyowners of the insolvent insurer, and another party with a  
7 bona fide interest, in distributing the ownership rights of the insol-  
8 vent insurer. The court shall consider the welfare of policyholders  
9 of the continuing or successor insurers. A distribution to stockhold-  
10 ers of an impaired or insolvent insurer may not be made until the  
11 total amount of valid claims of the association for money spent in  
12 carrying out its powers and duties under AS 21.79.060, with respect to  
13 the insurer, has been fully recovered by the association.

14 (e) The receiver appointed under an order for liquidation or  
15 rehabilitation of a domestic insurer may recover the amount distribut-  
16 ed, other than stock dividends paid by the insurer on its capital  
17 stock, to a controlling affiliate, as defined in AS 21.22.200, during  
18 the five years preceding the petition for liquidation or rehabilita-  
19 tion. However, if the insurer shows that, when paid, the distribution  
20 was lawful and reasonable, and that the insurer did not know and could  
21 not reasonably have known that the distribution might adversely affect  
22 the ability of the insurer to fulfill its contractual obligations, the  
23 receiver may not recover the amount distributed to the controlling  
24 affiliate. The following apply to recovery of amounts distributed:

25 (1) A controlling affiliate of the insurer at the time the  
26 distributions were paid is liable for distributions received. A  
27 controlling affiliate at the time the distributions were declared is  
28 liable for distributions that would have been received if they had  
29 been paid at that time. If two or more persons are liable with

1 respect to the same distribution, they are jointly and severally  
2 liable.

3 (2) If an affiliate liable under (1) of this subsection is  
4 insolvent, all its controlling affiliates at the time the dividend was  
5 paid are jointly and severally liable for an amount that is not re-  
6 covered from the insolvent affiliate.

7 (3) The amount needed to pay the contractual obligations of  
8 the insolvent insurer that exceeds the available assets of the insol-  
9 vent insurer is the greatest amount that may be recovered under this  
10 subsection.

11 Sec. 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.  
12 The association may be examined by the director. The board shall  
13 submit to the director, not later than May 1 of each year, a financial  
14 report for the preceding calendar year, in a form approved by the  
15 director, and a report of its activities during the preceding calendar  
16 year.

17 Sec. 21.79.130. TAX EXEMPTIONS. The association is exempt from  
18 payment of all fees and all taxes levied by the state or any of its  
19 subdivisions, other than real property taxes.

20 Sec. 21.79.140. IMMUNITY. The association or its agents or  
21 employees, members of the board of governors, or the director or the  
22 director's representatives are not liable for an action taken by them  
23 to perform the duties imposed by this chapter.

24 Sec. 21.79.150. STAY OF PROCEEDINGS, REOPENING DEFAULT JUDG-  
25 MENTS. Proceedings that involve the enforcement of a judgment of  
26 liquidation, rehabilitation, or conservation against an insolvent  
27 insurer may not be taken until at least 60 days after the entry of the  
28 judgment. The association may apply to have a default judgment set  
29 aside and may defend against the suit on the merits.

1           Sec. 21.79.160. TITLE. This chapter may be cited as the Alaska  
2 Life and Disability Insurance Guaranty Association Act.

3           Sec. 21.79.900. DEFINITIONS. In this chapter,

4           (1) "account" means any one of the accounts created under  
5 AS 21.79.040;

6           (2) "association" means the Alaska Life and Disability  
7 Insurance Guaranty Association;

8           (3) "board" means the board of governors of the associa-  
9 tion;

10          (4) "contractual obligation" means an obligation under a  
11 covered policy;

12          (5) "covered policy" means a policy or contract under  
13 AS 21.79.020(a);

14          (6) "director" means the director of the division of insur-  
15 ance in the Department of Commerce and Economic Development;

16          (7) "impaired insurer" means a member insurer considered by  
17 the director to be potentially unable to fulfill its contractual  
18 obligations, but does not include an insolvent insurer;

19          (8) "insolvent insurer" means a member insurer that becomes  
20 insolvent after January 1, 1984 and is placed under a final order of  
21 liquidation, rehabilitation, or conservation by a court of competent  
22 jurisdiction;

23          (9) "member insurer" means an insurer licensed to transact  
24 insurance in the state that issues a policy listed in AS 21.79.020(a);

25          (10) "premium" means a direct gross insurance premium and  
26 annuity consideration received under a covered policy, less a return  
27 premium, and a consideration or dividend paid or credited to a policy-  
28 holder on direct business, but does not include a premium on a con-  
29 tract between an insurer and a reinsurer; and

1                   (11) "resident" means a person who resides in the state at  
2 the time a member insurer is determined to be an impaired or insolvent  
3 insurer and to whom a contractual obligation is owed.

4 \* Sec. 4. AS 21.36 is amended by adding a new section to read:

5                   Sec. 21.36.035. PROHIBITED ADVERTISEMENT IN INSURANCE SALES. A  
6 person may not make, publish, disseminate, circulate, or place before  
7 the public, an advertisement, announcement, or statement that uses the  
8 existence of the Alaska Life and Disability Insurance Guaranty Associa-  
9 tion to sell, solicit, or induce the public to purchase a form of  
10 insurance covered by the Alaska Life and Disability Insurance Guaranty  
11 Association Act (AS 21.79). A person having a beneficial interest in  
12 a form of insurance covered by the Alaska Life and Disability Insur-  
13 ance Guaranty Association Act may not represent to a lender or another  
14 person that the insurance or form of insurance has value as collateral  
15 for a loan because the insurance is covered by the Alaska Life and  
16 Disability Insurance Guaranty Association. This section does not  
17 apply to the Alaska Life and Disability Insurance Guaranty Associa-  
18 tion.

19 \* Sec. 5. AS 21.79.150, enacted in sec. 3 of this Act, has the effect  
20 of amending Rule 62(a), Rules of Civil Procedure, to provide for a 60-day  
21 stay of actions that involve the liquidation, rehabilitation, or conserva-  
22 tion of an insolvent insurer.

23 \* Sec. 6. This Act takes effect January 1, 1985.