

Introduced: 1/23/85  
Referred: Labor & Commerce, Judiciary,  
Health, Education & Social Services  
and Finance

BY THE RULES COMMITTEE BY  
REQUEST OF THE GOVERNOR

1 IN THE SENATE

2 SENATE BILL NO. 88

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the creation of the Alaska Life  
7 and Disability Insurance Guaranty Association; chang-  
8 ing Rule 62(a), Rules of Civil Procedure, by provid-  
9 ing for an automatic state of 60 days in a liquida-  
10 tion, rehabilitation, or conservation proceeding; and  
11 providing for an effective date."

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

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

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

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

24 (2) voting stock: an insurer may not invest in or hold at  
25 any one time more than 10 percent of the outstanding voting stock of a  
26 corporation, except with the consent of the director given with re-  
27 spect to voting rights of preference stock during default of divi-  
28 dends; this provision does not apply to stock of a wholly-owned sub-  
29 sidiary of the insurer or to controlling stock of an insurer acquired

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 securities  
12 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 paragraph shall be based on the  
22 cost of the stocks to the insurer; this paragraph 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: AS 21.21.100, 21.21.150, [AND] 21.21.190, and  
29 21.21.250(c);

1 (8) other specific limits: limits in investments in the  
2 category of real estate are as provided in AS 21.21.280; and other  
3 specific limits apply as stated in the sections dealing with other  
4 respective kinds of investments.

5 \* Sec. 2. AS 21.21.250 is amended by adding a new subsection to read:

6 (c) A domestic insurer may invest in notes or other evidence of  
7 indebtedness of the Alaska Life and Disability Insurance Guaranty  
8 Association and the director may consider those notes and other evi-  
9 dence of indebtedness, which are not in default, admitted assets of  
10 the insurer.

11 \* Sec. 3. AS 21.36 is amended by adding a new section to read:

12 Sec. 21.36.035. PROHIBITED ADVERTISEMENT IN INSURANCE SALES. A  
13 person may not make, publish, disseminate, circulate, or place before  
14 the public, any advertisement, announcement, or statement that uses  
15 the existence of the Alaska Life and Disability Insurance Guaranty  
16 Association to sell, solicit, or induce the public to purchase any  
17 form of insurance covered by the Alaska Life and Disability Insurance  
18 Guaranty Association Act (AS 21.79). A person having a beneficial  
19 interest in any form of insurance covered by the Alaska Life and  
20 Disability Insurance Guaranty Association Act may not represent to any  
21 lender or any other person that the insurance or form of insurance has  
22 value as collateral for a loan because the insurance is covered by the  
23 Alaska Life and Disability Insurance Guaranty Association. This  
24 section does not apply to the Alaska Life and Disability Insurance  
25 Guaranty Association.

26 \* Sec. 4. AS 21 is amended by adding a new chapter to read:

27 CHAPTER 79. ALASKA LIFE AND DISABILITY INSURANCE  
28 GUARANTY ASSOCIATION.

29 Sec. 21.79.010. PURPOSE. The purpose of this chapter is to

1 provide a mechanism for the payment of covered claims under life  
2 insurance policies, disability insurance policies, annuity contracts,  
3 and supplemental contracts; to protect policyholders; and to avoid  
4 financial loss to claimants or policyholders because of the impairment  
5 or insolvency of the insurer issuing those policies or contracts. To  
6 provide this protection

7 (1) an association of insurers is created to guarantee the  
8 payment of benefits and the continuation of coverage of insurance  
9 policies;

10 (2) members of the association must be assessed to provide  
11 money to carry out the purposes of this chapter; and

12 (3) the association shall assist the director, in the pre-  
13 scribed manner, to detect and prevent impairments or insolvencies of  
14 insurers.

15 Sec. 21.79.020. SCOPE. (a) This chapter applies to life insur-  
16 ance policies, disability insurance policies, annuity contracts, and  
17 contracts supplemental to life and disability insurance policies or  
18 annuity contracts when issued directly by a member insurer or by a  
19 licensed agent or broker for a member insurer.

20 (b) This chapter does not apply to

21 (1) that part of a variable life insurance or variable  
22 annuity contract which is not guaranteed by an insurer;

23 (2) that part of any policy or contract under which the  
24 risk is borne by the policyholder;

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

28 (4) a policy or contract issued by a fraternal benefit  
29 society under AS 21.84 or a hospital or medical service corporation

1 under AS 21.87.

2 Sec. 21.79.030. CONSTRUCTION. This chapter must be liberally  
3 construed to effect the purposes set out in AS 21.79.010.

4 Sec. 21.79.040. CREATION OF THE ASSOCIATION. (a) There is  
5 created a nonprofit legal entity to be known as the Alaska Life and  
6 Disability Insurance Guaranty Association. An insurer which issues an  
7 insurance policy listed in AS 21.79.020(a) must be a member of the  
8 association as a condition of the insurer's authority to transact  
9 insurance in the state. The association shall perform its functions  
10 under a plan of operation established and approved under AS 21.79.080  
11 and shall exercise its powers through a board of governors established  
12 under AS 21.79.050. For purposes of administration and assessment,  
13 the association shall maintain the following accounts:

- 14 (1) the disability insurance account;  
15 (2) the life insurance account; and  
16 (3) the annuity account.

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

19 Sec. 21.79.050. BOARD OF GOVERNORS. (a) The board of governors  
20 of the association consists of not less than five nor more than nine  
21 member insurers. Terms of office for members of the board must be  
22 established in the plan of operation submitted under AS 21.79.080.  
23 Member insurers shall select the members of the board, subject to the  
24 approval of the director. A vacancy on the board must be filled for  
25 the unexpired term by a majority vote of the remaining board members,  
26 subject to the approval of the director. To select the first board of  
27 governors and organize the association, the director shall give notice  
28 to all member insurers of the time and place of the organization  
29 meeting. Each member insurer is entitled to one vote in person or by

1 proxy at the organization meeting. If the members of the board are  
2 not selected within 60 days after notice of the meeting, the director  
3 may appoint the members.

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

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

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

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

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

20 (3) loan money to the impaired insurer.

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

23 (1) guarantee, assume, or reinsure, or provide for the  
24 guarantee, assumption, or reinsurance of the covered policies of the  
25 insolvent insurer;

26 (2) assure payment of the contractual obligations of the  
27 insolvent insurer; or

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

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

3 (1) guarantee, assume, or reinsure or provide for the  
4 guarantee, assumption, or reinsurance of the covered policies of the  
5 insolvent insurer held by residents;

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

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

10 (d) The requirements set out in (c) of this section do not apply  
11 if the director determines that the jurisdiction in which the foreign  
12 or alien insurer is domiciled, or the state of entry, provides, by  
13 law, protection which is substantially similar to the protection  
14 provided by this state.

15 (e) In carrying out its duties under (b) and (c) of this sec-  
16 tion, the association may impose permanent policy liens or contract  
17 liens in connection with any guarantee, assumption, or reinsurance  
18 agreement, if the court

19 (1) finds that

20 (A) the amount which may be assessed under this chap-  
21 ter is less than the amount needed to assure full and prompt  
22 performance of the insolvent insurer's contractual obligations;  
23 or

24 (B) the economic or financial condition which affects  
25 member insurers is sufficiently adverse that the imposition of a  
26 policy or contract lien is in the public interest; and

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

28 (f) Before becoming obligated under (b) and (c) of this section,  
29 the association may request the court to impose temporary stays on the

1 payment of cash value and policy loans in addition to any existing  
2 contractual provisions for deferral of cash or policy loan values.

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

7 (h) If requested by the director, the association may assist and  
8 advise the director concerning rehabilitation, payment of claims,  
9 continuance of coverage, or the performance of other contractual  
10 obligations of any impaired or insolvent insurer.

11 (i) The association may appear in any court proceeding in the  
12 state involving an impaired or insolvent insurer. The standing con-  
13 ferred by this subsection extends to all matters germane to the powers  
14 and duties of the association, including proposals to reinsure or  
15 guarantee the covered policies of the impaired or insolvent insurer  
16 and the determination of the covered policies and contractual obliga-  
17 tions.

18 (j) A person who receives benefits under this chapter is con-  
19 sidered to have assigned the rights under the covered policy to the  
20 association to the extent of the benefits received under this chapter.  
21 The association may require an assignment to it of those rights by any  
22 payee, policy or contract owner, beneficiary, insured, or annuitant  
23 before a person may receive any rights or benefits conferred by this  
24 chapter. The association is subrogated to these rights against the  
25 assets of any insolvent insurer. The priority of the association's  
26 subrogation right to the assets of the insolvent insurer is the same  
27 as the priority of the person entitled to benefits under this chapter.

28 (k) The association may not be held liable for greater contrac-  
29 tual obligations of the insolvent insurer than the insolvent insurer

1 would have been liable for had that insurer not been insolvent, unless  
2 those obligations are reduced as permitted by (e) and (f) of this  
3 section. However, the aggregate liability of the association to a  
4 person may not exceed \$100,000 in cash value for all covered policies  
5 on one life or \$300,000 for all benefits, including cash value under  
6 any covered policies of the person.

- 7 (1) The association may
- 8 (1) enter into contracts which are necessary or proper to  
9 carry out the provisions of this chapter;
- 10 (2) sue or be sued, and take any legal action necessary or  
11 proper for recovery of any unpaid assessments under AS 21.79.070;
- 12 (3) borrow money to carry out the purposes of this chapter;
- 13 (4) employ or retain those persons necessary to handle the  
14 financial transactions of the association and other functions under  
15 this chapter;
- 16 (5) negotiate and contract with any liquidator, rehabilita-  
17 tor, conservator, or ancillary receiver to carry out the powers and  
18 duties of the association;
- 19 (6) exercise, for the purposes of this chapter and to the  
20 extent approved by the director, the powers of a domestic life or  
21 disability insurer; however, the association may not issue insurance  
22 policies or annuity contracts other than those issued to perform the  
23 contractual obligations of an impaired or insolvent insurer;
- 24 (7) take legal action to prevent the payment of improper  
25 claims; and
- 26 (8) perform all other acts necessary or proper to implement  
27 the purposes of this chapter.

28 Sec. 21.79.070. ASSESSMENTS. (a) To provide money for the  
29 association, the board of governors shall assess member insurers

1 separately for each account. The assessment must be made at times and  
2 for amounts as the board finds necessary. An assessment must be paid  
3 not later than 30 days after the association notifies insurers in  
4 writing of the assessment, and accrues interest at 10 percent per year  
5 from the date payment is due.

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

7 (1) a class A assessment may be made to pay administrative  
8 costs and other general expenses of the association and the cost of an  
9 examination conducted under AS 21.79.100(h) which is not related to a  
10 particular impaired or insolvent insurer;

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

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

17 (c) The amount of a class A assessment is determined by the  
18 board and may be made on a basis other than a pro rata basis. The  
19 assessment must be credited against future insolvency assessments and  
20 may not exceed \$150 per member insurer in a calendar year. The amount  
21 of a class B or class C assessment must be allocated for assessment  
22 purposes among the accounts according to the proportion that the  
23 premiums received by the impaired or insolvent insurer on the policies  
24 covered by each account for the preceding calendar year bears to the  
25 premiums received by the insurer for the preceding calendar year on  
26 all covered policies.

27 (d) A class B assessment for each account must be made separate-  
28 ly for each state in which the impaired or insolvent domestic insurer  
29 was authorized to transact insurance at any time. The assessment must

1 be made according to the proportion that the premiums received on  
2 business in the state by the impaired or insolvent insurer on policies  
3 covered by an account for the preceding calendar year bears to similar  
4 premiums received on business in all states by that impaired or insol-  
5 vent insurer for the same calendar year. The assessments against  
6 member insurers must be made according to the proportion that the  
7 premiums received on business in each state by each assessed member  
8 insurer on policies covered by each account for the preceding calendar  
9 year bears to similar premiums received on business in each state for  
10 the preceding calendar year by all assessed member insurers.

11 (e) A class C assessment against member insurers for each ac-  
12 count must be made according to the proportion that the premiums  
13 received on business in this state by each assessed member insurer on  
14 policies covered by each account for the preceding calendar years  
15 bears to the premiums received on business in this state by all as-  
16 sessed member insurers on policies covered by each account for the  
17 preceding calendar year.

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

21 (g) The association may abate or defer, in whole or in part, the  
22 assessment of a member insurer if, in the opinion of the board, pay-  
23 ment of the assessment would endanger the ability of the member insur-  
24 er to fulfill its contractual obligations. If an assessment against a  
25 member insurer is abated or deferred, in whole or in part, the amount  
26 by which the assessment is abated or deferred may be assessed against  
27 the other member insurers in a manner consistent with this section.

28 (h) A class B or class C assessment upon a member insurer may  
29 not in a calendar year exceed two percent of that insurer's premiums

1 received in the state during the preceding calendar year on the poli-  
2 cies covered by the account for which the assessment is made. If the  
3 maximum assessment, together with the other assets of the association,  
4 does not provide enough money to carry out the responsibilities of the  
5 association, the association shall make an assessment to obtain addi-  
6 tional money at the earliest time permitted by this chapter.

7 (i) The board may, in accordance with its plan of operation,  
8 refund to member insurers, in proportion to the contribution of each  
9 insurer to that account, the amount by which the assets of that ac-  
10 count exceed the amount the board finds is necessary to meet obliga-  
11 tions of the association for the next year. Assets which accrue from  
12 net gains and income from investments of an account must be included  
13 to determine the amount available in that account for refund to member  
14 insurers. A reasonable amount may be retained in the account to  
15 provide money for the continuing expenses of the association and for  
16 future losses if refunds are impracticable.

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

21 (k) The association shall issue a certificate of contribution,  
22 on a form approved by the director, to each insurer paying either a  
23 class B or class C assessment. All outstanding certificates have  
24 equal priority for money refunded by the association, regardless of  
25 the amount or date of issue. If the director approves of the form,  
26 amount, and length of term, an insurer may show a certificate of  
27 contribution as an asset in its financial statement.

28 Sec. 21.79.080. PLAN OF OPERATION. (a) The association shall  
29 submit to the director a plan of operation, and any amendments, to

1 assure the fair, reasonable, and equitable administration of the  
2 association. The plan of operation and any amendments take effect on  
3 the approval of the plan, in writing, by the director.

4 (b) Notwithstanding (a) of this section, if the association  
5 fails to submit a plan of operation acceptable to the director within  
6 180 days after the effective date of this chapter, or if at any later  
7 time the association fails to submit suitable amendments to the plan,  
8 the director shall, after notice and hearing, adopt regulations to  
9 implement this chapter. These regulations remain in effect until  
10 amended or repealed by the director or superseded by a plan submitted  
11 by the association which is approved by the director.

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

14 (1) establish procedures for handling assets of the asso-  
15 ciation;

16 (2) establish the amount and method of reimbursing members  
17 of the board under AS 21.79.050;

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

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

22 (5) establish terms of office for members of the board, and  
23 establish procedures for the selection of the members of the board and  
24 for the director's approval of those selected;

25 (6) establish any additional procedures for assessments  
26 under AS 21.79.070; and

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

29 (d) The plan of operation may delegate any powers and duties of

1 the association, other than those under AS 21.79.060(1)(3) and 21.79.-  
2 070, to a corporation or other organization performing functions  
3 similar to those of the association, or its equivalent, in two or more  
4 states. The association shall reimburse the corporation or organiza-  
5 tion for any payments made for the association and for performing any  
6 function of the association. A delegation under this subsection takes  
7 effect only with the approval of the board and the director.

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

12 (b) When an impairment is declared and the amount of the impair-  
13 ment is determined, the director shall serve a demand upon the impair-  
14 ed insurer to remove the impairment within a reasonable time. Notice  
15 to the impaired insurer constitutes notice to its shareholders. The  
16 failure of the insurer to promptly comply with a demand under this  
17 subsection does not excuse the association from performing its duties  
18 under this chapter.

19 (c) The director shall be appointed the liquidator or reha-  
20 bilitator in any liquidation or rehabilitation proceeding which in-  
21 volves a domestic insurer. If a foreign or alien member insurer is  
22 subject to a liquidation proceeding in its domiciliary jurisdiction or  
23 state of entry, the director must be appointed conservator of all  
24 assets of the foreign or alien member insurer in this state.

25 (d) The director may

26 (1) after notice and hearing as provided in AS 21.06.180 --  
27 21.06.230, suspend or revoke the certificate of authority to transact  
28 insurance in the state of any member insurer which fails to pay an  
29 assessment when due or fails to comply with the plan of operation;

1           (2) levy a penalty on any member insurer which fails to  
2 comply with the plan of operation; or

3           (3) levy a penalty on a member insurer which fails to pay  
4 an assessment when due; if the unpaid assessment is more than \$2,000,  
5 the penalty may not exceed five percent of the unpaid assessment per  
6 month, or be less than \$100 per month; if the unpaid assessment is  
7 \$2,000 or less, the penalty is \$100 per month.

8           (e) Any action of the board or the association may be appealed  
9 to the director by any member insurer if the appeal is taken within 30  
10 days after the date the notice of the action is mailed. Any final  
11 action or order of the director may be reviewed by the superior court.

12           (f) The liquidator, rehabilitator, or conservator of any impair-  
13 ed insurer may notify all interested persons of the effect of this  
14 chapter.

15           Sec. 21.79.100. PREVENTION OF INSOLVENCIES. (a) The director  
16 shall notify, by mail, the commissioners, directors, or superinten-  
17 dents of insurance of the other states, territories of the United  
18 States, and the District of Columbia, within 30 days after the date on  
19 which the following actions are taken against a member insurer:

20           (1) revocation of a license;

21           (2) suspension of a license; or

22           (3) any formal order that a member insurer restrict its  
23 premium writing, obtain additional contributions to surplus, withdraw  
24 from the state, reinsure all or any part of its business, or increase  
25 capital, surplus, or any other account for the security of policyhold-  
26 ers or creditors.

27           (b) The director shall report to the board if an action set out  
28 in (a) of this section is taken or a report is received from any state  
29 insurance regulator that similar action has been taken in another

1 state. The report to the board must contain all significant details  
2 of the action taken or the report received from another insurance  
3 regulator.

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

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

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

15 (f) The board shall, upon majority vote, make reports and rec-  
16 ommendations to the director relating to the solvency, liquidation,  
17 rehabilitation, or conservation of any member insurer or the solvency  
18 of any insurers who apply to transact insurance business in the state.  
19 The director and the board shall keep the reports and recommendations  
20 confidential.

21 (g) The board, upon a majority vote, shall notify the director  
22 of any information which indicates that a member insurer may be im-  
23 paired or insolvent.

24 (h) The board, upon a majority vote, may request the director to  
25 examine a member insurer which the board in good faith believes may be  
26 an impaired or insolvent insurer. Within 30 days after receipt of the  
27 request, the director shall begin the examination. The examination  
28 may be conducted as a National Association of Insurance Commissioners'  
29 examination or may be conducted by persons the director designates.

1 The cost of examination must be paid by the association, and the  
2 examination report will be treated in the same manner as other exami-  
3 nation reports under AS 21.06. The completed examination report may  
4 not be released to the board before it is released to the public, but  
5 this does not preclude the director from complying with (c) of this  
6 section. The director shall notify the board when the examination is  
7 completed. The request for an examination must be kept on file by the  
8 director and may not be released to the public before the release of  
9 the examination report to the public.

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

12 (j) The board shall, at the conclusion of any insurer insolvency  
13 in which the association was required to pay covered claims, prepare a  
14 report to the director which sets out information concerning the  
15 history and cause of the insolvency. The board shall cooperate with  
16 the boards of guaranty associations in other states in preparing a  
17 report on the history and causes of insolvency of an insurer, and may  
18 adopt by reference any report prepared by other associations.

19 Sec. 21.79.110. MISCELLANEOUS PROVISIONS. (a) This chapter  
20 does not reduce the liability for unpaid assessments of the insureds  
21 of an impaired or insolvent insurer operating under an insurance  
22 policy with assessment liability.

23 (b) The association shall keep records of negotiations and  
24 meetings relating to its activities under AS 21.79.060 in which the  
25 association or its representatives are involved. Records of negoti-  
26 ations or meetings may only be made public (1) after the termination  
27 of a liquidation, rehabilitation, or conservation proceeding which  
28 involves the impaired or insolvent insurer, (2) after the insurer is  
29 no longer impaired or insolvent, or (3) upon the order of a court of

1 competent jurisdiction. Nothing in this subsection limits the duty of  
2 the association to report its activities under AS 21.79.120.

3 (c) The association is considered to be a creditor of the im-  
4 paired or insolvent insurer to the extent of assets attributable to  
5 covered policies reduced by any amounts to which the association is  
6 entitled under AS 21.79.060(j). Assets of the impaired or insolvent  
7 insurer which are attributable to covered policies must be used to  
8 continue all covered policies and pay all contractual obligations of  
9 the impaired or insolvent insurer as required by this chapter. Assets  
10 attributable to covered policies include those assets which should  
11 have been established as reserves for the covered policies. These  
12 assets are determined by multiplying the total assets of the impaired  
13 or insolvent insurer by a fraction, the numerator of which is the  
14 amount which should have been established as reserves for the covered  
15 policies of the impaired or insolvent insurer and the denominator of  
16 which is the amount which should have been established as reserves for  
17 all policies of insurance issued in all states by that insurer.

18 (d) Before the termination of any liquidation, rehabilitation,  
19 or conservation proceeding, the court may consider the contributions  
20 of the respective parties, including the association, the shareholders  
21 and policyowners of the impaired or insolvent insurer, and any other  
22 party with a bona fide interest, in distributing the ownership rights  
23 of the impaired or insolvent insurer. The court shall consider the  
24 welfare of policyholders of the continuing or successor insurers. A  
25 distribution to stockholders of an impaired or insolvent insurer may  
26 not be made until the total amount of valid claims of the association  
27 for money spent in carrying out its powers and duties under AS 21.79.-  
28 060, with respect to the insurer, has been fully recovered by the  
29 association.

1 (e) The receiver appointed under an order for liquidation or  
2 rehabilitation of a domestic insurer may recover the amount distribut-  
3 ed, other than stock dividends paid by the insurer on its capital  
4 stock, to a controlling affiliate, as defined in AS 21.22.200, during  
5 the five years preceding the petition for liquidation or rehabilita-  
6 tion. However, if the insurer shows that, when paid, the distribution  
7 was lawful and reasonable, and that the insurer did not know and could  
8 not reasonably have known that the distribution might adversely affect  
9 the ability of the insurer to fulfill its contractual obligations, the  
10 receiver may not recover the amount distributed to the controlling  
11 affiliate. The following apply to recovery of amounts distributed:

12 (1) Any controlling affiliate of the insurer at the time  
13 the distributions were paid is liable for distributions received. Any  
14 controlling affiliate at the time the distributions were declared is  
15 liable for distributions that would have been received if they had  
16 been paid at that time. If two or more persons are liable with re-  
17 spect to the same distribution, they are jointly and severally liable.

18 (2) If any affiliate liable under (1) of this subsection is  
19 insolvent, all its controlling affiliates at the time the dividend was  
20 paid are jointly and severally liable for any amount which is not  
21 recovered from the insolvent affiliate.

22 (3) The amount needed to pay the contractual obligations of  
23 the insolvent insurer which exceeds the available assets of the insol-  
24 vent insurer is the greatest amount that may be recovered under this  
25 subsection.

26 Sec. 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.  
27 The association may be examined by the director. The board shall  
28 submit to the director, not later than May 1 of each year, a financial  
29 report for the preceding calendar year, in a form approved by the

1 director, and a report of its activities during the preceding calendar  
2 year.

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

6 Sec. 21.79.140. IMMUNITY. The association or its agents or  
7 employees, members of the board of governors, or the director or his  
8 representatives are not liable for any action taken by them to perform  
9 the duties imposed by this chapter.

10 Sec. 21.79.150. STAY OF PROCEEDINGS, REOPENING DEFAULT JUDG-  
11 MENTS. Proceedings which involve the enforcement of a judgment of  
12 liquidation, rehabilitation, or conservation against an impaired or  
13 insolvent insurer may not be taken until at least 60 days after the  
14 entry of the judgment. The association may apply to have a default  
15 judgment set aside and may defend against the suit on the merits.

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

18 Sec. 21.79.900. DEFINITIONS. In this chapter,

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

21 (2) "association" means the Alaska Life and Disability  
22 Insurance Guaranty Association;

23 (3) "board" means the board of governors of the associa-  
24 tion;

25 (4) "contractual obligation" means an obligation under a  
26 covered policy;

27 (5) "covered policy" means any policy or contract under  
28 AS 21.79.020(a);

29 (6) "director" means the director of the division of

1 insurance in the Department of Commerce and Economic Development;

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

5 (8) "insolvent insurer" means a member insurer which be-  
6 comes insolvent after January 1, 1986 and is placed under a final  
7 order of liquidation, rehabilitation, or conservation by a court of  
8 competent jurisdiction;

9 (9) "member insurer" means any insurer licensed to transact  
10 insurance in the state which issues a policy listed in AS 21.79.-  
11 020(a);

12 (10) "premium" means a direct gross insurance premium and  
13 annuity consideration received under a covered policy, less a return  
14 premium, and any consideration or dividends paid or credited to a  
15 policyholder on direct business, but does not include a premium on a  
16 contract between an insurer and a reinsurer; and

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

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

24 \* Sec. 6. This Act takes effect January 1, 1986.