

Introduced: 4/18/85  
Referred: Labor & Commerce  
and Finance

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AND FERGUSON

1 IN THE SENATE

2 SENATE BILL NO. 288

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 liquor license holders' insur-  
7 ance; providing for increased alcoholic beverage  
8 taxes; and providing for an effective date."

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

10 \* Section 1. AS 04.11.320(a) is amended by adding a new paragraph to  
11 read:

12 (13) the applicant has less than \$500,000 in liability  
13 insurance coverage.

14 \* Sec. 2. AS 04.11.370 is amended by adding a new paragraph to read:

15 (12) failure of the licensee to maintain at least \$500,000  
16 in liability insurance coverage.

17 \* Sec. 3. AS 21.78.050 is amended to read:

18 Sec. 21.78.050. GROUNDS FOR LIQUIDATION. The director may  
19 apply to the court for an order appointing the director as receiver,  
20 if an appointment of the director as receiver is not then in effect,  
21 and directing the director to liquidate the business of a domestic  
22 insurer or of the United States branch of an alien insurer having  
23 trustee assets in this state, regardless of whether or not there has  
24 been a prior order directing the director to rehabilitate the insurer,  
25 upon any of the grounds specified in AS 21.78.040, or if the insurer

26 (1) has ceased transacting business for a period of one  
27 year;

28 (2) is an insolvent insurer and has commenced voluntary  
29 liquidation or dissolution, or attempts to commence or prosecute an  
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1 action or proceeding to liquidate its business or affairs, or to  
2 dissolve its corporate charter, or to procure the appointment of a  
3 receiver, trustee, custodian or sequestrator under any law except this  
4 title; [OR]

5 (3) is the Medical Indemnity Corporation of Alaska, and the  
6 director has ordered termination of the business of the corporation in  
7 accordance with AS 21.88.055; or

8 (4) is the Liquor License Holders' Indemnity Corporation of  
9 Alaska, and the director has ordered termination of the business of  
10 the corporation in accordance with AS 21.85.055.

11 \* Sec. 4. AS 21.78.100(b) is amended to read:

12 (b) The director may apply for and secure an order dissolving  
13 the corporate existence of a domestic insurer, except the Medical  
14 Indemnity Corporation of Alaska or the Liquor License Holders' Indem-  
15 nity Corporation of Alaska, upon the director's application for an  
16 order of liquidation of the insurer or at any time after the order has  
17 been granted.

18 \* Sec. 5. AS 21.80.180(5) is amended to read:

19 (5) "insolvent insurer" means an insurer

20 (A) authorized to transact insurance in this state,  
21 except an assessable reciprocal insurer formed by and insuring  
22 only municipalities or nonprofit public utilities, the Liquor  
23 License Holders' Indemnity Corporation of Alaska, the Medical  
24 Indemnity Corporation of Alaska, and the Health Care Providers  
25 Joint Underwriting Association established under AS 21.88, either  
26 at the time the policy was issued or when the insured event  
27 occurred, and

28 (B) determined to be insolvent by a court of competent  
29 jurisdiction;

1 \* Sec. 6. AS 21.80.180(6) is amended to read:

2 (6) "member insurer" means a person, except an assessable  
3 reciprocal insurer formed by and insuring only municipalities or  
4 nonprofit public utilities, the Liquor License Holders' Indemnity  
5 Corporation of Alaska, the Medical Indemnity Corporation of Alaska,  
6 and the Health Care Providers Joint Underwriting Association estab-  
7 lished under AS 21.88, who

8 (A) writes any kind of insurance to which this chapter  
9 applies under AS 21.80.020 including the exchange of reciprocal  
10 or interinsurance contracts, and

11 (B) is licensed to transact insurance in this state;

12 \* Sec. 7. AS 21 is amended by adding a new chapter to read:

13 CHAPTER 85. LIQUOR LICENSE HOLDERS' INSURANCE CORPORATION.

14 Sec. 21.85.010. PURPOSE OF THIS CHAPTER. It is the purpose of  
15 this chapter to provide a means of furnishing liquor license holders  
16 under AS 04 with adequate insurance against liability for negligent  
17 acts or omissions that concern customers on licensed premises.

18 Sec. 21.85.020. CORPORATION CREATED. There is created the  
19 Liquor License Holders' Indemnity Corporation of Alaska that is a  
20 public corporation having a legal existence independent of and sepa-  
21 rate from the state. Obligations issued by the corporation do not  
22 constitute a debt, liability or obligation of the state or a pledge of  
23 full faith and credit of the state.

24 Sec. 21.85.030. CORPORATION BOARD OF GOVERNORS. (a) The corpo-  
25 ration shall exercise its powers through a board of governors that is  
26 appointed by the governor of the state and confirmed by the legisla-  
27 ture. Members of the board of governors shall be Alaska residents as  
28 follows:

29 (1) four liquor license holders; no more than two of the

1 liquor license holders shall reside in a municipality having a popula-  
2 tion of more than 100,000, and two of the liquor license holders must  
3 be indemnified against loss by reason of liability by the Liquor  
4 License Holders' Indemnity Corporation of Alaska;

5 (2) two professionals from the insurance industry who are  
6 authorized or licensed to do business in the state;

7 (3) two persons who are not liquor license holders or  
8 financially interested in a license issued under AS 04 or representa-  
9 tives of the insurance industry.

10 (b) The term of office of each governor is three years, except  
11 that the governor of the state shall designate two initially appointed  
12 governors to serve for one year and two initially appointed governors  
13 to serve for two years. Upon the expiration of the term of a gover-  
14 nor, the governor of the state shall appoint a successor who shall be  
15 from the same class described in (a) of this section as the governor  
16 whose term has expired.

17 (c) Upon a governor's early resignation, death or inability to  
18 serve, the governor of the state shall appoint a successor from the  
19 same class defined in (a) of this section as the terminating governor,  
20 who shall serve for the unexpired term.

21 (d) The director or a designee of the director is not a voting  
22 member of the board of governors but shall be notified by the board of  
23 and have the right to attend and participate in all meetings and  
24 proceedings of the board.

25 (e) The corporation shall compensate members of the board of  
26 governors and reimburse them for necessary travel expenses according  
27 to a policy approved by the director.

28 (f) A governor, officer, or employee or former governor, of-  
29 ficer, or employee of the corporation is not liable for damages or

1 other relief in any action by reason of the person's actions or in-  
2 actions as a governor, officer, or employee of the corporation, or by  
3 reason of the actions or inactions of the corporation, its board of  
4 governors, officers or employees unless

5 (1) the person acted with actual knowledge that the person  
6 was acting outside the scope of the person's authority;

7 (2) at the time the person acted for a purpose that the  
8 person knew was not in the best interests of the corporation; or

9 (3) with respect to any criminal action, the person acted  
10 knowingly or recklessly.

11 (g) If a claim or action is brought against a person entitled to  
12 the protection of this subsection, the claim or action shall be de-  
13 fended by the state. The person shall reimburse the state for the  
14 cost to the state of the person's defense if it is established that  
15 the person

16 (1) acted with actual knowledge that the person was acting  
17 outside the scope of the person's authority;

18 (2) at the time was acting for a purpose that the person  
19 knew was not in the best interests of the corporation; or

20 (3) with respect to any criminal action, acted knowingly or  
21 recklessly.

22 (h) In this section,

23 (1) "knowingly" has the meaning given in AS 11.81.900;

24 (2) "recklessly" has the meaning given in AS 11.81.900.

25 Sec. 21.85.040. CORPORATION PLAN OF OPERATION. (a) The board  
26 of governors shall prepare and submit to the director for approval a  
27 plan of operation that provides for the fair and reasonable adminis-  
28 tration of the affairs of the corporation and the discharge of the  
29 purposes for which it is created. The plan and any amendments to it

1 become effective upon the director's approval. If the board of gover-  
2 nors fails to submit a plan of operation, or if at a subsequent time  
3 the board of governors fails to submit suitable amendments to the  
4 plan, the director shall, after notice and hearing, adopt and promul-  
5 gate a plan of operation or amendments that are necessary or advisable  
6 to carry out the provisions of this chapter. Adoption of the plan is  
7 not subject to the Administrative Procedure Act (AS 44.62).

8 (b) The plan of operation shall

9 (1) establish the procedures by which the powers and duties  
10 of the corporation specified in AS 21.85.050 shall be performed;

11 (2) establish procedures for handling assets and discharg-  
12 ing liabilities of the corporation;

13 (3) establish regular times and places for meetings of the  
14 board of governors;

15 (4) establish procedures for records to be kept of all  
16 financial transactions of the corporation, its agents, and the board  
17 of governors;

18 (5) establish the procedures for awarding contracts to  
19 carry out the provisions of this chapter;

20 (6) establish the procedures for issuing contracts of  
21 insurance as provided in AS 21.85.050 and for the determination of  
22 rates;

23 (7) contain additional provisions necessary for the exe-  
24 cution of the powers and duties of the corporation.

25 Sec. 21.85.050. POWERS AND DUTIES OF THE CORPORATION. (a) The  
26 corporation shall

27 (1) in the form approved by the director, issue to all  
28 liquor license holders who are found to be acceptable risks under  
29 standards developed under (5) of this subsection, and who pay the

1 premiums for it, a contract or contracts indemnifying liquor license  
2 holders and their employees on licensed premises against loss in  
3 excess of \$50,000 by reason of liability for covered claims, and  
4 agreeing to tender on behalf of the liquor license holders and their  
5 employees on licensed premises a defense to a covered claim; the  
6 liability covered by policies issued by the corporation shall be  
7 \$500,000; the contract shall cover the defense against but need not  
8 indemnify liability for punitive damages arising from a covered claim;  
9 at the option of the corporation, if approved by the director, and for  
10 an additional premium the contract may cover claims for any period  
11 before the contract is issued, except that coverage will not be  
12 provided for a claim already filed or of which the liquor license  
13 holder had or reasonably should have had notice at the time the retro-  
14 active insurance was purchased;

15 (2) charge a premium for the protection provided by the  
16 contracts issued by the corporation that shall be determined by the  
17 board of governors in accordance with AS 21.85.080 and subject to the  
18 approval of the director;

19 (3) comply with or be subject to AS 21.06.090, 21.06.120,  
20 21.06.140, 21.06.160, 21.06.250; AS 21.09.180 - 21.09.200, 21.09.250,  
21 21.09.280; AS 21.12.020(b) - (e); AS 21.18; AS 21.21; AS 21.24 and  
22 AS 21.36; and shall be exempt from participation as a member insurer  
23 in the Alaska Insurance Guaranty Corporation;

24 (4) carry out the obligations of the contracts issued by  
25 the corporation by defending all covered claims made against insured  
26 liquor license holders and by paying all liabilities that are finally  
27 adjudicated against the liquor license holders or that may in the  
28 opinion of the corporation reasonably be expected to be finally adju-  
29 dicated against the liquor license holders to the extent of the

1 contract obligation;

2 (5) establish standards for the acceptability of risks; in  
3 establishing these standards the corporation may exclude an applicant  
4 for insurance based on individual risk selection factors, but may not  
5 exclude an applicant based only on the classification of the appli-  
6 cant.

7 (b) The corporation may

8 (1) employ or retain persons, individual or corporate, to  
9 discharge its obligations and pay reasonable compensation for these  
10 services; employees of the corporation are not considered state em-  
11 ployees;

12 (2) negotiate for and procure reinsurance from private  
13 casualty insurers or reinsurers for any and all liability incurred by  
14 contracts issued by it;

15 (3) borrow or advance funds necessary to carry out the  
16 purposes of the corporation;

17 (4) negotiate and become a party to contracts that are  
18 necessary to carry out the purposes of the corporation;

19 (5) sue or be sued in the name of the corporation;

20 (6) provide risk management advice and services to liquor  
21 license holders;

22 (7) negotiate and become a party to contracts for manage-  
23 ment services for the corporation;

24 (8) perform other acts necessary and proper to carry out  
25 the duties of the corporation.

26 Sec. 21.85.055. TERMINATION. (a) If at any time the corpora-  
27 tion posts written premiums for two consecutive years of less than 35  
28 percent of all premiums written in the state for liquor license  
29 holders' liability insurance or posts written premiums for one

1 calendar year of less than 20 percent of all premiums written in the  
2 state for liquor license holders' liability insurance, the director  
3 may hold a public hearing in accordance with AS 21.06.180 - 21.06.230  
4 to determine whether the business of the corporation should be termi-  
5 nated.

6 (b) Upon the effective date of an order of termination issued by  
7 the director under (a) and (c) of this section, the terms of the  
8 governors appointed under AS 21.85.030 expire, and the corporation,  
9 its governors, officers and employees are relieved of all further  
10 liabilities for all their obligations to the creditors and policy-  
11 holders of the corporation, and the business of the corporation shall  
12 be liquidated according to AS 21.78.

13 (c) In determining whether to terminate or reactivate the busi-  
14 ness of the corporation the director shall consider the following:

15 (1) the level of expected premiums and losses for continued  
16 operation;

17 (2) the requirement for state funds to support continued  
18 operation;

19 (3) the availability of alternative markets for coverage to  
20 a substantial majority of liquor license holders in the state;

21 (4) the costs of continued operation of the corporation;

22 (5) the impact that the continued operation of the corpo-  
23 ration will have on rates charged for coverage by the corporation or  
24 by alternative markets; or

25 (6) the expected number of liquor license holders who would  
26 participate if the operations were continued.

27 (d) If after public hearing held in accordance with (a) of this  
28 section the director determines that continuing the business of the  
29 corporation would result in substantial underwriting loss unless

1 excessive premiums are charged to participating liquor license  
2 holders, the director may order termination of the corporation.

3 Sec. 21.85.060. PREMIUM TAX. The corporation shall be taxed in  
4 the same manner as a domestic insurer.

5 Sec. 21.85.070. STATISTICS. The corporation shall collect,  
6 maintain and report information concerning claims against liquor  
7 license holders that it insures. The information must be on forms  
8 prescribed by the director, and must be sufficient to enable a proper  
9 determination of losses for rate making and to identify causes and  
10 sources of loss for loss control. At least annually the corporation  
11 shall report to the director the number and amount of claims filed,  
12 reserved, paid, settled and adjudicated during the year, the premiums  
13 paid to and the expenses incurred by the corporation during the year.  
14 This report shall be available to the public. The director may re-  
15 quire that supplemental reports include the names of insured liquor  
16 license holders and the claimants.

17 Sec. 21.85.080. RATES. The rates and rating plans used by the  
18 corporation for the policies issued shall be determined by license  
19 category of liquor license holders in accordance with all of the  
20 following:

21 (1) a minimum rate may be set for each category of liquor  
22 license holders within a license classification;

23 (2) rates may not be excessive; rates are excessive if,  
24 after a period of time and with respect to an amount of gross premium  
25 that is actuarially credible, the premiums exceed losses incurred by  
26 the corporation, including losses paid, reserves for covered claims  
27 reported and unpaid, reserves for covered claims incurred during the  
28 policy period and not reported, and reasonable expenses for the opera-  
29 tion of the corporation;

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(3) rates may not be inadequate; rates are inadequate if, based on available actuarial data, the premiums to be paid by the liquor license holders are or may reasonably be expected to be insufficient to pay for losses incurred by the corporation, including covered claims paid, reserves for covered claims reported and unpaid, reserves for covered claims incurred during the policy period and not reported, and reasonable expenses for the operation of the corporation;

(4) rates may not be unfairly discriminatory;

(5) rates shall be adjusted annually;

(6) rates for any policy year shall be calculated to include the adjustment for actual experience of the corporation as developed for the preceding four policy years;

(7) in considering losses to be incurred, changes in the law, national, regional, or local trends in damage awards, and other relevant factors may be considered;

(8) income from the investment of reserves shall be considered;

(9) individual risk underwriting factors shall be considered;

(10) disciplines and classifications within the license categories of liquor license holders shall be considered;

(11) amounts sufficient for repayment of loan obligations shall be considered;

(12) if the earned premiums of the corporation for any given year are less than the incurred claims, claim expense, underwriting expense, reserves for that year and provision for repayment of any loans, the corporation may, subject to the prior approval of the director, levy an assessment upon the insureds who held policies

1 during that year; the assessment, which may be made in periodic in-  
2 stallments, shall be made within three years and may not exceed 150  
3 percent of the insured's premium for that year; the termination of any  
4 policy does not relieve the insured of contingent liability for the  
5 insured's proportionate share of the obligations to the corporation  
6 that accrued while the policy was in force;

7 (13) if the earned premiums of the corporation for any given  
8 year exceed its incurred claim expense, underwriting expense, reserves  
9 for that year, and provision for repayment of any loan, the corpora-  
10 tion may, subject to the prior approval of the director, apportion and  
11 pay or credit its insureds who held policies during that year; a  
12 payment or credit shall be proportionate to the insured's earned  
13 premium for that year;

14 (14) upon application by any person, the director may issue  
15 a certificate authorizing the corporation to extinguish all or a  
16 portion of an assessment levied, or that could be levied, under (12)  
17 of this section for all insureds with policies in force when the  
18 certificate is issued, and to omit provisions levying an assessment  
19 under (12) of this section in all policies delivered or issued for  
20 delivery after the certificate is issued, if the director determines  
21 that there is a sound actuarial basis for the extinguishment; the  
22 director may at any time revoke the certificate; a policy in force at  
23 the time of revocation is not subject to the revocation of the certif-  
24 icate for the remainder of the period for which the premium has been  
25 paid, but after revocation a policy may not be issued or renewed  
26 without providing for an assessment of the insured.

27 Sec. 21.85.090. PAYMENT OF PREMIUMS; CANCELLATION OF INSURANCE.  
28 The corporation may provide for installment payment of premiums in  
29 which case each installment is due by the date specified. The

1 corporation may cancel any of its policies for nonpayment of any  
2 premium or installment on a premium, or other charge, by mailing or  
3 delivering notice of cancellation to the insured at the address shown  
4 on the policy and to the Alcoholic Beverage Control Board. Cancel-  
5 lation is not effective until 30 days after the date notice is mailed  
6 or delivered by the corporation.

7 Sec. 21.85.095. TRANSFER OF CORPORATE ASSETS AND LIABILITIES.

8 (a) The corporation may, subject to the prior approval of the direc-  
9 tor, transfer its assets and liabilities to a company that meets all  
10 of the following conditions:

11 (1) the company possesses a valid certificate of authority  
12 to transact casualty insurance business in the state; in evaluating  
13 the capital and surplus of the company for qualification for a certif-  
14 icate of authority, the value of the assets and liabilities trans-  
15 ferred by the corporation may not be considered;

16 (2) the company pays to the corporation for return to the  
17 state treasury the full value of any surplus in the corporation;

18 (3) the company executes a complete reinsurance and hold  
19 harmless agreement in a form approved by the director covering all of  
20 the obligations of the corporation to its creditors and policyholders;

21 (4) the company meets other requirements the director may  
22 reasonably require to protect the interests of the state, the liquor  
23 license holders insured, the involved company, and the public;

24 (5) the company provides the board of governors with a  
25 written statement from the director that the company qualifies under  
26 (1) - (5) of this subsection.

27 (b) If and while the company to which the assets and liabilities  
28 of the corporation are transferred in the manner provided in (a) of  
29 this section continues to write premiums in excess of the levels

1 provided in AS 21.85.055, it shall be entitled to carry forward and  
2 offset against its premium tax obligation to the state the amount by  
3 which the aggregate claims paid on reinsurance assumed under (a)(3) of  
4 this section exceeds aggregate reserves on the same business estab-  
5 lished at the date of the reinsurance agreement.

6 Sec. 21.85.210. RESERVE FUND ESTABLISHED. The corporation shall  
7 establish a reserve fund, in an amount required by the Department of  
8 Commerce and Economic Development to provide surplus in respect to  
9 policyholders.

10 Sec. 21.85.900. DEFINITIONS. In this chapter

11 (1) "continuous coverage" means one or more successive  
12 policy period that is uninterrupted by cancellation or failure to  
13 renew for any reason;

14 (2) "corporation" means the Liquor License Holders' Indem-  
15 nity Corporation of Alaska;

16 (3) "covered claim" means a claim by an injured person  
17 reported to the corporation during the period of continuous coverage  
18 by the corporation of the insured liquor license holder for a negli-  
19 gent act or omission that concerns customers on licensed premises;

20 (4) "governor" means a member of the board of governors of  
21 the Liquor License Holders' Indemnity Corporation of Alaska;

22 (5) "licensed premises" has the meaning given in AS 04.21.-  
23 080;

24 (6) "liquor license holder" means a person, association of  
25 persons, or a corporation that holds a current liquor license issued  
26 under AS 04.

27 \* Sec. 8. The alcoholic beverage tax rates established under AS 43.60.-  
28 010(a) shall be increased by 100 percent during the 1986 tax year. This  
29 increase shall be in effect only during the 1986 tax year. Revenue derived

1 as a result of the increased rate is intended to compensate the state for  
2 appropriations made under AS 21.85.210 for the Liquor License Holders'  
3 Indemnity Corporation of Alaska.

4 \* Sec. 9. This Act takes effect on the effective date of a bill estab-  
5 lishing a special appropriation for a reserve fund under AS 21.85.210.

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