

1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

2

SENATE BILL NO. 212

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

6 For an Act entitled: "An Act relating to insurer solvency; changing Rule
7 62(a), Rules of Civil Procedure; and providing for an
8 effective date."

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

10 * Section 1. AS 21.06.120 is amended to read:

11 Sec. 21.06.120. EXAMINATION OF INSURERS, SURPLUS LINES BROKERS,
12 AND FORMERLY LICENSED PERSONS. (a) The director may examine the
13 affairs, transactions, accounts, records, and assets of each au-
14 thorized and formerly authorized insurer and each licensed and former-
15 ly licensed surplus lines broker as often as the director considers
16 advisable. The director shall so examine each domestic insurer at
17 least once every three years. Examination of an alien insurer may be
18 limited to its insurance transactions and affairs in the United
19 States. Examination of a reciprocal insurer may also include ex-
20 amination of its attorney-in-fact to the extent that the transactions
21 of the attorney-in-fact relate to the insurer.

22 (b) The director shall in like manner examine each insurer
23 applying for an initial certificate of authority to do business in
24 this state.

25 (c) In place of an examination by the director, the director may
26 accept a full report of the last recent examination of a foreign or
27 alien insurer, certified to by the insurance supervisory official of
28 another state, territory, commonwealth, or district of the United
29 States.

1 (d) The director may participate in National Association of
2 Insurance Commissioner's examinations of insurers.

3 (e) The director may use contract examiners to carry out the
4 functions of this section.

5 * Sec. 2. AS 21.06.140(b) is amended to read:

6 (b) Every person being examined and its officers, employees,
7 agents, and representatives shall produce and make freely available to
8 the director the accounts, records, documents, files, information,
9 assets, and matters in their possession or control relating to the
10 subject of the examination, and shall facilitate and aid the ex-
11 amination as far as reasonably possible, including providing to the
12 director, at the expense of the person being examined, a copy of any
13 document requested during the examination.

14 * Sec. 3. AS 21.06.150(e) is amended to read:

15 (e) The director may withhold from public inspection any docu-
16 ments, information, accounts, or records received during an ex-
17 amination or investigation, and any [AN] examination or investigation
18 report, for as long as the director finds [CONSIDERS] the withholding
19 to be necessary for the protection of any person [THE PERSON EXAMINED]
20 against unwarranted injury or to be in the public interest.

21 * Sec. 4. AS 21.06.160 is amended to read:

22 (a) Each person examined, other than as to examinations under
23 AS 21.06.130, shall pay all the costs of, and expenses incurred by
24 division staff examiners, including salary and benefit costs, for time
25 spent relating to the examination, and shall pay the compensation of a
26 contract examiner, to be set at a reasonable customary rate, for
27 conducting [ACTUAL TRAVEL EXPENSES, A REASONABLE LIVING EXPENSE ALLOW-
28 ANCE, AND A PER DIEM AS COMPENSATION OF EXAMINERS, AS NECESSARILY
29 INCURRED ON ACCOUNT OF] the examination, [ALL AT REASONABLE RATES

1 CUSTOMARY THEREFOR AND AS ESTABLISHED OR ADOPTED BY THE DIRECTOR],
2 upon presentation of a detailed account of the charges and expenses by
3 the director or in accordance with an order [PURSUANT TO THE WRITTEN
4 AUTHORIZATION] of the director. The accounting may either be present-
5 ed periodically during the course of the examination or at the ter-
6 mination of the examination. A person may not pay and an examiner may
7 not accept additional emolument for an examination.

8 (b) The director shall pay into the general fund of the state
9 all money received under (a) of this section. Instead [IN LIEU] of
10 making a deposit into the general fund, the director may order [GIVE
11 WRITTEN AUTHORIZATION FOR] the person examined to make direct payment
12 to the contract examiner for all or part of the contract examiner's
13 compensation amount [TRAVEL EXPENSES AND LIVING ALLOWANCE]. The
14 contract between the state and a contract examiner who will receive
15 direct payment under this subsection shall require the examiner to
16 provide to the director a copy of each billing for the examination.

17 (c) In addition to other penalties provided by this title, if
18 [IF] the person fails to pay the charges and expenses prescribed in
19 (a) of this section, the amount may be recovered by suit by the attor-
20 ney general on behalf of the state and restored to the general fund.
21 The amount due shall be a first lien upon all of the assets and prop-
22 erty of the person in this state.

23 (d) Irrespective of the method of payment under this section of
24 a contract examiner, the selection of the examiner and the award of
25 the contract is subject to the state procurement code, AS 36.30.

26 * Sec. 5. AS 21.06 is amended by adding a new section to read:

27 Sec. AS 21.06.165. IMMUNITY FOR DIRECTOR AND OTHERS. (a) The
28 director, any other employee or agent of the division, and the Nation-
29 al Association of Insurance Commissioners and its employees, are not

1 liable for civil damages for an act or omission in the execution of
2 their authorized activities or duties under this title, or for the
3 publication or dissemination of a report or bulletin related to their
4 authorized activities or duties.

5 (b) This section does not abrogate or modify any common law or
6 other statutory privilege or immunity.

7 (c) This section does not preclude liability for civil damages
8 as a result of reckless, wilful, or intentional misconduct.

9 * Sec. 6. AS 21.09.020 is amended to read:

10 Sec. AS 21.09.020. EXCEPTIONS, CERTIFICATE OF AUTHORITY REQUIRE-
11 MENT. A certificate of authority is not required of an insurer, not
12 otherwise authorized in this state, in regard to

13 (1) transactions relative to its policies lawfully written
14 in Alaska, or liquidation of assets and liabilities of the insurer
15 (other than collection of new premiums), all as resulting from its
16 former authorized operations in Alaska;

17 (2) transactions relative thereto subsequent to issuance of
18 a policy covering only subjects of insurance not resident, located, or
19 expressly to be performed in Alaska at time of issuance, and which
20 coverage was lawfully solicited, written, and delivered outside
21 Alaska;

22 (3) transactions under [PURSUANT TO] surplus lines cover-
23 ages lawfully written under AS 21.34 [21.33]; or

24 (4) reinsurance, except as to domestic reinsurers.

25 * Sec. 7. AS 21.09.060 is amended to read:

26 Sec. 21.09.060. COMBINATIONS OF INSURING POWERS IN ONE INSURER.
27 An insurer that otherwise qualifies may be authorized to transact any
28 one kind or combination of kinds of insurance as defined in AS 21.12,
29 except that

1 (1) a life insurer may also grant annuities, but is not
2 authorized to transact any other kind of insurance than disability;
3 except that if the insurer is otherwise qualified, the director shall
4 continue to authorize a life insurer that, immediately before July 1,
5 1966, was lawfully authorized to transact in this state a kind or
6 kinds of insurance in addition to life and disability;

7 (2) a reciprocal insurer may not transact life insurance;

8 (3) a title insurer must [SHALL] be a stock insurer;

9 (4) a property or casualty insurer may not transact life
10 insurance and may not grant annuities.

11 * Sec. 8. AS 21.09.070(a) is amended to read:

12 (a) To qualify for authority to transact any one kind of insur-
13 ance as defined in AS 21.12, or combination of kinds of insurance as
14 shown below, a foreign insurer, or a domestic insurer applying for its
15 original certificate of authority in this state, or an insurer reap-
16 plying for a certificate of authority in this state after having
17 withdrawn from this state for any cause, shall possess and after that
18 [THEREAFTER] maintain unimpaired basic paid-in capital stock (if a
19 stock insurer) or unimpaired basic guarantee surplus (if a foreign
20 mutual insurer or foreign reciprocal insurer), that is unavailable for
21 dividends of any kind, and shall possess when first so authorized, and
22 maintain after that, additional money [FUNDS] in surplus, as follows:

23 Kind or Kinds	Basic Capital or	Additional of
24 Insurance	Basic <u>Guarantee</u>	Surplus
25	Surplus	
26 Life	\$ 800,000	\$ 800,000
27 Disability	800,000	800,000
28 Life and Disability	1,000,000	1,000,000
29 Property	600,000	600,000

1	Casualty excluding vehicle	1,000,000	1,000,000
2	Vehicle	800,000	800,000
3	Marine and Transportation	1,000,000	1,000,000
4	Surety	1,000,000	1,000,000
5	Title	300,000	300,000
6	Any two of the		
7	following kinds		
8	of insurance:		
9	property, marine and		
10	transportation,		
11	vehicle, casualty		
12	excluding vehicle,		
13	surety and disability	1,500,000	1,500,000
14	Legal Expenses	600,000	600,000
15	Mortgage Guarantee	1,000,000	1,000,000

16 * Sec. 9. AS 21.09.070(c) is repealed and reenacted to read:

17 (c) In order for an insurer to renew, and continue, its certifi-
18 cate of authority beyond June 30, 1990, it must possess at least the
19 basic capital or basic surplus, and additional surplus, required under
20 this section.

21 * Sec. 10. AS 21.09.070 is amended by adding a new subsection to read:

22 (f) A domestic property or casualty insurer may assume reinsur-
23 ance, either new or renewal, on or after January 1, 1990 (1) only of
24 the kinds of risks, and to retain risks, within the limits it is
25 otherwise authorized to insure; and (2) only if, in the absence of
26 prior written approval from the director, it maintains, notwithstand-
27 ing (a) of this section, in policyholder surplus at least \$10,000,000
28 as of December 31, 1989, \$15,000,000 as of December 31, 1990, and
29 \$20,000,000 as of December 31, 1991. However, this criteria does not

1 apply to reinsurance that is required to be assumed by applicable law
2 or regulation, or is assumed under an intracompany pooling arrangement
3 between affiliated insurers.

4 * Sec. 11. AS 21.09.110(3) is amended to read:

5 (3) a copy of its financial statement as of the preceding
6 December 31, and all subsequent quarterly financial statements, sworn
7 to by at least two executive officers of the insurer, or certified by
8 the public insurance supervisory official of the insurer's state of
9 domicile or of entry into the United States;

10 * Sec. 12. AS 21.09.140(a) is amended to read:

11 (a) The director shall suspend or revoke an insurer's certifi-
12 cate of authority

13 (1) if the action is required by a provision of this title;

14 (2) if the insurer no longer meets the requirements for the
15 authority [ORIGINALLY] granted, on account of the insurer becoming
16 impaired or insolvent [DEFICIENCY OF ASSETS] or otherwise; or

17 (3) if the insurer's authority to transact insurance is
18 suspended or revoked by its state of domicile, or state of entry into
19 the United States if an alien insurer.

20 * Sec. 13. AS 21.09.200(a) is amended to read:

21 (a) Each authorized insurer shall annually, before March 2, file
22 with the director a full and true statement of its financial condi-
23 tion, transactions, and affairs as of the preceding December 31. The
24 reporting format for any given year is the most recently approved
25 National Association of Insurance Commissioners' annual financial
26 statement blank form and instructions [THE STATEMENT SHALL BE IN THE
27 GENERAL FORM AND CONTEXT ACCEPTABLE TO THE DIRECTOR, AND IN CURRENT
28 USE FOR SIMILAR REPORTS TO STATES IN GENERAL WITH RESPECT TO THE TYPE
29 OF INSURER AND KINDS OF INSURANCE TO BE REPORTED UPON,] and

1 supplemented for additional information as required by the director.
2 The director may require the statement to be filed on electronic
3 media. The statement shall be verified by the oath of the insurer's
4 president or vice-president, and secretary, or, if a reciprocal insurer,
5 by oath of the attorney-in-fact or its like officers if a corporation,
6 unless verification is waived by the director of insurance.

7 * Sec. 14. AS 21.09.200 is amended by adding a new subsection to read:

8 (f) In addition to the requirements of (a) of this section, a
9 domestic insurer shall file its annual statement with the National
10 Association of Insurance Commissioners (NAIC) by the due date established
11 by the NAIC, and shall pay the applicable NAIC filing fee. An
12 insurer that fails to comply with this subsection is subject to the
13 penalties specified in (e) of this section, calculated from the NAIC
14 filing and fee due date.

15 * Sec. 15. AS 21.09 is amended by adding a new section to read:

16 Sec. 21.09.205. QUARTERLY STATEMENT. (a) The director may
17 require an insurer to file quarterly financial statements, which must
18 adhere to the format specified in AS 21.09.200(a).

19 (b) Quarterly financial statements, if required, are due 60 days
20 after the end of the quarters to which they pertain.

21 (c) An insurer shall pay to the division \$100 for each day the
22 insurer fails to file the quarterly statement in the form required or
23 within the time established in (b) of this section.

24 * Sec. 16. AS 21.12.020 is repealed and reenacted to read:

25 Sec. 21.12.020. REINSURANCE CREDIT ALLOWED A DOMESTIC CEDING
26 INSURER. (a) Credit for reinsurance shall be allowed a domestic
27 ceding insurer as either an asset or a deduction from liability on
28 account of reinsurance ceded only if

29 (1) the reinsurance is ceded to an assuming insurer that is

1 licensed to transact insurance or reinsurance in this state;

2 (2) the reinsurance is ceded to an assuming insurer that is
3 accredited as a reinsurer in this state; an accredited reinsurer is
4 one that

5 (A) submits to this state's jurisdiction, submits to
6 this state's authority to examine its books and records, and is
7 licensed to transact insurance or reinsurance in at least one
8 state; or

9 (B) in the case of a United States branch of an alien
10 assuming insurer, is entered through, and licensed to transact
11 insurance or reinsurance in, at least one state, files annually
12 with the director a copy of its annual financial statement that
13 is filed with the insurance regulatory agency of its state of
14 domicile, and maintains at least \$20,000,000 policyholder sur-
15 plus;

16 (3) the reinsurance is ceded to an assuming insurer that is
17 domiciled in a state, or in the case of a United States branch of an
18 alien assuming insurer, is entered through a state that employs stan-
19 dards regarding credit for reinsurance ceded substantially similar to
20 those applicable under (1) and (2) of this subsection, the assuming
21 insurer maintains policyholder surplus of at least \$20,000,000, and
22 the assuming insurer submits to the authority of this state to examine
23 its books and records;

24 (4) the reinsurance is ceded to an assuming alien insurer
25 that

26 (A) maintains a trust fund in a qualified United
27 States financial institution, as defined in (c) of this section,
28 for the payment of the valid claims of its United States policy-
29 holders and ceding insurers, and their assigns and successors in

1 interest, which conforms to the following requirements:

2 (i) the trust shall be established in a form
3 approved by the director; the trust instrument shall provide
4 that contested claims are valid and enforceable upon the
5 final order of any court of competent jurisdiction in the
6 United States; the trust shall vest legal title to its
7 assets in the trustees of the trust for its United States
8 policyholders and ceding insurers, their assigns and succes-
9 sors in interest; the trust and the assuming insurer are
10 subject to examination as determined by the director; the
11 trust must remain in effect for so long as the assuming
12 insurer has outstanding liabilities due under the reinsur-
13 ance agreements subject to the trust;

14 (ii) the trustees shall report in writing to the
15 director on or before March 1 of each year the balance of
16 the trust and list the trust's investments at the preceding
17 year end, and shall certify the date of termination of the
18 trust, if so planned, or certify that the trust does not
19 expire before the next following December 31;

20 (iii) in the case of a single assuming insurer, the
21 trust shall consist of trusteed money representing the
22 assuming insurer's liabilities attributable to business
23 written in the United States and, in addition, include a
24 trusteed surplus not less than \$20,000,000; the single
25 assuming insurer shall make available to the director an
26 annual certification by its domiciliary regulator and its
27 independent public accountants of its solvency;

28 (iv) in the case of a group of individual unin-
29 corporated insurers, the trust shall consist of trusteed

1 money representing the group's liabilities attributable to
2 business written in the United States and, in addition,
3 include a trustee surplus not less than \$100,000,000; the
4 group shall make available to the director an annual certi-
5 fication by the group's domiciliary regulator and its in-
6 dependent public accountants of the solvency of each of the
7 individual unincorporated insurers; and

8 (B) shall report annually to the director information
9 substantially the same as that required to be reported on the
10 National Association of Insurance Commissioners Annual Statement
11 form by licensed insurers, to enable the director to determine
12 the sufficiency of the trust fund;

13 (5) the reinsurance ceded to an assuming insurer not meet-
14 ing the requirements of (1), (2), (3), or (4) of this subsection, but
15 only with respect to the insurance of risks located in jurisdictions
16 where such reinsurance is required by applicable law or regulation of
17 that jurisdiction.

18 (b) If the assuming insurer is not licensed or accredited to
19 transact insurance or reinsurance in this state, the credit permitted
20 by (a)(1), (2), (3) and (4) of this section may not be allowed unless
21 the assuming insurer agrees in the reinsurance agreements

22 (1) that in the event of the failure of the assuming insur-
23 er to perform its obligations under the terms of the reinsurance
24 agreement, the assuming insurer, at the request of the ceding insurer,
25 shall submit to the jurisdiction of any court of competent jurisdic-
26 tion in any state of the United States, will comply with all require-
27 ments necessary to give the court jurisdiction and will abide by the
28 final decision of the court or of any appellate court in the event of
29 an appeal; this provision is not intended to conflict with or override

1 the obligation of the parties to a reinsurance agreement to arbitrate
2 their disputes, if such an obligation is created in the reinsurance
3 agreement; and

4 (2) to designate the director or an attorney resident in
5 the United States as its true and lawful attorney upon whom may be
6 served any lawful process in any action, suit, or proceeding institut-
7 ed by or on behalf of the ceding insurer.

8 (c) A reduction from liability, for reinsurance ceded to an
9 assuming insurer not meeting the requirements of (a) of this section,
10 shall be allowed in an amount not exceeding the liabilities carried by
11 the ceding insurer, and the reduction shall be in the amount of money
12 held by or on behalf of the ceding insurer, including money held in
13 trust for the ceding insurer, under a reinsurance contract with the
14 assuming insurer as security for the payment of obligations under it,
15 if such security is held in the United States subject to withdrawal
16 solely by, and under the exclusive control of, the ceding insurer, or
17 in the case of a trust, held in a qualified United States financial
18 institution, as defined in (d) of this section; the security may be in
19 the form of

20 (1) cash;

21 (2) securities listed by the Securities Valuation Office of
22 the National Association of Insurance Commissioners which qualify as
23 admitted assets under AS 21.21;

24 (3) clean, irrevocable, unconditional letters of credit,
25 issued or confirmed by a qualified United States financial institu-
26 tion, as defined in (d) of this section; letters of credit meeting
27 applicable standards of issuer acceptability as of the dates of their
28 issuance or confirmation shall, notwithstanding the issuing or con-
29 firming institution's subsequent failure to meet applicable standards

1 of issuer acceptability, continue to be acceptable as security until
2 their expiration, extension, renewal, modification, or amendment,
3 whichever occurs first; or

4 (4) any other form of security acceptable to and approved
5 in advance by the director.

6 (d) Notwithstanding the other provisions of this section, no
7 credit may be allowed a domestic ceding insurer unless the reinsurance
8 contract provides for payment by the assuming insurer on the basis of
9 the liability of the ceding domestic insurer under the insurance
10 contracts reinsured without diminution because of the insolvency of
11 the ceding domestic insurer.

12 (e) Upon request of the director, an insurer shall promptly
13 inform the director, in writing, of the cancellation or other material
14 change in any of its reinsurance treaties, contracts, or arrangements.

15 (f) A qualified United States financial institution is an insti-
16 tution that,

17 (1) for the purposes of (c)(3) of this section,

18 (A) is organized or, in the case of a United States
19 office of a foreign banking organization, is licensed under the
20 laws of the United States or any state of the United States;

21 (B) is regulated, supervised, and examined by United
22 States federal or state authorities having regulatory authority
23 over banks and trust companies; and

24 (C) has been determined by either the director, or the
25 Securities Valuation Office of the National Association of Insur-
26 ance Commissioners, to meet the standards of financial condition
27 and standing which are considered necessary and appropriate to
28 regulate the quality of financial institutions whose letters of
29 credit are acceptable to the director;

1 (2) for the purposes of the provisions of this section
2 other than (c)(3) of this section, specifying those institutions that
3 are eligible to act as a fiduciary of a trust, an institution that

4 (A) is organized or, in the case of a United States
5 branch or agency office of a foreign banking organization, li-
6 censed under the laws of the United States or any state of the
7 United States, and has been granted authority to operate with
8 fiduciary powers; and

9 (B) is regulated, supervised, and examined by United
10 States federal or state authorities having regulatory authority
11 over banks and trust companies.

12 (g) Subsections (a) -- (f) apply to all reinsurance transactions
13 having an inception, anniversary, or renewal date on or after July 1,
14 1990.

15 * Sec. 17. AS 21.12 is amended by adding a new section to read:

16 Sec. 21.12.120. REINSURANCE DEFINED. Reinsurance is a contract
17 by which the assuming insurer agrees to indemnify the ceding insurer
18 in whole or in part against liability that the ceding insurer might
19 incur under a separate contract of insurance with its insured.

20 * Sec. 18. AS 21.18.010 is repealed and reenacted to read:

21 Sec. 21.18.010. ALLOWABLE ASSETS. In a determination of the
22 financial condition of an insurer, only those assets that are owned by
23 the insurer and that consist of the following are allowed:

24 (1) cash in the possession of the insurer, or in transit
25 under its control, including the true balance of a deposit in a sol-
26 vent bank, savings and loan association, or trust company as defined
27 in AS 21.21;

28 (2) investments, securities, properties, and loans acquired
29 or held in accordance with this title, and in connection with them,

1 the following items:

2 (A) interest due or accrued on a bond or evidence of
3 indebtedness qualifying as an admitted asset which is not in
4 default and which is not valued on a basis including accrued
5 interest;

6 (B) declared and unpaid dividends on stock and shares,
7 unless the amount has otherwise been allowed as an asset;

8 (C) interest due or accrued upon a collateral loan in
9 an amount not to exceed one year's interest;

10 (D) interest due or accrued on deposits in solvent
11 banks, savings and loan associations, and trust companies, and
12 interest due or accrued on other assets, if the interest is, in
13 the judgment of the director a collectible asset;

14 (E) interest due or accrued on a current real estate
15 mortgage loan that is an admitted asset, in an amount not exceed-
16 ing the amount, if any, of the excess of the value of the proper-
17 ty less delinquent taxes on the property over the unpaid princi-
18 pal; however, if any such interest is in default more than three
19 months, or any tax or installment on the property is due and
20 unpaid for more than three months, no allowance may be made for
21 any unpaid interest on the loan;

22 (F) rent due or accrued on real property if the rent
23 is not in arrears for more than three months, and rent more than
24 three months in arrears if the payment of the rent is secured by
25 property of current market value no less than 75 percent of the
26 total rent due, held in the name of the tenant and conveyed to
27 the insurer as collateral;

28 (G) the unaccrued portion of taxes paid before the due
29 date on real property;

1 (3) premium notes, policy loans, and other policy assets
2 and liens on policies and certificates of life insurance and annuity
3 contracts, and accrued interest on them, in an amount not exceeding
4 the legal reserve, and other policy liabilities carried on each indi-
5 vidual policy;

6 (4) amounts of bills receivable taken for premium, or
7 amounts of installment premiums other than for life insurance, if the
8 total does not exceed the unearned premium amount for the policy on
9 which it is accepted and if all payment required is current;

10 (5) the net amount of uncollected and deferred premiums and
11 annuity considerations in the case of a life insurer;

12 (6) premiums in the course of collection, other than for
13 life insurance, not more than three months past due, less commissions
14 payable on them,

15 (A) except that the three-month limitation of this
16 paragraph does not apply to

17 (i) premiums payable directly or indirectly by
18 the United States government or by any of its instrumen-
19 talities;

20 (ii) reinsurance premiums payable by ceding insur-
21 ers authorized to transact such business in this state; or

22 (iii) reinsurance premiums receivable which might
23 be offset by amounts carried by the reinsurer as liabilities
24 for amounts due to the insurer for unpaid losses or other
25 mutual debts; however, reinsurance premiums more than 90
26 days past due may not be allowed in excess of 10 percent of
27 the reinsurer's total admitted assets as shown on its most
28 recent annual financial statement on file with the director;

29 (B) and premiums, excluding commissions payable on

1 them, due from a controlling or controlled person, shall be
2 allowed as an asset to the extent that

3 (i) the premiums collected by the controlling or
4 controlled person and not remitted to the insurer are held
5 in a trust account with a bank or other depository approved
6 by the division; that money shall be held as trust money and
7 may not be commingled with any other money of the control-
8 ling or controlled person; a disbursement from the trust
9 account may be made only to the insurer, the insured, or,
10 for the purpose of returning a premium, an entity who is
11 entitled to returned premiums on behalf of the insured;
12 however, the investment income derived from the trust may be
13 allocated as the parties consider proper; a controlling or
14 controlled person shall deposit premiums collected into the
15 trust account within five working days after collection; the
16 director shall disapprove a trust agreement that, in the
17 director's judgment, does not assure the safety of the
18 premiums collected; and

19 (ii) the controlling or controlled person has
20 provided to the insurer, and the insurer has maintained in
21 its possession, an unexpired, clean, irrevocable, and uncon-
22 ditional letter of credit, payable to the insurer, for a
23 term of not less than one year with automatic extension for
24 one year, unless the beneficiary has received in writing
25 notification of intention not to renew 30 days before the
26 original expiration date; the letter of credit must be
27 issued in conformity with the requirements set out in this
28 subparagraph, and the amount of it must equal or exceed the
29 liability of the controlling or controlled person to the

1 insurer, at all times during the period that the letter of
2 credit is in effect, for premiums collected by the control-
3 ling or controlled person; the requirements are that such a
4 letter of credit be issued under arrangements satisfactory
5 to the division and that the letter be issued by a banking
6 institution that is a member of the Federal Reserve System
7 and that has a financial standing satisfactory to the de-
8 partment; or the controlling or controlled person has
9 provided to the insurer, and the insurer has maintained in
10 its possession, evidence that the controlling or controlled
11 person has purchased and has currently in effect a financial
12 guaranty bond, payable to the insurer, issued for a continu-
13 ous term, cancellable only on 30-day written notice to the
14 beneficiary of intention to terminate with the bond continu-
15 ing in effect for acts committed before the date of termina-
16 tion, and which is in conformity with the requirements set
17 out in this subparagraph; the amount of the bond shall equal
18 or exceed the liability of the controlling or controlled
19 person to the insurer, at all times during which the finan-
20 cial guaranty bond is in effect, for the premium collected
21 by the controlling or controlled person; the requirements
22 are that such a financial guaranty bond be issued under an
23 arrangement satisfactory to the division and that the finan-
24 cial guaranty bond be issued by an insurer that is au-
25 thorized to transact business in Alaska and that has a
26 financial standing satisfactory to the division and that is
27 neither controlled nor controlling in relation to either the
28 insurer or the person for whom the bond is purchased; the
29 director shall disapprove a letter of credit that, in the

1 director's judgment, does not assure the safety of the
2 premiums; and

3 (iii) a financial examination indicates that the
4 controlling or controlled person is solvent and has the
5 ability to pay such premiums as they become due; the finan-
6 cial examination, as called by the director, shall be based
7 on a review of the books and records of the controlling or
8 controlled person;

9 (7) notes and like written obligations not past due, taken
10 for premiums other than life insurance premiums, on policies permitted
11 to be issued on that basis, and to the extent of the unearned premium
12 reserves carried on the policies;

13 (8) the full amount of reinsurance that is recoverable by a
14 ceding insurer from a solvent reinsurer and that is authorized under
15 AS 21.12.020;

16 (9) amounts receivable by an assuming insurer representing
17 money withheld by a solvent ceding insurer under a reinsurance treaty,
18 not exceeding the amounts carried by the assuming insurer as liability
19 for unpaid losses and reserves under the contract;

20 (10) deposits or equities recoverable from underwriting
21 associations, syndicates, and reinsurance funds, or from a suspended
22 banking institution, to the extent considered by the director avail-
23 able for the payment of losses and claims and at values to be de-
24 termined by the director;

25 (11) electronic data processing and related equipment, and
26 operating software constituting a data processing, record keeping, or
27 accounting system, if the cost of the system, including subsequent
28 additions to the original system, is \$50,000 or more and if that cost
29 is to be amortized in full over a period not to exceed 10 calendar

1 years;

2 (12) intercompany transactions arising from income tax
3 allocations among organizations participating in a consolidated tax
4 return, if

5 (A) there is a written agreement that is in compliance
6 with regulations promulgated by the Internal Revenue Service and that
7 includes

8 (i) a description of the method of allocation and
9 the manner in which intercompany balances will be settled;
10 and

11 (ii) a requirement that any intercompany balance
12 will be settled within a reasonable time following the
13 filing of the consolidated tax return;

14 (B) any receivables arising out of the agreement are
15 due from a solvent organization that is not in default on its
16 obligations and that meets all other requirements for admitted
17 assets; and

18 (C) liabilities that offset the related intercompany
19 receivables are recorded in the financial statement of one or
20 more of the other organizations participating in the agreement;

21 (13) foreign exchange differential on the excess of assets
22 over liabilities recorded in foreign currencies;

23 (14) the amount of an unsecured receivable from a solvent
24 affiliate, which is not more than six months past due, if a liability
25 to offset the receivable is recorded in the affiliate's corresponding
26 financial statement;

27 (15) the amount of receivables arising from wholly and
28 partially uninsured accident and health plans;

29 (16) all assets, not inconsistent with the provisions of

1 this section, which are allowed in the annual statement form in accor-
2 dance with the annual statement instructions most recently published
3 by the National Association of Insurance Commissioners, and approved
4 by the director; or

5 (17) other assets, not inconsistent with the provisions of
6 this section, considered by the director to be available for the
7 payment of losses and claims, at values to be determined by the direc-
8 tor.

9 * Sec. 19. AS 21.18.030 is repealed and reenacted to read:

10 Sec. 21.18.030. ASSETS NOT ALLOWED. (a) In addition to assets
11 impliedly excluded by AS 21.18.010, the following expressly are not
12 allowed as assets in a determination of the financial condition of an
13 insurer:

14 (1) good will, trade names, and other like intangible
15 assets;

16 (2) advances to officers, other than policy loans, whether
17 secured or not, and advances to employees, agents, and other persons
18 on personal security only;

19 (3) stock of the insurer, owned by it, or any material
20 equity in the stock or loans secured by the stock, or a material
21 proportionate interest in the stock acquired or held through the
22 ownership by the insurer of an interest in another firm, corporation,
23 or business unit;

24 (4) tangible personal property, including furniture, fix-
25 tures, furnishings, safes, vehicles, libraries, stationery, litera-
26 ture, and supplies, other than electronic data processing machines
27 authorized by AS 21.18.010(11), except property acquired through
28 foreclosure of chattel mortgages acquired under AS 21.21.270, or
29 property that is reasonably necessary for the maintenance and

1 operation of real estate lawfully acquired and held by the insurer
2 other than real estate used by it for home office, branch office, and
3 similar purposes;

4 (5) the amount, if any, by which the aggregate book value
5 of investments as carried on the ledger assets of the insurer exceeds
6 the aggregate value as determined under this title;

7 (6) the amount of bonds, notes, or other evidences of
8 indebtedness that are secured by mortgages or deeds of trust that are
9 in default;

10 (7) the amount of payments made under the Internal Revenue
11 Code of 1986 for the alternative minimum tax, or refunds receivable
12 which are in dispute from any federal or state taxing authority;

13 (8) the amount of commuted commissions by which present
14 value of future commissions is paid in advance to agents;

15 (9) the amount of commissions and fees forwarded to agents
16 before the earning of such commissions and fees by the agent;

17 (10) the amount of unsecured loans due from outside sources.

18 (b) All non-admitted assets and all other assets of doubtful
19 value or character included as ledger or non-ledger assets in any
20 statement by an insurer to the director, or in an examiner's report to
21 the director, shall also be reported, to the extent of the value
22 disallowed, as deductions from the gross assets of the insurer, unless
23 the director permits a reserve to be carried among the liabilities of
24 the insurer in place of such a deduction.

25 * Sec. 20. AS 21.18.060(a) is amended to read:

26 (a) As to insurance against loss or damage to property, except
27 as otherwise provided in AS 21.18.070, and as to all general casualty
28 insurance and surety insurance, every insurer shall maintain an un-
29 earned premium reserve on all policies in force.

1 * Sec. 21. AS 21.18.060(b) is amended to read:

2 (b) The director may require that the reserves be equal to the
3 unearned portions of the gross premiums in force after deducting
4 applicable reinsurance in solvent [INSOLVENT] insurers as computed on
5 each respective risk from the policy's date of issue. If the director
6 does not so require, the portions of the gross premium in force, less
7 applicable reinsurance in solvent insurers, to be held as an unearned
8 premium reserve shall be computed according to the following table:

9	Term for Which Policy	Reserve for Unearned
10	Was Written	Premium
11	1 year or less	1/2
12	2 years	1st year 3/4
13		2nd year 1/4
14	3 years	1st year 5/6
15		2nd year 1/2
16		3rd year 1/6
17	4 years	1st year 7/8
18		2nd year 5/8
19		3rd year 3/8
20		4th year 1/8
21	5 years	1st year 9/10
22		2nd year 7/10
23		3rd year 1/2
24		4th year 3/10
25		5th year 1/10
26	Over 5 years	pro rata

27 * Sec. 22. AS 21.18 is amended by adding new sections to read:

28 Sec. 21.18.073. UNEARNED PREMIUM RESERVE FOR TITLE INSURANCE.

29 In addition to an adequate reserve as to outstanding losses as

1 required under AS 21.18.050, a title insurer shall establish, segre-
2 gate, and maintain a guaranty fund or unearned premium reserve as
3 provided in this section. The sums required by this section to be
4 reserved for unearned premiums on title guarantees and policies at all
5 times and for all purposes shall be considered, and constitute, un-
6 earned portions of the original premiums, and are charged as a reserve
7 liability of the insurer in determining its financial condition.
8 While the sums are so reserved, they are withdrawn from the use of the
9 insurer for its general purposes, impressed with a trust in favor of
10 the holders of title guarantees and policies, and held available for
11 reinsurance of the title guarantees and policies in the event of the
12 insolvency of the insurer. Nothing in this section precludes the
13 insurer from investing the reserves in investments authorized by law
14 for such an insurer, and the income from invested reserves is included
15 in the general income of the insurer, to be used by the insurer for
16 any lawful purpose. This unearned premium reserve consists of not
17 less than an amount computed as follows with respect to a policy of
18 title insurance issued by a title insurer after December 31, 1988:

19 (A) Ten percent of the total amount of risk premiums
20 written in the calendar year for title insurance contracts shall
21 be assigned originally to the reserve.

22 (B) During each of the 20 years immediately following
23 the year in which the title insurance contract was issued, the
24 reserve applicable to the contract shall be reduced by five
25 percent of the original amount of the reserve. With respect to a
26 policy of title insurance issued by a title insurer before Janu-
27 ary 1, 1989, the insurer shall maintain at all times a reserve of
28 not less than \$.30 for each \$1,000 of the fee amount of all title
29 guarantees and policies issued during the preceding 10 years.

1 This reserve amount, required to be reserved for unearned premi-
2 ums on title guarantees and policies, shall at all times and for
3 all purposes be considered, and constitute, unearned portions of
4 the original premiums, and shall be charged as a reserve liabil-
5 ity of the insurer in determining its financial condition. That
6 portion of the unearned premium reserve established with respect
7 to a title guarantee or policy issued more than 10 years previ-
8 ously shall be released, shall no longer constitute part of the
9 unearned premium reserve, and may be used for any purpose by the
10 insurer.

11 Sec. 21.18.075. BAIL BOND RESERVE. In place of the unearned
12 premium reserve required on surety bonds under AS 21.18.050, the
13 department may require a surety insurer or limited surety insurer to
14 set up and maintain a reserve on all bail bonds or other single premi-
15 um bonds without a definite expiration date, furnished in judicial
16 proceedings, equal to 25 percent of the total consideration charged
17 for the bonds that are outstanding as of the date of any current
18 financial statement of the insurer.

19 * Sec. 23. AS 21.18.120(a) is amended to read:

20 (a) All bonds or other evidences of debt having a fixed term and
21 rate of interest held by an insurer may, if issued by a solvent entity
22 [AMPLY SECURED] and not in default in principal or interest, be valued
23 as follows:

24 (1) if purchased at par, at the par value;

25 (2) if purchased above or below par, on the basis of the
26 purchase price with amortization of bond premium or discount [ADJUST-
27 ED] to bring the value to par at maturity and yield in the meantime
28 the effective rate of interest at which the purchase was made, or
29 instead [IN LIEU] of this method, according to another [AN] accepted

1 method of valuation approved by the director;

2 (3) the purchase price shall in no case be taken at a
3 higher figure than the actual market value at the time of purchase,
4 plus actual brokerage, transfer, postage or express charges paid in
5 the acquisition of the securities;

6 (4) unless otherwise provided by valuation established or
7 approved by the director, no security may [SHALL] be carried at or
8 above the call price for the entire issue during any period within
9 which the security may be called.

10 * Sec. 24. AS 21.18 is amended by adding a new section to read:

11 Sec. 21.18.900. DEFINITIONS. In this chapter

12 (1) "admitted asset" means an asset allowed by AS 21.18.010
13 to be included in the determination of the financial condition of a
14 domestic or foreign insurer or the United States branch of an alien
15 insurer;

16 (2) "affiliate" has the meaning given in AS 21.22.200.

17 (3) "controlling" or "controlled" has the same meaning as
18 in AS 21.22.200 and, for the purposes of this chapter, includes a
19 person that individually, or in combination with other persons, owes
20 to the insurer an amount that exceeds 50 percent of the insurer's
21 total premiums in course of collection as stated on the insurer's
22 financial statement;

23 (4) "foreign currency" means the monetary denominations of
24 a country other than the dollar used by the United States of America;

25 (5) "ledger asset" means an asset recorded on the general
26 ledger of an insurer;

27 (6) "nonadmitted assets" means an asset recorded on the
28 insurer's ledger that is not allowed by AS 21.18.010 to be included in
29 the determination of the financial condition of a domestic or foreign

1 insurer or the United States branch of an alien insurer;

2 (7) "nonledger asset" means an asset not recorded on the
3 general ledger of an insurer;

4 (8) "person" has the meaning given in AS 21.90.900;

5 (9) "solvent" means able to satisfy all current and future
6 obligations and operate as an ongoing entity.

7 * Sec. 25. AS 21.21.020(c) is amended to read:

8 (c) Eligibility of an investment shall be determined as of the
9 date of its making or acquisition[, EXCEPT AS STATED IN (b) OF THIS
10 SECTION].

11 * Sec. 26. AS 21.21.030(c) is amended to read:

12 (c) This chapter does not prohibit the acquisition by an insurer
13 of other or additional securities or property if received as a divi-
14 dend or as a lawful distribution of assets, or, subject to (d) of this
15 section, under a lawful and bona fide agreement of bulk reinsurance,
16 merger, or consolidation. An investment so acquired that is not
17 otherwise eligible under this chapter or subject to (d) of this sec-
18 tion shall be disposed of under AS 21.21.300 if personal property or
19 securities, or under AS 21.21.290, if real property.

20 * Sec. 27. AS 21.21.030 is amended by adding new subsections to read:

21 (d) A bona fide agreement of bulk reinsurance, merger, or con-
22 solidation in which the consideration received is comprised of assets,
23 25 percent or more of which, as valued under AS 21.18, are ineligible
24 under this chapter, requires the specific written approval of the
25 director before being consummated.

26 (e) The director may, at any time, order the immediate disposi-
27 tion of any or all of the ineligible assets received, or may order the
28 reversal of the agreement of bulk reinsurance, merger, or consoli-
29 tion, or may order such other action as the director considers

1 appropriate under the circumstances.

2 * Sec. 28. AS 21.21.050 is amended to read:

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

6 (1) one person: an insurer may not, except with the con-
7 sent of the director, have at any one time a combination of invest-
8 ments in or loans upon the security of the obligations, property, or
9 securities of any one person, or insurer, aggregating an amount ex-
10 ceeding five percent of the insurer's assets; this restriction does
11 not apply to

12 (A) general obligations of the United States of Ameri-
13 ca; or

14 (B) general obligations of a state of the United
15 States of America which is not insolvent and whose securities are
16 not then in default; or

17 (C) [INCLUDE] policy loans made under AS 21.21.210;

18 (2) voting stock: an insurer may not invest in or hold at
19 any one time more than 10 percent of the outstanding voting stock of a
20 corporation, except with the consent of the director given with re-
21 spect to voting rights of preference stock during default of divi-
22 dends; this provision does not apply to stock of a wholly-owned sub-
23 sidiary of the insurer or to controlling stock of an insurer acquired
24 under AS 21.21.170;

25 (3) minimum capital: an insurer, other than title insurer,
26 shall invest and maintain invested funds not less in amount than the
27 higher of

28 (A) the minimum basic capital (for stock insurers) or
29 basic guarantee surplus (for mutual insurers) and additional

1 surplus (for both stock and mutual insurers) [PAID-IN CAPITAL
2 STOCK] required under [THIS TITLE OF A DOMESTIC STOCK INSURER
3 TRANSACTIONING LIKE KINDS OF INSURANCE,] AS 21.09.070; or
4 (B) 50 percent of the total capital and surplus shown
5 on the most recent statement of its financial condition as filed
6 with the director under AS 21.09.200 only in
7 (i) cash;
8 (ii) the fully insured portion of bank deposits
9 when such insurance is provided by a solvent agency of the
10 United States government or by collateral in the form of the
11 securities provided for under AS 21.21.060 and 21.21.080; or
12 (iii) [AND] the securities provided for under
13 AS 21.21.060 and[,] 21.21.080 [AND 21.21.260];
14 (4) life insurance reserves: a life insurer shall also
15 invest and keep invested its funds in an amount not less than the
16 reserves under its life insurance policies and annuity contracts,
17 other than variable annuities, in force, in cash and/or the securities
18 or investments provided for under this chapter;
19 (5) corporate obligations: except with the director's
20 written consent, an insurer may not have invested at any one time more
21 than 20 percent of its assets in the class of securities described in
22 AS 21.21.140, exclusive of obligations of public utilities;
23 (6) common stocks: except with the director's written
24 consent an insurer may invest and have invested at any one time in
25 aggregate amount not more than 10 percent of its assets in all stocks
26 under AS 21.21.160, 21.21.170 and 21.21.200; determination of the
27 amount that [WHICH] an insurer has invested in common stocks for the
28 purposes of this paragraph is [SHALL BE] based on the cost of the
29 stocks to the insurer; this paragraph does not apply to stock of a

1 controlled or subsidiary insurance corporation or other corporation
2 held under AS 21.21.170 and 21.21.180;

3 (7) miscellaneous: except with the director's written
4 consent, an insurer may not have invested at any one time more than 10
5 percent of its assets in any one of the class of securities described
6 in [ANY ONE OF THE FOLLOWING SECTIONS:] AS 21.21.100, 21.21.150, [AND]
7 21.21.190, or 21.21.250(c);

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

12 * Sec. 29. AS 21.21.080 is amended to read:

13 Sec. 21.21.080. STATE, COUNTY, MUNICIPAL, AND SCHOOL OBLIGA-
14 TIONS. An insurer may invest in bonds or other evidences of indebted-
15 ness that are general obligations of[, OR ARE SECURED BY PLEDGE OR
16 SPECIFIC REVENUES BY,] this state or of another state of the United
17 States or of a province of Canada, or of a political subdivision or
18 all other taxing districts of these states or provinces, if the state
19 or province

20 (1) is not insolvent;

21 (2) has the power to levy taxes for the prompt payment of
22 the principal and interest of such obligations; and

23 (3) is not in default in the payment of principal or inter-
24 est on any of its direct, general obligations at the date of the
25 investment.

26 * Sec. 30. AS 21.21.130 is amended to read:

27 Sec. AS 21.21.130. [INTER-AMERICAN] DEVELOPMENT BANKS [BANK].

28 An insurer may invest in obligations issued, assumed, or guaranteed by
29 the Inter-American Development Bank, the African Development Bank, or

1 the Asian Development Bank, if the bank is solvent and not in default
2 in the payment of principal or interest on any of its direct, general
3 obligations at the date of the investment.

4 * Sec. 31. AS 21.21.140 is amended to read:

5 Sec. 21.21.140. CORPORATE BONDS AND DEBENTURES. (a) An insurer
6 may invest in bonds, debentures, notes, and other evidences of indebt-
7 edness issued, assumed, or guaranteed by a solvent institution, not in
8 default in the payment of principal or interest on any of its direct,
9 general obligations on the date of the investment, existing under the
10 laws of the United States of America or of Canada, or of a state or
11 province, after this referred to in this section as a "domestic debtor
12 institution," if the bond, debenture, note, or other evidence of
13 indebtedness [WHICH IS NOT IN DEFAULT AS TO PRINCIPAL OR INTEREST AND
14 WHICH] is secured by adequate collateral and bears fixed interest and
15 if during each of any three, including either of the last two, of the
16 five fiscal years preceding the date of acquisition by the insurer,
17 the net earnings of the domestic debtor [ISSUING, ASSUMING OR GUARAN-
18 TEEING] institution available for its fixed charges, defined in
19 AS 21.21.600 [(d) OF THIS SECTION,] have been not less than one and
20 one-quarter times the total of its charges for that year. In de-
21 termining the adequacy of collateral security, not more than one-third
22 of the total value of the required collateral may consist of common
23 stock.

24 (b) An insurer may invest in secured and unsecured obligations
25 of domestic debtor [THESE] institutions, other than the obligations in
26 (a) of this section, bearing interest at a fixed rate, with mandatory
27 principal and interest due at specified times, if the net earnings of
28 the domestic debtor [ISSUING, ASSUMING OR GUARANTEEING] institution
29 available for its fixed charges for a period of five fiscal years

1 immediately preceding the date of acquisition by the insurer have
2 averaged per year not less than one and one-half times its average
3 annual fixed charges applicable to that period and if during either of
4 the last two years of that period the net earnings have been not less
5 than one and one-half times its fixed charges for the year.

6 (c) An insurer may invest in adjustment, income, or other con-
7 tingent interest obligations of domestic debtor [THESE] institutions
8 if the net earnings of the domestic debtor [ISSUING, ASSUMING OR
9 GUARANTEEING] institution available for its fixed charges for a period
10 of five fiscal years immediately preceding the date of acquisition by
11 the insurer have averaged per year not less than one and one-half
12 times the sum of its average annual fixed charges and its average
13 annual maximum contingent interest applicable to that period and if
14 during either of the last two years of that period the net earnings
15 have been not less than one and one-half times the sum of its fixed
16 charges and maximum contingent interest for the year.

17 [(d) IN THIS SECTION

18 (1) "FIXED CHARGES" INCLUDES INTEREST ON FUNDED AND UNFUND-
19 ED DEBT, AMORTIZATION OF DEBT DISCOUNT, AND RENTAL FOR LEASED PROP-
20 erties;

21 (2) "NET EARNINGS AVAILABLE FOR FIXED CHARGES" MEANS NET
22 INCOME AFTER DEDUCTING OPERATING AND MAINTENANCE EXPENSES, TAXES OTHER
23 THAN FEDERAL INCOME TAXES, DEPRECIATION AND DEPLETION, BUT EXCLUDING
24 EXTRAORDINARY NONRECURRING ITEMS OF INCOME OR EXPENSE APPEARING IN THE
25 REGULAR FINANCIAL STATEMENT OF THE ISSUING, ASSUMING OR GUARANTEEING
26 INSTITUTION.]

27 * Sec. 32. AS 21.21.150 is amended to read:

28 Sec. 21.21.150. PREFERRED OR GUARANTEED STOCK. An insurer may
29 invest in preferred or guaranteed stocks or shares of a solvent

1 institution, not in default on any of its obligations, existing under
2 the laws of the United States of America or of Canada, or of a state
3 or province of the United States or Canada [THEREOF], if all of the
4 prior obligations and prior preferred stocks, if any, of the institu-
5 tion at the date of acquisition of the investment by the insurer are
6 eligible as investments under this chapter and if the net earnings of
7 the institution available for its fixed charges during each of the
8 last two fiscal years immediately preceding the date of acquisition of
9 the investment by the insurer have been, and during each of the last
10 five fiscal years immediately preceding the date of acquisition of the
11 investment by the insurer have averaged, not less than one and
12 one-half times the sum of its average annual fixed charges, if any,
13 its average annual maximum contingent interest, if any, and its aver-
14 age annual preferred dividend requirements whether the dividends are
15 cumulative or noncumulative and whether paid or not. [FOR THE PUR-
16 POSES OF THIS SECTION THE COMPUTATION SHALL REFER TO THE FISCAL YEARS
17 IMMEDIATELY PRECEDING THE DATE OF ACQUISITION OF THE INVESTMENT BY THE
18 INSURER, AND THE TERM "PREFERRED DIVIDEND REQUIREMENT" MEANS CUMULA-
19 TIVE OR NONCUMULATIVE DIVIDENDS, WHETHER PAID OR NOT.]

20 * Sec. 33. AS 21.21.160 is amended to read:

21 Sec. 21.21.160. COMMON STOCKS. An insurer may invest in nonas-
22 sessable common stocks, other than insurance stocks, of a solvent
23 corporation, not in default on any of its obligations, existing under
24 the laws of the United States of America or of Canada, or a state or
25 province of the United States or Canada [THEREOF], if cash or stock
26 dividends have been earned and paid on its common stock in each of the
27 five fiscal years preceding the acquisition; and if, further, all
28 prior obligations or preference stock of the corporation, if any, are
29 eligible for investment under this chapter. If the issuing

1 corporation has not been in legal existence for the whole of the five
2 preceding fiscal years but was formed as a consolidation or merger of
3 two or more businesses, the test of eligibility for investment of its
4 common stock under this section is [SHALL BE] based upon consolidation
5 pro forma statements of the predecessor or constituent institutions.

6 * Sec. 34. AS 21.21.170(a) is amended to read:

7 (a) An insurer may invest in the stocks of another [OTHER]
8 solvent insurer, not in default on any of its obligations, [INSURERS]
9 formed under the laws of this or another state, if the [WHICH] stocks
10 meet the applicable requirements of AS 21.21.150 and 21.21.160.

11 * Sec. 35. AS 21.21.190 is amended to read:

12 Sec. 21.21.190. EQUIPMENT TRUST CERTIFICATES. An insurer may
13 invest in equipment trust obligations or [OF] certificates adequately
14 secured and evidencing an interest in transportation equipment, wholly
15 or in part within the United States of America, if the [WHICH] obliga-
16 tions or certificates carry the right to receive determined portions
17 of rental, purchase, or other fixed obligatory payments to be made for
18 the use or purchase of the transportation equipment.

19 * Sec. 36. AS 21.21 is amended by adding a new section to read:

20 Sec. 21.21.245. POOLED INVESTMENTS. (a) An insurer may invest
21 in the securities of eligible pooled investment companies, 90 percent
22 of the assets of which, were they not held in a pooled investment
23 format, would otherwise be eligible for investment under AS 21.21.060,
24 21.21.150, 21.21.160, 21.21.200, 21.21.225, or 21.21.230.

25 (b) In addition to meeting the requirements of (a) of this
26 section, a pooled investment is eligible for initial investment by an
27 insurer, and continued holding by an insurer, only if it appears on
28 the most recent list of eligible pooled investment companies main-
29 tained by the director.

1 (c) In determining adherence to the limits established under
2 AS 21.21.050, the pooled investments are measured as if the insurer
3 held pro rata the investments of the pooled investment company.

4 (d) If, on the effective date of this section, an insurer has
5 invested in a pooled investment that does not, within one year after
6 the effective date of this section, appear on the director's list of
7 eligible pooled investment companies, or if an insurer has invested in
8 a pooled investment that is subsequently removed from the director's
9 list, the investment is treated as described in AS 21.21.310(a).

10 * Sec. 37. AS 21.21.250 is amended by adding a new subsection to read:

11 (c) A domestic insurer may invest in notes or other evidence of
12 indebtedness of the Alaska Life and Disability Insurance Guaranty
13 Association, and the director may consider those notes, and other
14 evidence of indebtedness, that are not in default, as admitted assets
15 of the insurer.

16 * Sec. 38. AS 21.21.270 is amended to read:

17 Sec. 21.21.270. CHATTEL MORTGAGES. (a) In connection with a
18 mortgage loan acquired under AS 21.21.260, on the security of real
19 estate designed and used primarily for residential purposes only, an
20 insurer may lend or invest an amount not exceeding 20 percent of the
21 amount loaned on or invested in the real estate mortgage on the secu-
22 rity of a chattel mortgage to be amortized by regular periodic pay-
23 ments within a term of not more than five years, and representing a
24 first and prior lien, except for taxes not then delinquent, on person-
25 al property constituting durable equipment owned by the mortgagor and
26 kept and used in the mortgaged premises.

27 (b) Before the acquisition of a chattel mortgage under this
28 section, items of property to be included shall be separately ap-
29 praised by a qualified independent appraiser and the fair market value

1 determined. A chattel mortgage loan may not exceed in amount the same
2 ratio of loan to the value of the property that is applicable to the
3 companion loan on the real property.

4 (c) Nothing in this [THIS] section prohibits [DOES NOT PROHIBIT]
5 an insurer from taking liens on personal property

6 (1) as additional security for an investment otherwise
7 eligible under this chapter; or

8 (2) to improve an insurer's collection efforts or security
9 concerning an investment either eligible or ineligible under this
10 chapter.

11 [(d) IN THIS SECTION, THE TERM "DURABLE EQUIPMENT" INCLUDES ONLY
12 MECHANICAL REFRIGERATORS, AIR CONDITIONING EQUIPMENT, MECHANICAL
13 LAUNDERING MACHINES, HEATING AND COOKING STOVES AND RANGES, AND, IN
14 ADDITION, IN THE CASE OF APARTMENT HOUSES, MOTELS AND HOTELS, ROOM
15 FURNITURE AND FURNISHINGS.]

16 * Sec. 39. AS 21.21.280 is amended to read:

17 Sec. 21.21.280. REAL ESTATE. An insurer may invest in real
18 estate only if used for the purposes or acquired in the manner and
19 within the limits as follows:

20 (1) the land and the buildings on the land in which it has
21 its principal office, and the other real estate that is requisite for
22 its convenient accommodation in the transaction of its business;
23 except that the aggregate investment under this paragraph may not
24 exceed 10 percent of the insurer's admitted assets as shown on the
25 insurer's most recent statement of financial condition as filed with
26 the director under AS 21.09.200 unless otherwise authorized by the
27 director;

28 (2) with the prior approval of the director, a parcel of
29 real estate acquired under (1) of this section may include excess

1 space for rent to others if it is reasonably anticipated that such
2 excess is required in order to have a building that will be a viable
3 economic unit;

4 (3)[(2)] real estate acquired in satisfaction of loans,
5 mortgages, liens, judgments, decrees, or debts previously owing to the
6 insurer in the course of its business;

7 (4)[(3)] real estate acquired in part payment of the con-
8 sideration on the sale of other real estate owned by it, if the trans-
9 action does not increase the insurer's investment in real estate;

10 (5)[(4)] real estate acquired by gift or devise, or through
11 merger, consolidation, or bulk reinsurance of another insurer under
12 this title;

13 (6)[(5)] the seller's interest in real property subject to
14 an agreement of purchase or sale, but the sum invested in a parcel of
15 real estate may [SHALL] not exceed three-fourths of the market value
16 of the parcel if [PROVIDED] it consists of one- or two-family residen-
17 tial property and two-thirds of the market value of all other parcels
18 of real estate;

19 (7)[(6)] real estate, or any interest in real estate
20 acquired or held by purchase, lease, or otherwise, other than real
21 estate to be used primarily for agricultural purposes, ranching,
22 [RANCH] mining, development of oil or mineral resources, or recre-
23 ational, amusement, or club purposes, [ACQUIRED AS AN INVESTMENT] for
24 the production of income, and other than real estate described in (1)
25 of this section, which is situated in any state of the United States
26 of America, and the construction of improvements upon it, on the
27 following conditions:

28 (A) The prior approval of the director has been ob-
29 tained; the director shall give approval on a showing by the

1 insurer that

2 (i) the insurer has adequate assets available for
3 such a long-term investment and the interests of the insurer's
4 policyholders will not be jeopardized by it;

5 (ii) the investment will not exceed the reasonable
6 value of the property or of the interest in it which the
7 insurer proposes to acquire;

8 (iii) there is a reasonable probability of occupan-
9 cy of the property sufficient to make the investment profit-
10 able; and

11 (iv) there is reasonable cause to believe that the
12 insurer will be in compliance with the provisions of this
13 subparagraph over the entire period that the insurer owns
14 the property.

15 (B) The insurer must own the entire property, except
16 that it may share ownership with one or more insurers authorized
17 to do business in Alaska under agreements that will assure con-
18 certed action in management and control of the property in case
19 of the insolvency of any participating insurer, and if each
20 investment made under this subparagraph by the insurer and by
21 each participating insurer may not be less than \$250,000 unless
22 prior written approval is obtained from the director.

23 (C) The insurer, alone or in conjunction with partici-
24 pants qualified under (B) of this paragraph, may let contracts
25 for construction and pay costs of construction and leasing, hold,
26 maintain, lease, and manage the property, collect rents and other
27 income from it, and sell the property in whole or in part.

28 (D) The property may be encumbered by leases to ten-
29 ants and by rights-of-way, easements, mineral reservations,

1 building restrictions, and restrictive covenants, if (i) none of
2 them interferes substantially with the use of the property or
3 result in a forfeiture of the property, or (ii) a policy of title
4 insurance, equal in amount to the cost of the property, issued by
5 a responsible title insurer qualified to do business in the state
6 in which the property is located, insures the insurer against
7 loss or damage arising from such encumbrances or reversionary
8 rights.

9 (E) An [OR ACQUIRED TO BE IMPROVED OR DEVELOPED FOR
10 SUCH INVESTMENT PURPOSES UNDER AN EXISTING PROGRAM; THE INSURER
11 MAY HOLD, IMPROVE, DEVELOP, MAINTAIN, MANAGE, LEASE, SELL, AND
12 CONVEY REAL ESTATE ACQUIRED BY IT UNDER THIS PARAGRAPH; AN]
13 insurer may not, except with the director's written consent, have
14 at any one time invested in real estate under this paragraph an
15 amount exceeding five percent of its admitted assets;

16 (8)[(7)] additional real estate and equipment incident to
17 real estate, if necessary or convenient for the purpose of enhancing
18 the sale or other value of real estate previously acquired or held by
19 the insurer under (3) -- (5) or (7) [(2) -- (4), or (6)] of this
20 section; the real estate and equipment shall be included together with
21 the real estate for the enhancement of which it was acquired, for the
22 purpose of applicable investment limits, and are [SHALL BE] subject to
23 disposal at the same time and under the same conditions as those
24 applying to the enhanced real estate under AS 21.21.290;

25 (9)[(8)] except with the director's consent, all real
26 estate owned by the insurer under this section, except the seller's
27 interest specified in (6)[(5)] of this section, may not at any one
28 time exceed 15 percent of the insurer's assets.

29 * Sec. 40. AS 21.21.310 is amended to read:

1 Sec. 21.21.310. FAILURE TO DISPOSE OF REAL ESTATE, PROPERTY, OR
2 SECURITIES. (a) Real estate, personal property, or securities law-
3 fully acquired and held by an insurer after expiration of the period
4 for disposal of them or any extension of the period granted by the
5 director, as provided in AS 21.21.290 and 21.21.300, may not be al-
6 lowed as an admitted asset of the insurer.

7 (b) The insurer shall immediately dispose of an ineligible
8 investment unlawfully acquired by it, and the director may suspend or
9 revoke the insurer's certificate of authority if the insurer fails to
10 dispose of the investment within a reasonable time that the director
11 may specify by order.

12 * Sec. 41. AS 21.21 is amended by adding new sections to read:

13 Sec. 21.21.350. INVESTMENT TRANSACTIONS WITH AFFILIATED OR
14 CONTROLLING PERSONS. (a) Except as provided in this section or as
15 otherwise provided in AS 21.21.180, an insurer may not

16 (1) invest in or dispose of otherwise eligible investments
17 issued by or due from affiliated parties;

18 (2) purchase from an affiliated party an otherwise eligible
19 investment; or

20 (3) use the services of a broker or commissioned sales
21 agent who is an affiliated or controlling person in securing an other-
22 wise eligible investment without first fulfilling the obligations of
23 (b) -- (e) of this section.

24 (b) Before consummating investment activities with or through
25 affiliated or controlling persons, an insurer shall fully disclose and
26 document in writing to its board of directors and the committee au-
27 thorized by the board and charged with the supervision or making of
28 the investment or loan involved, the material facts concerning the
29 affiliation or circumstances of control. The board of directors must,

1 by specific board action, authorize transactions with affiliated or
2 controlling persons and conclude that they comply with (c) and (d) of
3 this section, by votes recorded in the minutes, on a member-by-member
4 basis, recording each vote approving, disapproving, or abstaining.

5 (c) Investments or loans with affiliated or controlling persons
6 shall be consummated at current market transfer prices and under a fee
7 structure and at interest or discount rates that are commercially
8 reasonable in the area in which the transaction occurs.

9 (d) The insurer's board of directors is responsible for de-
10 termining that the transfer prices are at current market and determin-
11 ing the commercial reasonableness of the transactions with affiliated
12 or controlling persons, and may rely on independent third-party ex-
13 perts in its determination.

14 (e) This section does not apply to policy loans nor in circum-
15 stances in which the financial interest of the affiliated or control-
16 ling party is only nominal, trifling, or so remote as not to give rise
17 to a conflict of interest.

18 Sec. 21.21.355. CERTAIN DEPOSITS NOT PROHIBITED. Nothing in
19 this chapter prevents the board of directors of an insurer from depos-
20 iting any of its securities with a committee appointed for the purpose
21 of protecting the interests of policyholders or with the authorities
22 of any state or country in which it is necessary to do so in order to
23 secure permission to transact its appropriate business; and nothing in
24 this section prevents the board of directors of such an insurer from
25 depositing any securities as collateral for the securing of a bond
26 required for the business of the insurer.

27 Sec. 21.21.360. OPTIONS AND FUTURES CONTRACTS. (a) With the
28 prior written approval of the director of a policy of hedging under-
29 taken to reduce an insurer's risk from market fluctuations or the

1 effect of inflation, and adoption in writing by an insurer's board of
2 directors, an insurer may invest in options and futures contracts.

3 (b) Put and call options traded on a regulated exchange are
4 valued as follows:

5 (1) For hedges of items carried at amortized cost:

6 (A) options owned are valued at the premium paid to
7 purchase the option;

8 (B) options sold must have the proceeds reserved at
9 full value until the option either expires, is exercised, or a
10 closing transaction has been effected;

11 (C) if, during the life of the option, the option is
12 no longer effective as a hedge, valuation at cost ceases and the
13 option owned or proceeds reserved is valued at its current market
14 value;

15 (D) unrealized gains or losses over the life of the
16 option are deferred until the ultimate disposition occurs; at
17 disposition, if the hedge was effective, the gain or loss is
18 recognized as an adjustment to the basis of the hedged item
19 acquired and amortized into income over the remaining life of the
20 hedged item, or deducted from the consideration received for the
21 security sold; if the hedge was not effective and the option
22 expires or is terminated through a closing transaction, the gain
23 or loss is recognized on the date of expiration or termination;

24 (E) for effective hedges, impractical to match against
25 specific hedged assets or liabilities, an insurer not wishing to
26 use the accounting specified in (D) of this paragraph may, at its
27 discretion, recognize the gain or loss of the option upon its
28 disposition;

29 (2) For hedges of items carried at market value:

1 (A) options owned are valued at the current market
2 price and changes are treated as unrealized gains or losses;

3 (B) options sold must have the proceeds credited to a
4 liability reserve that is marked to market, and the changes
5 treated as unrealized gains or losses;

6 (C) if the option is exercised, the premium is added
7 to the cost of the security acquired or deducted from the consid-
8 eration received for the security sold;

9 (3) For options acquired or sold not involving a hedging
10 transaction, the cost or other carrying value is not allowed as an
11 admitted asset.

12 (c) Other stock options and purchase warrants that are exercis-
13 able into securities that are not restricted as to transferability are
14 valued as follows, whether or not physically attached to any other
15 security:

16 (1) Publicly traded warrants and options (other than ex-
17 change traded) are valued at market value.

18 (2) Value for a warrant or option having no public market
19 which is currently exercisable into shares of common stock that have
20 no public market, is the difference resulting from the subtraction
21 from the analytically determined value of the stock of the exercise
22 price for the warrant or option.

23 (3) The value for a warrant or option having no public
24 market which is currently exercisable into shares of common stock that
25 have a counterpart public market but that are themselves restricted is
26 \$1; the warrant or option is not allowed as an admitted asset.

27 (4) A warrant or option that has no public market and for
28 which the first exercise date is subsequent to the date of the state-
29 ment, has no value for statement purposes.

1 (d) An insurer's investment in financial futures contracts is
2 valued as follows:

3 (1) positions in futures contracts are initially valued at
4 the amount of any cash deposit (i.e., basis of the contract), if any,
5 placed with a broker;

6 (2) gains or losses on futures contracts (i.e., market
7 value changes) which insurers are permitted to defer are to be added,
8 in the case of losses, or deducted, in the case of gains, to the basis
9 of the contract;

10 (3) for hedges of items carried at amortized cost,

11 (A) gains or losses may be deferred until the earliest
12 of the completion of the hedging transaction or the determination
13 that the anticipated transaction will no longer take place;

14 (B) if, during the life of the hedge, the futures
15 contract is no longer effective as a hedge, deferral accounting
16 ceases and a gain or loss is recognized to the extent that the
17 futures results have not been offset by the effects of price or
18 interest rate changes (i.e., changes in market value) on the
19 hedged item;

20 (C) if the anticipated transaction will no longer take
21 place, hedge accounting ceases and the total gain or loss on the
22 futures contract since inception is recognized;

23 (D) upon completion of the hedging transaction, the
24 deferred gains or losses are added to the basis of the hedged
25 item;

26 (E) upon completion of the hedging transaction, if it
27 is impractical to match gains or losses to specific hedged assets
28 or liabilities, an insurer not wishing to use the accounting
29 method specified in (D) of this paragraph may recognize the

1 previously deferred gains or losses upon completion of the hedg-
2 ing transaction;

3 (4) for hedges of items carried at market, the gains or
4 losses on futures contracts are recognized currently;

5 (5) for futures contracts not involved hedging trans-
6 actions, gains or losses are recognized currently.

7 (e) The cost of or other carrying value of warrants or options
8 exercisable into securities which are restricted as to transferabil-
9 ity, and the restricted securities into which they are transferable,
10 are not allowed as admitted assets.

11 (f) Without the express, written permission of the director
12 before a change, the alternative methods of adjusting the hedged item
13 or recognizing gains or losses at disposition as described in this
14 section must be consistently applied from period-to-period for a
15 particular type of hedging program. Appropriate disclosures shall be
16 made as to whether one or both methods are used and the basis for
17 determining the method or methods used.

18 * Sec. 42. AS 21.21.600 is amended to read:

19 Sec. 21.21.600. DEFINITIONS [DEFINITION OF DOMESTIC INSURER].

20 In this chapter, unless the context requires otherwise,

21 (1) "domestic insurer" has the meaning given in AS 21.90.-
22 900 and, in addition, for the purposes of this chapter, includes an
23 insurer that [WHICH] has been authorized to do business in this state
24 and that [WHICH], during its three preceding fiscal years taken to-
25 gether, or during any lesser period of time if it has been licensed to
26 transact its business in the State of Alaska only for such lesser
27 periods of time, has written an average of more gross premiums in the
28 State of Alaska than it has written in its state of domicile during
29 the same period, and the gross premiums written constitute 33 percent

1 or more of its total gross premiums written everywhere in the United
2 States for the three year or lesser period, as reported in its three
3 most recent annual statements;

4 (2) "affiliated" has the same meaning as in AS 21.22.200;

5 (3) "assets" means assets that are allowable assets under
6 AS 21.18.010;

7 (4) "bank" means an organization organized under the laws
8 of a state requiring the permission of either the United States Comp-
9 troller of the Currency or the state of domicile director of banking
10 or equivalent state officer, to both accept deposits of individuals
11 and businesses and make commercial loans, and whose deposits are
12 insured by the Federal Deposit Insurance Corporation;

13 (5) "control, controlling, or controlling interest" has the
14 same meaning as in AS 21.22.200;

15 (6) "durable equipment" means only mechanical refrigera-
16 tors, air conditioning equipment, mechanical laundering machines,
17 heating and cooking stoves and ranges, and, in the case of apartment
18 houses, motels, and hotels, it includes room furniture and furnish-
19 ings;

20 (7) "fixed charges" includes interest on funded and unfund-
21 ed debt, amortization of debt discount, and rental for leased prop-
22 erties;

23 (8) "independent" means not affiliated or not controlled,
24 as those terms are defined in AS 21.22.200;

25 (9) "insurer" has the same meaning as in AS 21.90.900;

26 (10) "most recent statement of financial condition" means
27 the annual report or quarterly report most recently filed under
28 AS 21.09.200 and 21.09.205;

29 (11) "net earnings available for fixed charges" means net

1 income after deducting operating and maintenance expenses, taxes other
2 than federal income taxes, depreciation, and depletion, excluding
3 extraordinary nonrecurring items of income or expenses appearing in
4 the regular financial statement of an issuing, assuming, or guarantee-
5 ing institution;

6 (12) "options and futures contracts" means a put or call
7 option on underlying common stocks, debt instruments, and stock in-
8 dices, other stock options, purchase warrants, and financial futures
9 contracts;

10 (13) "pooled investments" means a management-type investment
11 company or investment trust, or unit investment trust, or similar
12 investment vehicle, registered with the Securities and Exchange Com-
13 mission under 15 U.S.C. 80a -- 81 (Investment Company Act of 1940, as
14 amended), and qualifying under 26 U.S.C. 851 (Internal Revenue Code of
15 1986, as amended);

16 (14) "preferred dividend requirement" means cumulative or
17 noncumulative dividends, whether paid or not;

18 (15) "savings and loan" means an organization organized under
19 the laws of a state which has qualified for the insurance protection
20 afforded by the Federal Savings and Loan Insurance Corporation;

21 (16) "solvent agency of the United States government" means
22 an agency of the government of the United States of America whose
23 assets exceed its liabilities, and which has not been defined as
24 insolvent by the director for purposes of administering this chapter;

25 (17) "solvent institution or person or company" means an
26 institution, person, or company whose assets exceed its liabilities
27 and which has not been defined as insolvent by the director for pur-
28 poses of administering this chapter.

29 * Sec. 43. AS 21.34.040(c) is amended to read:

1 (c) A nonadmitted insurer may be eligible to provide coverage in
2 this state if it qualifies under one of the following:

3 (1) a foreign but nonalien stock insurer may qualify under
4 this subsection if it has the [A] minimum unimpaired basic capital and
5 additional surplus equal to that required in its domiciliary jurisdic-
6 tion, or maintains [\$1,500,000 ON SEPTEMBER 18, 1984, \$2,500,000 ON
7 JUNE 20, 1985, \$3,500,000 ON JUNE 20, 1986, AND] \$5,000,000 as of [ON]
8 June 20, 1987, \$6,000,000 as of December 31, 1989, \$7,000,000 as of
9 December 31, 1990, \$8,000,000 as of December 31, 1991, \$9,000,000 as
10 of December 31, 1992, and \$10,000,000 as of December 31, 1993, which-
11 ever is greater;

12 (2) a foreign but nonalien mutual insurer, a reciprocal
13 insurer, or a mutual protection and indemnity association may qualify
14 under this subsection if it has the minimum unimpaired basic surplus
15 and additional surplus equal to that required in its domiciliary
16 jurisdiction or maintains \$6,000,000 as of December 31, 1989,
17 \$7,000,000 as of December 31, 1990, \$8,000,000 as of December 31,
18 1991, \$9,000,000 as of December 31, 1992, and \$10,000,000 as of Decem-
19 ber 31, 1993, whichever is greater;

20 (3)[(2)] an alien insurer may qualify under this subsection
21 if it meets the minimum [CAPITAL AND SURPLUS] requirements in (1) or
22 (2) of this subsection and maintains in the United States an irrevoca-
23 ble trust fund in either a national bank or a member of the Federal
24 Reserve system, in an amount not less than \$5,000,000, as security to
25 the full amount [\$1,500,000], for the protection of all its policy-
26 holders and creditors of each member of the mutual insurer, reciprocal
27 insurer, or mutual protection and indemnity association in the United
28 States; the trust fund must consist of instruments of substantially
29 the same character and quality as those that are eligible investments

1 for the capital and statutory reserves of admitted insurers authorized
2 to write like kinds of insurance in this state or of irrevocable,
3 clean, and unconditional letters of credit; the trust fund must have
4 an expiration [EXPIRY] date that at no time is less than five years;

5 (4)[(3)] a Lloyd's or other similar unincorporated group of
6 alien individual insurers may qualify if it maintains a trust fund [OF
7 NOT LESS THAN \$50,000,000 AS SECURITY TO THE FULL AMOUNT, FOR ALL
8 POLICYHOLDERS AND CREDITORS IN THE UNITED STATES, OF EACH MEMBER OF
9 THE GROUP;] in an amount not less than \$100,000,000, as security to
10 the full amount, for the protection of all its policyholders and
11 creditors of each member of the group in the United States; the trust
12 fund must consist of instruments of substantially the same character
13 and quality as those that are eligible investments for the capital and
14 statutory reserves of admitted insurers authorized to write like kinds
15 of insurance in this state or of irrevocable, clean, and unconditional
16 letters of credit; the trust fund must have an expiration date that at
17 no time is less than five years;

18 (5)[(4)] an "insurance exchange" created by the laws of
19 individual states may qualify if it maintains capital and surplus, or
20 the substantial equivalent, of not less than \$20,000,000 [\$15,000,000]
21 in the aggregate; in the event the insurance exchange does not main-
22 tain funds for the protection of all its policyholders, each individu-
23 al syndicate shall meet the minimum [CAPITAL AND SURPLUS] requirements
24 of (1) or (2) of this subsection.

25 * Sec. 44. AS 21.36.360 is amended by adding a new subsection to read:

26 (r) A fraudulent insurance act is committed by any person who,
27 knowingly, and with intent to defraud,

28 (1) presents, causes to be presented, or prepares with
29 knowledge or belief that it will be presented, to or by an insurer,

1 purported insurer, broker, or any agent of these, a written or oral
2 statement as part of, or in support of, an application for the issu-
3 ance of an insurance policy, the rating of an insurance policy, or a
4 claim for payment or other benefit under an insurance policy, which
5 the person knows to contain materially false information concerning a
6 material fact, or conceals, for the purpose of misleading, information
7 concerning a material fact relating to the application, rating, or
8 claim; or

9 (2) in violation of a provision of the laws of this state
10 diverts, attempts to divert, or conspires to divert money of an insur-
11 er or other person in connection with the transaction of insurance or
12 reinsurance, or the conduct of other business activities by, or the
13 formation of, an insurer, reinsurer, or other entity operating under
14 the insurance laws of this state.

15 * Sec. 45. AS 21.36 is amended by adding a new section to read:

16 Sec. 21.36.430. IMMUNITY FOR REPORTS ON FRAUD. (a) A person is
17 not liable for civil damages for filing a report or furnishing other
18 information whether written or oral, concerning suspected, anticipat-
19 ed, or completed fraudulent acts, with or to

20 (1) law enforcement officials, their agents and employees;

21 (2) the National Association of Insurance Commissioners,
22 the division of insurance, an agency in any state which regulates
23 insurance, or any organization established to detect and prevent
24 fraudulent insurance acts, their agents, employees, or designees.

25 (b) This section does not preclude liability for civil damages
26 as a result of reckless, wilful, or intentional misconduct.

27 * Sec. 46. AS 21.66.080 is amended to read:

28 Sec. 21.66.080. ANNUAL STATEMENT. (a) Every corporation, on or
29 before March 1 [2] of each year, shall furnish the director a sworn

1 statement of assets and liabilities, and of all title premiums re-
2 ceived by it during the preceding calendar year, setting out among
3 other things that three percent of all gross premiums on title insur-
4 ance policies issued by it during the year, covering property in this
5 state, have been set aside and held by it in an account known as the
6 Title Insurance Unearned Premium Reserve Fund, as provided in this
7 chapter. The reporting format for any given year is the most recently
8 approved National Association of Insurance Commissioners' Annual
9 Financial Statement blank form and instructions approved by the direc-
10 tor, supplemented for additional information as required by the direc-
11 tor. The director may require the statement to be filed on electronic
12 media. The statement shall also show [IN THE FORM WHICH MAY BE PRE-
13 SCRIBED BY THE DIRECTOR] all unpaid losses and claims upon title
14 insurance policies of which the corporation has received due notice in
15 writing from or on behalf of the insured. With the filing of the
16 statement, the corporation shall pay a filing fee set under AS 21.06.-
17 250.

18 (b) All domestic title insurance companies shall comply with
19 AS 21.09.200(f).

20 * Sec. 47. AS 21.66 is amended by adding a new section to read:

21 Sec. 21.66.085. QUARTERLY STATEMENT. (a) The director may
22 require an insurer to file quarterly financial statements, which must
23 adhere to the format specified in AS 21.66.080(a).

24 (b) A quarterly financial statement, if required, is due 60 days
25 after the end of the quarter to which it pertains.

26 (c) An insurer shall pay to the division \$100 for each day the
27 insurer fails to file the quarterly statement in the form required, or
28 within the time established in (b) of this section.

29 * Sec. 48. AS 21.66.090(b) is amended to read:

1 (b) With the filing of the application, the corporation shall
2 pay a fee set under AS 21.06.250 and, in addition, shall, in accor-
3 dance with AS 21.06.160, pay all [TRAVELING] expenses [OF THE DIRECTOR
4 OR AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR AND PER DIEM AT THE
5 CURRENT LEVEL FOR STATE EMPLOYEES AT THE LOCATION OF THE EXAMINATION]
6 incurred in examining the applicant's title plant or plants.

7 * Sec. 49. AS 21.66.130 is repealed and reenacted to read:

8 Sec. 21.66.130. EXPENSES OF EXAMINATION. Expenses incurred due
9 to an examination of the company are to be paid as required by AS 21.
10 06.160.

11 * Sec. 50. AS 21.69.530(a) is amended to read:

12 (a) If an insurer becomes impaired [IF A STOCK INSURER'S CAPI-
13 TAL, AS REPRESENTED BY THE AGGREGATE PAR VALUE OF ITS OUTSTANDING
14 CAPITAL STOCK, BECOMES IMPAIRED, OR THE ASSETS OF A MUTUAL INSURER ARE
15 LESS THAN ITS LIABILITIES AND THE MINIMUM AMOUNT OF SURPLUS REQUIRED
16 TO BE MAINTAINED BY IT UNDER AS 21.69.220 OR 21.69.270 FOR AUTHORITY
17 TO TRANSACT THE KINDS OF INSURANCE BEING TRANSACTED], the director
18 shall [AT ONCE] determine the amount of deficiency and serve notice
19 upon the insurer to make good the deficiency within 60 days after
20 service of the notice.

21 * Sec. 51. AS 21.78.020 is repealed and reenacted to read:

22 Sec. 21.78.020. COMMENCEMENT OF DELINQUENCY PROCEEDINGS. (a)
23 No delinquency proceeding may be commenced under this chapter by
24 anyone other than the director of insurance of this state, and no
25 court has jurisdiction to entertain, hear, or determine such a pro-
26 ceeding commenced by any other person.

27 (b) The director shall commence the proceedings by application
28 to the court for an order directing the insurer to show cause why the
29 director should not have the relief prayed for. On the return of the

1 order to show cause, and after a full hearing, the court shall either
2 deny the application or grant the application, together with other
3 relief that the nature of the case and the interest of the policyhold-
4 ers, creditors, stockholders, members, subscribers, or the public
5 might require.

6 (c) No court of this state has jurisdiction to entertain, hear,
7 or determine a complaint praying for the dissolution, liquidation,
8 rehabilitation, sequestration, conservation, or receivership of an
9 insurer, or praying for an injunction or restraining order or other
10 relief preliminary to, incidental to, or relating to, such proceedings
11 other than in accordance with this chapter.

12 (d) In addition to other grounds for jurisdiction provided by
13 the law of this state, a court of this state having jurisdiction of
14 the subject matter has jurisdiction over a person served under the
15 Rules of Civil Procedure or other applicable provisions of law in an
16 action brought by the receiver of a domestic insurer or an alien
17 insurer domiciled in this state

18 (1) if the person served is obligated to the insurer in any
19 way as an incident to an agency or brokerage arrangement that might
20 exist or has existed between the insurer and the agent or broker, in
21 any action on or incident to the obligation;

22 (2) if the person served is a reinsurer who has at any time
23 written a policy of reinsurance for an insurer against which a reha-
24 bilitation or liquidation order is in effect when the action is com-
25 menced, or is an agent or broker of or for the reinsurer, in any
26 action or incident related to the reinsurance contract; or

27 (3) if the person is or has been an officer, manager,
28 trustee, organizer, promoter, or person in a position of comparable
29 authority or influence in an insurer against which a rehabilitation or

1 liquidation order is in effect when the action is commenced, in any
2 action resulting from such a relationship with the insurer.

3 (e) If the court, on motion of a party, finds that an action
4 should, as a matter of substantial justice, be tried in a forum out-
5 side this state, the court may enter an appropriate order to stay
6 further proceedings on the action in this state.

7 (f) The court shall appoint the director as the receiver in all
8 actions taken under this chapter.

9 * Sec. 52. AS 21.78.030 is repealed and reenacted to read:

10 Sec. 21.78.030. INJUNCTIONS AND ORDERS. (a) A receiver ap-
11 pointed in a proceeding under this chapter may at any time apply for,
12 and a court of general jurisdiction may grant, such restraining or-
13 ders, preliminary and permanent injunctions, and other orders as are
14 considered necessary and proper in order to prevent

15 (1) the transaction of further business;

16 (2) the transfer of property;

17 (3) interference with the receiver or with a proceeding
18 under this chapter;

19 (4) waste of the insurer's assets;

20 (5) dissipation and transfer of bank accounts;

21 (6) the institution or further prosecution of any actions
22 or proceedings;

23 (7) the obtaining of preferences, judgments, attachments,
24 garnishments, or liens against the insurer, its assets, or its policy-
25 holders;

26 (8) the levying of execution against the insurer, its
27 assets, or its policyholders;

28 (9) the making of a sale or deed for nonpayment of taxes or
29 assessments which would lessen the value of the assets of the insurer;

1 (10) the withholding from the receiver of books, accounts,
2 documents, or other records relating to the business of the insurer;
3 or

4 (11) any other threatened or contemplated action that might
5 lessen the value of the insurer's assets or prejudice the rights of
6 policyholders, creditors, or shareholders, or the administration of a
7 proceeding under this chapter.

8 (b) The receiver may apply to a court outside of the state for
9 the relief described in subsection (a).

10 (c) No bond may be required of the director as a prerequisite
11 for the issuance of an injunction or restraining order under this
12 section.

13 (d) An officer, manager, director, trustee, owner, employee, or
14 agent of an insurer, or any other person with authority over or in
15 charge of any segment of the insurer's affairs, shall cooperate with
16 the director in a proceeding under this chapter or in an investigation
17 preliminary to the proceeding. As used in this subsection,

18 (1) "person" includes a person who exercises control di-
19 rectly or indirectly over activities of an insurer through a holding
20 company or other affiliate of the insurer;

21 (2) "to cooperate" includes replying promptly in writing to
22 an inquiry from the director requesting such a reply, and making
23 available to the director any books, accounts, documents, or other
24 records or information or property of or pertaining to the insurer and
25 in the person's possession, custody, or control.

26 (e) No person may obstruct or interfere with the director in the
27 conduct of a delinquency proceeding or an investigation preliminary or
28 incidental to it.

29 (f) This section does not abridge otherwise existing legal

1 rights, including the right to resist a petition for liquidation or
2 other delinquency proceedings, or other orders.

3 (g) A person, as described in (d) of this section, who fails to
4 cooperate with the director, or any person who obstructs or interferes
5 with the director in the conduct of a delinquency proceeding or an
6 investigation preliminary or incidental to it, or who violates an
7 order that the director validly issued under this chapter,

8 (1) may be found guilty of a class A misdemeanor, and

9 (2) is, after a hearing, subject to the imposition by the
10 director of a civil penalty not to exceed \$10,000 and is subject to
11 the revocation or suspension of any insurance licenses issued by the
12 director.

13 * Sec. 53. AS 21.78.040 is amended by adding new paragraphs to read:

14 (11) has failed to remove a person who, in fact, has execu-
15 tive authority in the insurer, whether an officer, manager, general
16 agent, employee, or other person, if the person has been found after
17 notice and hearing by the director to be dishonest or untrustworthy in
18 a way affecting the insurer's business;

19 (12) after demand by the director under AS 21.06.120 or
20 under this chapter, has failed to promptly make available for ex-
21 amination any of its own property, books, accounts, documents, or
22 other records, or those of a subsidiary or related company within the
23 control of the insurer, or those of a person having executive authori-
24 ty in the insurer so far as they pertain to the insurer;

25 (13) has, within the previous four years, wilfully violated
26 its charter or articles of incorporation, its bylaws, an insurance law
27 of this state, or a valid order of the director issued under this
28 title; or

29 (14) has failed to file, within the time allowed by law, its

1 annual report or other financial report required by statute and, after
2 written demand by the director, has failed to give an adequate expla-
3 nation immediately.

4 * Sec. 54. AS 21.78.040 is amended by adding a new subsection to read:

5 (b) The director may apply to the court for an order appointing
6 the director as receiver of, and directing the director to rehabili-
7 tate, a domestic insurer if

8 (1) there is reasonable cause to believe that there has
9 been embezzlement from the insurer, wrongful sequestration or diver-
10 sion of the insurer's assets, forgery or fraud affecting the insurer,
11 or other illegal conduct in, by, or with respect to the insurer that,
12 if established, would endanger assets in an amount threatening the
13 solvency of the insurer;

14 (2) control of the insurer, whether by stock ownership or
15 otherwise, and whether direct or indirect, is in a person or persons
16 found after notice and hearing to be untrustworthy;

17 (3) a person who, in fact, has executive authority in the
18 insurer, whether an officer, manager, general agent, director or
19 trustee, employee, or other person, has refused to be examined under
20 oath by the director concerning the insurer's affairs, whether in this
21 state or elsewhere, and after reasonable notice of the fact the insur-
22 er has failed promptly and effectively to terminate the employment and
23 status of the person and the person's influence on management.

24 * Sec. 55. AS 21.78.090 is amended by adding new subsections to read:

25 (d) An order issued under this section shall require an account-
26 ing to the court by the receiver. Accountings shall be at the in-
27 tervals that the court specifies in its order.

28 (e) Entry of an order of rehabilitation does not constitute an
29 anticipatory breach of any contracts of the issuer.

1 (f) A court in this state before which an action or proceeding
2 in which the insurer is a party or is obligated to defend a party is
3 pending when a rehabilitation order against the insurer is entered,
4 shall stay the action or proceeding for 90 days and such additional
5 time as is necessary for the receiver to obtain proper representation
6 and prepare for further proceedings. The receiver shall take such
7 action respecting the pending litigation as the receiver considers
8 necessary in the interests of justice and for the protection of credi-
9 tors, policyholders, and the public. The receiver shall immediately
10 consider all litigation pending outside this state, and shall petition
11 the courts having jurisdiction over that litigation for stays if
12 necessary to protect the estate of the insurer.

13 (g) No statute of limitations or defense of laches runs with
14 respect to an action by or against an insurer between the filing of a
15 petition for appointment of a receiver for the insurer and the order
16 granting or denying that petition. An action by or against the insur-
17 er that might have been commenced when the petition was filed may be
18 commenced for at least 60 days after the order of rehabilitation is
19 entered or the petition is denied.

20 (h) A guaranty association or foreign guaranty association has
21 standing to appear in a court proceeding concerning the rehabilitation
22 of a domestic insurer if the association is or might become liable to
23 act as a result of the rehabilitation.

24 * Sec. 56. AS 21.78.100 is amended by adding new subsections to read:

25 (c) An order issued under this section shall require an account-
26 ing to the court by the receiver. Accountings shall be at the in-
27 tervals that the court specifies in its order.

28 (d) All policies, other than life or health insurance or annu-
29 ities, in effect at the time of issuance of an order of liquidation

1 continue in force only for the lesser of

2 (1) a period of 30 days after the date of entry of the
3 liquidation order;

4 (2) the expiration of the policy coverage;

5 (3) the date on which the insured replaces the insurance
6 coverage with equivalent insurance in another insurer or otherwise
7 terminates the policy; or

8 (4) the date on which the receiver effects a transfer of
9 the policy obligation to a solvent assuming insurer.

10 (e) For purposes of any other statute, an order of liquidation
11 terminates coverages at the time specified in (d) of this section.

12 (f) A policy of life, health insurance, or annuities, in effect
13 at the time an order of liquidation is issued, continues in force for
14 the period and under the terms provided for by an applicable guaranty
15 association or foreign guaranty association.

16 (g) A policy of life, health insurance, or annuities, or any
17 period of coverage of such a policy, not covered by a guaranty asso-
18 ciation or foreign guaranty association terminates as provided in (d)
19 and (e) of this section.

20 (h) Upon issuance of an order appointing a receiver of a domes-
21 tic insurer or of an alien insurer domiciled in this state, no action
22 at law or equity may be brought against the insurer or receiver,
23 whether in this state or elsewhere, nor may an existing action be
24 maintained or further presented after issuance of such an order. The
25 court of this state shall give full faith and credit to an injunction
26 against the receiver or the company, or against the continuation of an
27 existing action against the receiver or the company, if such an in-
28 junction is included in an order to liquidate an insurer which is
29 issued under corresponding provisions in another state. If, in the

1 receiver's judgment, protection of the estate of the insurer necessi-
2 tates intervention in an action against the insurer that is pending
3 outside this state, the receiver may intervene in the action. The
4 receiver may defend an action in which the receiver intervenes under
5 this section at the expense of the estate of the insurer.

6 (i) The receiver may, upon, or within two years after an order
7 for liquidation, or within the additional time that applicable law
8 permits, institute an action or proceeding on behalf of the estate of
9 the insurer upon any cause of action against which the period of
10 limitation fixed by applicable law has not expired at the time of the
11 filing of the petition upon which the liquidation order is entered.
12 If, by agreement, a period of limitation is fixed for instituting a
13 suit or proceeding upon a claim, or for filing a claim, proof of
14 claim, proof of loss, demand, notice, or the like, or if in a judicial
15 or other proceeding a period of limitation is fixed, either in the
16 proceeding or by applicable law, for taking an action, filing a claim
17 or pleading, or doing an act, and if the period had not expired at the
18 date of the filing of the petition for liquidation, the receiver may,
19 for the benefit of the estate, take an action or do an act, required
20 of or permitted to the insurer, within a period of 180 days after the
21 entry of an order for liquidation, or within a longer period that is
22 shown to the satisfaction of the court not to be unfairly prejudicial
23 to the other party.

24 (j) No statute of limitations or defense of laches runs with
25 respect to an action against an insurer between the filing of a peti-
26 tion for liquidation against an insurer and the denial of the peti-
27 tion. An action against the insurer that might have been commenced
28 when the petition was filed may be commenced for at least 60 days
29 after the petition is denied.

1 (k) A guaranty association or foreign guaranty association has
2 standing to appear in a court proceeding concerning the liquidation of
3 an insurer if the association is, or might become, liable to act as a
4 result of the liquidation.

5 * Sec. 57. AS 21.78.130 is amended by adding new subsections to read:

6 (g) If it appears to the receiver that there has been criminal
7 or tortious conduct, or breach of a contractual or fiduciary
8 obligation detrimental to the insurer by an officer, manager, agent,
9 broker, employee, or other person, the receiver may pursue all appro-
10 priate legal remedies on behalf of the insurer.

11 (h) If the receiver determines that reorganization, consolida-
12 tion, conversion, reinsurance, merger, or other transformation of the
13 insurer is appropriate, the receiver shall prepare a plan to effect
14 such changes. Upon application of the receiver for approval of the
15 plan, and after the notice and hearings that the court prescribes, the
16 court may either approve or disapprove the plan proposed, or may
17 modify it and approve it as modified. A plan approved under this
18 section must be, in the judgment of the court, fair and equitable to
19 all parties concerned. If the plan is approved, the receiver shall
20 carry out the plan. In the case of a life insurer, the plan proposed
21 may include the imposition of liens upon the policies of the company,
22 if all rights of shareholders are first relinquished. A plan for a
23 life insurer may also propose imposition of a moratorium upon loan and
24 cash surrender rights under policies, for the period, and to the
25 extent, considered necessary.

26 (i) If the property of the insurer does not contain sufficient
27 cash or liquid assets to defray the costs incurred, the director may
28 advance the costs so incurred out of any appropriation to the division
29 of insurance for that purpose. Any amounts so advanced for expenses

1 of administration shall be repaid to the state out of the first avail-
2 able money of the insurer.

3 (j) The receiver may hold hearings, subpoena witnesses to compel
4 their attendance, administer oaths, examine a person under oath, and
5 compel a person to subscribe to the person's testimony after it has
6 been correctly reduced to writing, and may require the production of
7 books, papers, records, or other documents that the receiver deter-
8 mines are relevant to the inquiry.

9 (k) The receiver may remove any or all records and property of
10 the insurer to the offices of the director or to another place that is
11 convenient for the purposes of efficient and orderly execution of the
12 liquidation. A guaranty association and a foreign guaranty asso-
13 ciation shall be allowed reasonable access to the records of the
14 insurer as is necessary for the association to carry out its statutory
15 obligations.

16 (l) The receiver may intervene in a proceeding, wherever in-
17 stituted, that might lead to the appointment of a receiver or trustee,
18 and may act as the receiver or trustee if the appointment is offered.

19 (m) The receiver may enter into agreements with a receiver or
20 commissioner of any other state relating to the rehabilitation, liq-
21 uidation, conservation, or dissolution of an insurer doing business in
22 both this state and the other state.

23 * Sec. 58. AS 21.78.170(c) is repealed and reenacted to read:

24 (c) If a claim is denied in whole or in part by the receiver,
25 written notice of the determination shall be given to the claimant or
26 the claimant's attorney by first class mail at the address shown in
27 the proof of claim. Within 60 days after the date of mailing of the
28 notice, the claimant must file any objections with the receiver. If
29 no such filing is made, the claimant may not object to the

1 determination.

2 * Sec. 59. AS 21.78.170(d) is repealed and reenacted to read:

3 (d) If an objection is filed with the receiver and the receiver
4 does not alter the denial of the claim as a result of the objection,
5 the receiver shall ask the court for a hearing as soon as practicable
6 and give notice of the hearing by first class mail to the claimant or
7 the claimant's attorney and to any other person directly affected, not
8 less than 10 nor more than 30 days before the date of the hearing.

9 * Sec. 60. AS 21.78.170 is amended by adding new subsections to read:

10 (e) A claim need not be considered or allowed if it does not
11 contain all the information in (a) of this section which might be
12 applicable. The receiver may require that a prescribed form be used
13 and may require that other information and documents be included.

14 (f) At any time, the receiver may request the claimant to pre-
15 sent information or evidence supplementary to that required under (a)
16 of this section, and may take testimony under oath, require production
17 of affidavits or depositions, or otherwise obtain additional informa-
18 tion or evidence.

19 (g) A judgment or order against an insured or the insurer en-
20 tered after the date of filing of a successful petition for liquida-
21 tion, and a judgment or order against an insured or the insurer en-
22 tered at any time by default or by collusion, need not be considered
23 as evidence of liability or the amount of damages. A judgment or
24 order against an insured or the insurer entered within the four months
25 before the filing of the petition need not be considered as evidence
26 of liability or of the amount of damages.

27 (h) A claim of a guaranty association or foreign guaranty asso-
28 ciation shall be in the form and contain the substantiation agreed to
29 by the association and the receiver.

1 * Sec. 61. AS 21.78.180(d) is repealed and reenacted to read:

2 (d) The determination of the value of a security held by a
3 secured creditor shall be under the supervision and control of the
4 court, with due regard for any recommendations made by the receiver.
5 The value determined shall be credited upon the secured claim, and any
6 deficiency shall be treated as an unsecured claim. If the claimant
7 surrenders the security to the receiver, the entire claim shall be
8 allowed as if unsecured. The value of a security held by a secured
9 creditor shall be determined in one of the following ways, as the
10 court directs:

11 (1) by converting the security into money according to the
12 terms of the agreement under which the security was delivered to the
13 creditor; or

14 (2) by agreement, arbitration, compromise, or litigation
15 between the creditor and the receiver.

16 * Sec. 62. AS 21.78.180 is amended by adding a new subsection to read:

17 (e) If a creditor, whose claim against an insurer is secured, in
18 whole or in part, by the undertaking of another person, fails to prove
19 and file that claim, the other person may do so in the creditor's
20 name, and is subrogated to the rights of the creditor, whether the
21 claim was filed by the creditor or by the other person in the credi-
22 tor's name, to the extent that the other person discharges the un-
23 dertaking. In the absence of an agreement with the creditor to the
24 contrary, the other person is not entitled to a distribution, however,
25 until the amount paid to the creditor on the undertaking plus the
26 distributions paid on the claim from the insurer's estate to the
27 creditor equals the amount of the entire claim of the creditor. Any
28 excess received by the creditor shall be held by the creditor in trust
29 for the other person. As used in this subsection, "other person" is

1 not intended to apply to a guaranty association or foreign guaranty
2 association.

3 * Sec. 63. AS 21.78.250 is repealed and reenacted to read:

4 Sec. 21.78.250. FRAUDULENT TRANSFERS BEFORE PETITION. (a) A
5 transfer made, or an obligation incurred, by an insurer within one
6 year before the filing of a successful petition for rehabilitation or
7 liquidation under this chapter is fraudulent as to then existing and
8 future creditors if made or incurred without fair consideration, or
9 with actual intent to hinder, delay, or defraud either existing or
10 future creditors. A transfer made, or an obligation incurred, by an
11 insurer ordered to be rehabilitated or liquidated under this chapter
12 which is fraudulent under this section, may be avoided by the receiv-
13 er, except as to a person who in good faith is a purchaser, lienor, or
14 obligee for a present fair equivalent value, and except that a pur-
15 chaser, lienor, or obligee, who in good faith has given a consid-
16 eration less than fair for the transfer, lien, or obligation may
17 retain the property, lien, or obligation as security for repayment.
18 The court may, on due notice, order any such transfer or obligation to
19 be preserved for the benefit of the estate, and in that event, the
20 receiver shall succeed to and may enforce the rights of the purchaser,
21 lienor, or obligee.

22 (b) A transfer

23 (1) of property other than real property is considered to
24 be made when it becomes so far perfected that no subsequent lien
25 obtainable by legal or equitable proceedings on a simple contract
26 could become superior to the rights of the transferee under
27 AS 21.78.252;

28 (2) of real property is considered to be made when it
29 becomes so far perfected that no subsequent bona fide purchaser from

1 the insurer could obtain rights superior to the rights of the
2 transferee;

3 (3) that creates an equitable lien is not considered to be
4 perfected if there are any available means by which a legal lien could
5 be created;

6 (4) not perfected before the filing of a petition for
7 liquidation is considered to be made immediately before the filing of
8 the successful petition.

9 (c) The provisions of (b) of this section apply whether or not
10 there is or was a creditor who might have obtained a lien or a person
11 who might have become a bona fide purchaser.

12 (d) A transaction of the insurer with a reinsurer is considered
13 fraudulent and may be avoided by the receiver under (a) of this sec-
14 tion if

15 (1) the transaction consists of the termination, adjust-
16 ment, or settlement of a reinsurance contract in which the reinsurer
17 is released from any part of its duty to pay the originally specified
18 share of losses that occurred before the time of the transaction,
19 unless the reinsurer gives a present fair equivalent value for the
20 release; and

21 (2) any part of the transaction took place within one year
22 before the date of filing of the petition through which the receiver-
23 ship was commenced.

24 * Sec. 64. AS 21.78 is amended by adding new sections to read:

25 Sec. 21.78.251. FRAUDULENT TRANSFER AFTER PETITION. (a) After
26 a petition for rehabilitation or liquidation has been filed, a trans-
27 fer of any of the real property of the insurer made to a person acting
28 in good faith is valid against the receiver if made for a present fair
29 equivalent value, or, if not made for a present fair equivalent value,

1 then to the extent of the present consideration actually paid, for
2 which amount the transferee has a lien on the property so transferred.
3 The commencement of a proceeding in rehabilitation or liquidation is
4 constructive notice upon the recording of a copy of the petition for,
5 or order of, rehabilitation or liquidation with the recorder of deeds
6 in the jurisdiction where the real property in question is located.
7 The exercise by a court of the United States, or any state or juris-
8 diction, to authorize or effect a judicial sale of real property of
9 the insurer in any county or borough in any state is not impaired by
10 the pendency of such a proceeding unless the copy is recorded in the
11 county or borough before the consummation of the judicial sale.

12 (b) After a petition for rehabilitation or liquidation has been
13 filed, and before either the receiver takes possession of the property
14 of the insurer or an order of rehabilitation or liquidation is gran-
15 ted,

16 (1) a transfer of any of the property of the insurer, other
17 than real property, made to a person acting in good faith is valid
18 against the receiver if made for a present fair equivalent value, or,
19 if not made for a fair equivalent value, then to the extent of the
20 present consideration actually paid, for which amount the transferee
21 has a lien on the property so transferred;

22 (2) a person indebted to the insurer or holding property of
23 the insurer may, if acting in good faith, pay the indebtedness or
24 deliver the property, or any part of it, to the insurer or upon the
25 insurer's order, with the same effect as if the petition were not
26 pending;

27 (3) a person having actual knowledge of the pending reha-
28 bilitation or liquidation is considered not to have acted in good
29 faith;

1 (4) a person asserting the validity of a transfer under
2 this section has the burden of proof.

3 (c) Except as otherwise provided in this section, no transfer by
4 or on behalf of the insurer after the date of the petition for liq-
5 uidation by any person other than the receiver is valid against the
6 receiver.

7 (d) Nothing in this chapter impairs the negotiability of curren-
8 cy or negotiable instruments.

9 Sec. 21.78.252. VOIDABLE PREFERENCES AND LIENS. (a) A prefer-
10 ence is a transfer of any of the property of an insurer to or for the
11 benefit of a creditor, for or on account of an antecedent debt, made
12 by the insurer within one year before the filing of a successful
13 petition for liquidation under this chapter, the effect of which might
14 be to enable the creditor to obtain a greater percentage of the debt
15 than another creditor of the same class would receive. If a liquida-
16 tion order is entered while the insurer is already subject to a reha-
17 bilitation order, then such a transfer is considered a preference if
18 it is made within one year before the filing of the successful peti-
19 tion for rehabilitation, or within two years before the filing of the
20 successful petition for liquidation, whichever time is shorter.

21 (b) A preference may be avoided by the receiver if

22 (1) the insurer was insolvent at the time of the transfer;

23 (2) the transfer was made within the four months before the
24 filing of the petition;

25 (3) the creditor receiving it or to be benefited by it or
26 the creditor's agent had, at the time the transfer was made, reason-
27 able cause to believe that the insurer was insolvent or was about to
28 become insolvent; or

29 (4) the creditor receiving it was an officer, or was an

1 employee or attorney or other person who acted in such a capacity
2 whether or not the creditor held such a position, or was a shareholder
3 holding directly or indirectly more than five percent of any class of
4 any equity security issued by the insurer, or was any other person,
5 firm, corporation, association, or group of persons with whom the
6 insurer did not deal at arm's length.

7 (c) If a preference is voidable, the receiver may recover the
8 property or, if it has been converted, its value, from a person who
9 has received or converted the property, except that if a bona fide
10 purchaser or lienor has given less than fair equivalent value, the
11 person has a lien upon the property to the extent of the consideration
12 actually given by the person. If a preference by way of lien or
13 security title is voidable, the court may, after notice, order the
14 lien or title to be preserved for the benefit of the estate, in event
15 the lien or title passes to the receiver.

16 (d) The provisions of this subsection apply whether or not there
17 are or were creditors who might have obtained liens or persons who
18 might have become bona fide purchasers. A transfer

19 (1) of property other than real property is considered to
20 be made when it becomes so far perfected that no subsequent lien
21 obtainable by legal or equitable proceedings on a contract could
22 become superior to the rights of the transferee;

23 (2) of real property is considered to be made when it
24 becomes so far perfected that no subsequent bona fide purchaser from
25 the insurer could obtain rights superior to the rights of the
26 transferee;

27 (3) that creates an equitable lien is not considered to be
28 perfected if there are available means by which a legal lien could be
29 created; or

1 (4) not perfected before the filing of a petition for
2 liquidation is considered to be made immediately before the filing of
3 the successful petition.

4 (e) A lien obtainable by legal or equitable proceedings

5 (1) upon a contract is one arising in the ordinary course
6 of such proceedings upon the entry or docketing of a judgment or
7 decree, or upon attachment, garnishment, execution, or like process,
8 whether before, upon, or after judgement or decree and whether before
9 or upon levy; it does not include a lien that, under applicable law,
10 is given a special priority over other liens that are prior in time;
11 or

12 (2) could become superior to the rights of a transferee, or
13 a purchaser could obtain rights superior to the rights of a transferee
14 within the meaning of (d) of this section, if such consequences would
15 follow only from the lien or purchase itself, or from the lien or
16 purchase followed by a step wholly within the control of the respec-
17 tive lienholder or purchaser, with or without the aid of ministerial
18 action by public officials; such a lien could not, however, become
19 superior and such a person could not create superior rights for the
20 purpose of (d) of this section through any acts subsequent to the
21 obtaining of such a lien or subsequent to such a purchase which re-
22 quire the agreement or concurrence of a third party or which require
23 any further judicial action or ruling.

24 (f) A transfer of property for or on account of a new and con-
25 temporaneous consideration which is considered under (d) of this
26 section to be made after the transfer because of delay in perfecting
27 it, does not thereby become a transfer for or on account of an
28 antecedent debt if any acts required by the applicable law to be
29 performed in order to perfect the transfer against a lien or bona fide

1 purchaser's rights are performed within 21 days, or a period expressly
2 allowed by the law, whichever is less. A transfer to secure a future
3 loan, if such a loan is actually made, or a transfer that becomes
4 security for a future loan, has the same effect as a transfer for or
5 on account of a new and contemporaneous consideration.

6 (g) If a lien that is considered voidable under (b) of this
7 section has been dissolved by the furnishing of a bond or other
8 obligation, the surety on which has been indemnified directly or
9 indirectly by the transfer of or the creation of a lien upon any
10 property of an insurer before the filing of a petition under this
11 chapter which results in a liquidation order, the indemnifying trans-
12 fer or lien is also considered voidable.

13 (h) The property affected by a lien that is considered voidable
14 under (b) and (g) of this section shall be discharged from the lien,
15 and that property and any of the indemnifying property transferred to
16 or for the benefit of a surety shall be transferred to the receiver,
17 except that the court may order such a lien to be preserved for the
18 benefit of the estate, and the court may direct that such a conveyance
19 be executed as is proper or adequate to evidence the title of the
20 receiver.

21 (i) The court has jurisdiction of any proceeding by the receiver
22 to hear and determine the rights of any parties under this section.
23 Reasonable notice of a hearing in the proceeding shall be given to all
24 parties in interest, including the obligee of a releasing bond or
25 other like obligation. If an order is entered for the recovery of
26 indemnifying property in kind or for the avoidance of an indemnifying
27 lien, the court, upon application of a party in interest, shall in the
28 same proceeding ascertain the value of the property or lien, and if
29 the value of the property is less than the amount of the indemnity or

1 the amount of the lien, the transferee or lienholder may elect to
2 retain the property or lien upon payment of its value, as ascertained
3 by the court, to the receiver, within the reasonable time that the
4 court fixes.

5 (j) The liability of a surety under a releasing bond or other
6 like obligation shall be discharged to the extent of the value of the
7 indemnifying property recovered or the indemnifying lien nullified and
8 avoided by the receiver, or, if the property is retained under (i) of
9 this section, to the extent of the amount paid to the receiver.

10 (k) If a creditor has been preferred, and afterward in good
11 faith gives the insurer further credit without security of any kind,
12 for property that becomes a part of the insurer's estate, the amount
13 of the new credit remaining unpaid at the time of the petition may be
14 set off against the preference that would otherwise be recoverable
15 from the creditor.

16 (l) If an insurer, directly or indirectly, within four months
17 before the filing of a successful petition for liquidation under this
18 chapter or at any time in contemplation of a proceeding to liquidate
19 it, pays money or transfers property to an attorney for services
20 rendered or to be rendered, the transaction may be examined by the
21 court on its own motion or shall be examined by the court on petition
22 of the receiver. The transaction may be held valid only to the extent
23 of a reasonable amount to be determined by the court, and the excess
24 may be recovered by the receiver for the benefit of the estate, except
25 that if the attorney is in a position of influence in the insurer or
26 an affiliate, payment of money or the transfer of property to the
27 attorney for services rendered or to be rendered is governed by the
28 (b)(4) of this section.

29 (m) An officer, manager, employee, shareholder, member

1 subscriber, attorney, or other person acting on behalf of an insurer,
2 who knowingly participates in giving a preference even though the
3 person has reasonable cause to believe that the insurer is, or is
4 about to become, insolvent at the time of the preference, is person-
5 ally liable to the receiver for the amount of the preference. It is
6 prima facie evidence that a preference was given with reasonable cause
7 to believe the insurer is or is about to become insolvent if the
8 transfer was made within four months before the filing of a successful
9 petition for liquidation.

10 (n) If a person receives property from the insurer, or the
11 benefit of such property, and the preference for the property is found
12 voidable under (b) of this section, the person is personally liable
13 for the value of the property and shall account to the receiver for
14 it.

15 (o) Nothing in (m) or (n) of this section prejudices any other
16 claim by the receiver against any person.

17 Sec. 21.78.253. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS.

18 (a) No claim of a creditor who has received or acquired a preference,
19 lien, conveyance, transfer, assignment, or encumbrance that is
20 voidable under this chapter, may be allowed unless the creditor sur-
21 renders the preference, lien, conveyance, transfer, assignment, or
22 encumbrance. If the avoidance is effected by a proceeding in which a
23 final judgment has been entered, the claim may not be allowed unless
24 the money is paid or the property is delivered to the receiver within
25 30 days after the date of the entering of the final judgment, except
26 that the court having jurisdiction over the liquidation may allow
27 further time if there is an appeal or other continuation of the pro-
28 ceeding.

29 (b) A claim allowable under (a) of this section by reason of

1 avoidance, whether voluntary or involuntary, or a preference, lien,
2 conveyance, transfer, assignment, or encumbrance, may be filed as an
3 excused late filing under AS 21.78.290 if filed within 30 days after
4 the date of avoidance, or within the further time allowed by the court
5 under (a) of this section.

6 * Sec. 65. AS 21.78.260 is repealed and reenacted to read:

7 Sec. 21.78.260. PRIORITY OF DISTRIBUTION. The priority of
8 distribution of claims from an insurer's estate is in accordance with
9 the order in which each class of claims is set out in this section.
10 Every claim in each class shall be paid in full, or adequate money
11 retained for payment, before the members of the next class receive any
12 payment. No subclasses may be established within a class. The order
13 of distribution of claims is:

14 (1) Class 1: The costs and expenses of administration
15 during rehabilitation and liquidation, including the following:

16 (A) the actual and necessary costs preserving or
17 recovering the assets of the insurer;

18 (B) compensation for all services rendered in the
19 rehabilitation and liquidation;

20 (C) any necessary filing fees;

21 (D) the fees and mileage payable to witnesses;

22 (E) reasonable attorney's fees and other professional
23 services rendered in the rehabilitation and liquidation;

24 (F) the reasonable expenses of a guaranty association
25 or foreign guaranty association that is handling claims.

26 (2) Class 2: Reasonable compensation to employees for
27 services performed, to the extent that the claim does not exceed two
28 months of monetary compensation and represents payment for services
29 performed within one year before the filing of the petition for

1 liquidation or, if rehabilitation preceded liquidation, within one
2 year before the filing of the petition for rehabilitation. Principal
3 officers and directors of the insurer are not entitled to the benefit
4 of this priority except as otherwise approved by the receiver and the
5 court. The priority in this paragraph is in place of any other simi-
6 lar priority that might be authorized by law as to wages or compen-
7 sation of employees.

8 (3) Class 3: All claims under policies, including claims
9 of the federal, or a state or local government, for losses incurred,
10 including third-party claims, and all claims of a guaranty association
11 or foreign guaranty association. All claims under life insurance and
12 annuity policies, whether for death proceeds, annuity proceeds, or
13 investment values, shall be treated as loss claims. That portion of a
14 loss for which indemnification is provided by other benefits or advan-
15 tages recovered by the claimant, may not be included in this class,
16 other than benefits or advantages recovered or recoverable in dis-
17 charge of familial obligations or support, or by way of succession at
18 death, or as proceeds of life insurance, or as gratuities. No payment
19 by an employer to an employee may be treated as a gratuity.

20 (4) Class 4: Claims under nonassessable policies for
21 unearned premium or other premium refunds and claims of general credi-
22 tors, including claims of ceding and assuming companies under con-
23 tracts of reinsurance.

24 (5) Class 5: Claims of the federal, or a state or local
25 government, other than claims under (3) of this section. Claims,
26 including those of a government body for a penalty or forfeiture,
27 shall be allowed in this class only to the extent of the pecuniary
28 loss sustained from the act, transaction, or proceeding out of which
29 the penalty or forfeiture arose, along with reasonable and actual

1 costs attributable to it. The remaining portion of such claims is in
2 the class of claims set out in (8) of this section.

3 (6) Class 6: Claims filed late, or any other claims other
4 than claims under (7) and (8) of this section.

5 (7) Class 7: Surplus or contribution notes, or similar
6 obligations, and premium refunds on assessable policies. Payments to
7 members of domestic mutual insurance companies shall be limited in
8 accordance with law.

9 (8) Class 8: The claims of shareholders or other owners,
10 in their capacity as shareholders.

11 * Sec. 66. AS 21.78.270 is repealed and reenacted to read:

12 Sec. 21.78.270. SETOFFS AND COUNTERCLAIMS. (a) Except as
13 provided in (b) of this section and in AS 21.78.271, a mutual debt or
14 mutual credit between an insurer and another person in connection with
15 an action or proceeding under this chapter shall be set off, and only
16 the balance may be allowed or paid.

17 (b) No setoff or counterclaim may be allowed in favor of a
18 person if

19 (1) the obligation of the insurer to the person would not,
20 at the date of the filing of a petition for liquidation, entitle the
21 person to share as a claimant in the assets of the insurer;

22 (2) the obligation of the insurer to the person was pur-
23 chased by or transferred to the person with a view to its being used
24 as a setoff;

25 (3) the obligation of the person is to pay an assessment
26 levied against the members or subscribers of the insurer, or is to pay
27 a balance upon a subscription to the capital stock of the insurer, or
28 is in any other way in the nature of a capital contribution; or

29 (4) the obligation of the person is to pay premiums,

1 whether earned or unearned, to the insurer.

2 * Sec. 67. AS 21.78 is amended by adding new sections to read:

3 Sec. 21.78.271. RECOVERY OF PREMIUMS OWED. (a) An

4 (1) agent, broker, premium, finance company, or any other
5 person, other than the insured, responsible for the payment of a
6 premium is obligated to pay an unpaid premium for the full policy term
7 due the insurer at the time of the declaration of insolvency, whether
8 earned or unearned, as shown on the records of the insurer; the re-
9 ceiver has the right to recover from such a person any part of an
10 unearned premium that represents a commission of the person; neither a
11 credit nor a setoff is allowed to an agent, broker, or premium finance
12 company for an amount advanced to the insurer by the agent, broker, or
13 premium finance company on behalf of, but in the absence of a payment
14 by, the insured.

15 (2) insured is obligated to pay an unpaid earned premium
16 due the insurer at the time of the declaration of insolvency, as shown
17 on the records of the insurer.

18 (b) If there are grounds for believing that a person has violat-
19 ed this section, the director may initiate proceedings under AS 21.-
20 06.170 -- 21.06.230.

21 (c) Upon a finding of a violation of this section, the director
22 may order a penalty of not more than \$1,000 for each act in violation
23 of this section, and may suspend or revoke the person's license issued
24 under this title.

25 Sec. 21.78.272. REINSURER'S LIABILITY. The amount recoverable
26 by the receiver from reinsurers is not to be reduced as a result of
27 delinquency proceedings, regardless of any provision in the reinsur-
28 ance contract or other agreement. Payment made directly to an insured
29 or other creditor does not diminish the reinsurer's obligation to the

1 insurer's estate unless the reinsurance contract provided for direct
2 coverage of a named insured and the payment was made in discharge of
3 that obligation.

4 * Sec. 68. AS 21.78.280 is repealed and reenacted to read:

5 Sec. 21.78.280. SPECIAL CLAIMS. (a) No contingent and unliq-
6 uidated claim may share in a distribution of the assets of an insurer
7 that has been adjudicated to be insolvent by an order made under this
8 chapter, except that the claim shall be considered, if properly pre-
9 sented, and may be allowed to share if

10 (1) the claim becomes absolute against the insurer on or
11 before the last day for filing claims against the assets of the insur-
12 er; or

13 (2) there is a surplus and the liquidation is, after that,
14 conducted upon the basis that the insurer is solvent.

15 (b) The claim of a third party, which is contingent only on the
16 third party claimant first obtaining a judgment against the insured,
17 shall be considered and allowed as if there were no such contingency.

18 (c) A claim may be allowed even if contingent, if it is filed in
19 accordance with AS 21.78.292. It may be allowed and may participate
20 in all distributions declared after it is filed to the extent that it
21 does not prejudice the orderly administration of the liquidation.

22 (d) A claim that is due except for the passage of time shall be
23 treated as an absolute claim is treated, except that such a claim may
24 be discounted at the legal rate of interest.

25 (e) A claim made under an employment contract by a director,
26 principal officer, or person in fact performing similar functions or
27 having similar powers, is limited to payment for services rendered
28 before the issuance of an order of rehabilitation or liquidation under
29 this chapter.

1 * Sec. 69. AS 21.78 is amended by adding a new section to read:

2 Sec. 21.78.281. SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS. (a)
3 If a third party asserts a cause of action against an insured of an
4 insurer in liquidation, the third party may file a claim with the
5 receiver.

6 (b) Whether or not the third party files a claim, the insured
7 may file a claim on the insured's own behalf in the liquidation. If
8 the insured fails to file a claim by the date for filing claims spec-
9 ified in the order of liquidation or within 60 days after mailing of
10 the notice required by AS 21.78.290, whichever is later, the insured
11 is an unexcused late filer.

12 (c) The receiver shall make a recommendation to the court under
13 AS 21.78.260 for the allowance of an insured's claim under (b) of this
14 section after consideration of the probable outcome of a pending
15 action against the insured on which the claim is based, the probable
16 damages recoverable in the action, and the probable costs and expenses
17 of defense. After allowance by the court, the receiver shall withhold
18 from the undistributed assets of the insurer as a reserve any amounts
19 payable on the claim, pending the outcome of litigation and nego-
20 tiation with the insured. If appropriate, the receiver may reconsider
21 the claim on the basis of additional information and may amend any
22 recommendations made to the court. The insured shall be afforded the
23 same notice and opportunity to be heard on all changes in the rec-
24 ommendations as in its initial determination. The court may amend its
25 allowance. As claims against the insured are settled or barred, the
26 insured shall be paid from the amount withheld the same percentage as
27 was paid on other claims of like property, based on the lesser of (1)
28 the amount actually recovered from the insured by action or paid by
29 agreement plus the reasonable costs and expenses of defense, or (2)

1 the amount allowed on the claims by the court. After all claims are
2 settled or barred, any sum remaining from the amount withheld reverts
3 to the undistributed assets of the insurer. Delay in final payment
4 under this subsection is not a reason for unreasonable delay of final
5 distribution and discharge of the receiver.

6 (d) If several claims founded upon one policy are filed, whether
7 by third parties or as claims by the insured under this section, and
8 the aggregate allowed amount of the claims to which the same limit of
9 liability in the policy is applicable exceeds that limit, each claim
10 as allowed shall be reduced in the same proportion so that the total
11 equals the policy limit. Claims by the insured shall be evaluated as
12 in (c) of this section. If an insured's claim is subsequently reduced
13 under (c) of this section, the amount thus freed shall be apportioned
14 ratably among the claims that have been reduced under this subsection.

15 (e) No claim may be presented under this section if it is or
16 might be covered by a guaranty association or foreign guaranty asso-
17 ciation.

18 * Sec. 70. AS 21.78.290 is repealed and reenacted to read:

19 Sec. 21.78.290. NOTICE TO CREDITORS AND OTHERS. (a) Unless the
20 court directs otherwise, the receiver shall give or cause to be given
21 notice of the liquidation order as soon as possible after the date of
22 the entry of the order of liquidation

23 (1) by first class mail and either by telegram or tele-
24 phone, to the insurance director, commissioner, or superintendent of
25 each jurisdiction in which the insurer is doing business;

26 (2) by first class mail to any guaranty association or
27 foreign guaranty association that is or that might become obligated as
28 a result of the liquidation;

29 (3) by first class mail to all insurance agents of the

1 insurer;

2 (4) by first class mail to all persons known or reasonably
3 expected to have claims against the insurer, including all policy-
4 holders, at the person's last known address as indicated by the re-
5 cords of the insurer; and

6 (5) by publication in a newspaper of general circulation in
7 the locale in which the insurer has its principal place of business
8 and in other locations that the receiver considers appropriate.

9 (b) Notice to potential claimants under (a) of this section
10 shall state that a claimant must file a claim with the receiver, along
11 with the information required by AS 21.78.170(a), on or before the
12 date specified in the notice. The time specified in the notice may
13 not be less than six months after the date the liquidation order was
14 entered. The liquidation need not require a person claiming a cash
15 surrender value or other investment value in life insurance and annu-
16 ities to file a claim. A claimant has a duty to keep the receiver
17 informed of a change of address.

18 * Sec. 71. AS 21.78 is amended by adding new sections to read:

19 Sec. 21.78.291. DUTIES OF AGENTS. (a) A person who receives
20 notice in the form prescribed in AS 21.78.290 that an insurer that the
21 person represents as an agent is the subject of a liquidation order,
22 shall, within 15 days after receipt of that notice, give written
23 notice of the liquidation order. The notice under this section shall
24 be sent by first class mail to each policyholder or other person named
25 in a policy issued through the agent by the insurer, at the last
26 address contained in the agent's records. A policy is considered to
27 be issued through an agent if the agent has a property interest in the
28 expiration of the policy, or if the agent has had in the agent's
29 possession a copy of the declarations of the policy at any time during

1 the life of the policy, unless the ownership of the expiration of the
2 policy has been transferred to another. The written notice issued
3 under this section shall include the name and address of the insurer,
4 the name and address of the agent, identification of the policy im-
5 paired and the nature of the impairment, including termination of
6 coverage as specified in AS 21.78.100(d) -- (g). Notice under this
7 section by a general agent satisfies the notice requirement for any
8 agents under contract to the general agent. Each agent obligated to
9 give notice under this section shall file a report of compliance with
10 the receiver.

11 (b) An agent failing to give notice or file a report of compli-
12 ance as required in (a) of this section is, after a proceeding under
13 AS 21.06.070 -- 21.06.240, subject to a penalty of not more than
14 \$1,000 and suspension or revocation of the agent's license issued
15 under this title.

16 (c) The receiver may waive the duties imposed by this section if
17 the receiver determines that other notice to policyholders of the
18 insurer under liquidation is adequate.

19 Sec. 21.78.292. FILING OF CLAIMS. (a) Proof of a claim must
20 be filed with the receiver, in the form required by AS 21.78.170, on
21 or before the last day for filing specified in the notice required
22 under this chapter, except that proof of a claim for cash surrender
23 value or other investment value in life insurance and annuities need
24 not be filed unless the receiver expressly so requires.

25 (b) The receiver may, under the following circumstances, permit
26 a claimant who makes a late filing to share in distributions, whether
27 past or future, as if the claim was not late, to the extent that such
28 a payment does not prejudice the orderly administration of the liq-
29 uidation:

1 (1) the existence of the claim was not known to the claim-
2 ant and the claim was filed as promptly as was reasonably possible
3 after learning of it;

4 (2) a transfer to a creditor was avoided under this chap-
5 ter, or was voluntarily surrendered under this chapter, and the filing
6 satisfies the conditions of AS 21.78.253; or

7 (3) the valuation under AS 21.78.180(d), of security held
8 by a secured creditor, shows a deficiency, a claim for which is filed
9 within 30 days after the valuation.

10 (c) The receiver shall permit late-filed claims to share in
11 distributions, whether past or future, as if they were not late, if
12 the claims are claims of a guaranty association or foreign guaranty
13 association for reimbursement of covered claims paid or expenses
14 incurred, or both, after the last day for filing, and if the payments
15 were made and expenses were incurred as provided by law.

16 (d) The receiver may consider a claim that is filed late and
17 that is not covered by (b) of this section, and may permit it to
18 receive distributions that are subsequently declared on any claims of
19 the same or lower priority, if the payment does not prejudice the
20 orderly administration of the liquidation. The late-filing claimant
21 shall receive, at each distribution, the same percentage of the amount
22 allowed on the claim as is then being paid to claimants of any lower
23 priority, continuing until the claim has been paid in full.

24 Sec. 21.78.293. RECEIVER'S RECOMMENDATION TO THE COURT. (a)
25 The receiver shall review all claims filed in the liquidation and
26 shall make further investigation as the receiver considers necessary.
27 The receiver may compound, compromise, or in any other manner negoti-
28 ate the amount for which a claim will be recommended to the court,
29 unless the receiver is required by law to accept a claim as settled by

1 a person or organization, including a guaranty association or foreign
2 guaranty association. As soon as practicable, the receiver shall
3 present to the court a report of the claims against the insurer, along
4 with the receiver's recommendations. The report shall include the
5 name and address of each claimant and the amount of the claim finally
6 recommended, if any. If the insurer has issued annuities or life
7 insurance policies, the receiver shall report the persons to whom,
8 according to the records of the insurer, amounts are owed as cash
9 surrender values or other investment values, and the amounts owed.

10 (b) The court may approve, disapprove, or modify the receiver's
11 report on claims. Claims in a report that is not modified by the
12 court within a period of 60 days following submission by the receiver
13 shall be treated by the receiver as allowed claims.

14 Sec. 21.78.294. DISTRIBUTION OF ASSETS. Under the direction of
15 the court, the receiver shall pay distributions in a manner that will
16 assure the proper recognition of priorities and a reasonable balance
17 between the expeditious completion of the liquidation and the pro-
18 tection of unliquidated and undetermined claims, including third-party
19 claims. Distribution of assets in kind may be made at valuations set
20 by agreement between the receiver and the creditor and approved by the
21 court.

22 Sec. 21.78.295. UNCLAIMED AND WITHHELD MONEY. (a) All un-
23 claimed money that is subject to distribution and remains in the
24 receiver's hands when the receiver is ready to apply to the court for
25 discharge, including the amount distributable to a creditor, share-
26 holder, member, or other person who is unknown and cannot be found,
27 shall be deposited with the Department of Revenue, and shall be paid,
28 without interest, to the person entitled to receive it or to the
29 person's legal representative upon proof satisfactory to the

1 Department of Revenue of the person's right to it. Notwithstanding
2 the provisions of AS 34.45, any amount on deposit with the Department
3 of Revenue which is not claimed within six years after the discharge
4 of the receiver, is considered to be abandoned, and shall, without
5 further proceedings, be deposited in the general fund.

6 (b) All money retained for claims described in AS 21.78.280 and
7 not distributed, shall, upon discharge of the receiver, be deposited
8 with the Department of Revenue and paid in accordance with AS 21.78.-
9 260. Any amount remaining which, under AS 21.78.260, would revert to
10 the undistributed assets of the insurer, shall be transferred to the
11 Department of Revenue. Such remaining amounts become the property of
12 the state under (a) of this section, unless the director, in the
13 director's discretion, petitions the court to reopen the liquidation
14 under AS 21.78.297.

15 Sec. 21.78.296. TERMINATION OF PROCEEDINGS. (a) When all
16 assets justifying the expense of collection and distribution have been
17 collected and distributed under this chapter, the receiver shall apply
18 to the court for discharge. The court may grant the discharge and
19 make any other orders the court considers appropriate.

20 (b) Any other person may apply to the court at any time for an
21 order under (a) of this section. If the application is denied, the
22 applicant shall pay the receiver's costs and expenses incurred in
23 resisting the application, including a reasonable attorney's fee.

24 Sec. 21.78.297. REOPENING LIQUIDATION. After the liquidation
25 proceeding has been terminated and the receiver discharged, the direc-
26 tor or other interested party may at any time petition the court to
27 reopen the proceedings for good cause, including the discovery of
28 additional assets. If the court is satisfied that there is justifi-
29 cation for reopening, it shall so order.

1 Sec. 21.78.298. DISPOSITION OF RECORDS DURING AND AFTER TERMINA-
2 TION OF LIQUIDATION. If it appears to the director that the records
3 of an insurer that is in process of liquidation, or is completely
4 liquidated, are no longer useful, the director may recommend to the
5 court, and the court shall direct, which records should be retained
6 for future reference and which should be destroyed.

7 * Sec. 72. AS 21.90.900 is amended by adding new paragraphs to read:

8 (24) "impaired" or "impairment" means that

9 (A) an insurer's policyholder surplus is greater than
10 zero but less than that required by AS 21.09.070 for the authori-
11 ty to transact the kinds of insurance being transacted; or

12 (B) an insurer is being operated in a manner such that
13 irreparable loss and injury has occurred, or might occur, to the
14 insurer or to the public;

15 (25) "insolvent" or "insolvency" means that an insurer's
16 policyholder surplus is less than or equal to zero;

17 (26) "policyholder surplus" means

18 (A) for a stock insurer, the sum of its capital, as
19 represented by the aggregate par value to its outstanding capital
20 stock, and its surplus, if any;

21 (B) for a mutual insurer, its surplus, both basic
22 guaranteed and additional, if any;

23 (C) for an insurer other than a stock or mutual insur-
24 er, the net worth of the insurer, calculated as its recorded
25 assets less its liabilities, as determined by the accounting
26 criteria set out in this title.

27 * Sec. 73. AS 21.21.020(b) and AS 21.78.330(1) are repealed.

28 * Sec. 74. AS 21.78.090(f) added by sec. 55 of this Act, has the effect
29 of changing Rule 62(a), Rules of Civil Procedure, by providing for an

1 automatic 90-day stay of action in a rehabilitation proceeding.

2 * Sec. 75. This Act takes effect immediately under AS 01.10.070(c).