

Original sponsor(s): Rules/Governor

1 IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 212 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurance; changing Alaska Rules
7 of Civil Procedure 19, 41, 62(a), and 65(c); changing
8 Alaska Rules of Appellate Procedure 205, 405, 511,
9 603, 606, and 611(d); and providing for an effective
10 date."

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

12 * Section 1. AS 21.06.120(a) is amended to read:

13 (a) The director may examine the affairs, transactions, ac-
14 counts, records, and assets of each authorized and formerly authorized
15 insurer and each licensed and formerly licensed surplus lines broker
16 as often as the director considers advisable. The director shall so
17 examine each domestic insurer at least once every three years. Exam-
18 ination of an alien insurer may be limited to its insurance trans-
19 actions and affairs in the United States. Examination of a reciprocal
20 insurer may also include examination of its attorney-in-fact to the
21 extent that the transactions of the attorney-in-fact relate to the
22 insurer.

23 * Sec. 2. AS 21.06.120 is amended by adding new subsections to read:

24 (d) The director may examine insurers in participation with the
25 National Association of Insurance Commissioners.

26 (e) The director may use a contract examiner to carry out the
27 functions of this section. The selection of a contract examiner and
28 the award of a contract is subject to AS 36.30 (State Procurement
29 Code).

1 * Sec. 3. AS 21.06.140(b) is amended to read:

2 (b) Every person being examined and its officers, employees,
3 agents, and representatives shall produce and make freely available to
4 the director the accounts, records, documents, files, information,
5 assets, and matters in their possession or control relating to the
6 subject of the examination, and shall facilitate and aid the examina-
7 tion as far as reasonably possible, including providing to the direc-
8 tor, at the expense of the person being examined, a copy of any docu-
9 ment requested during the examination.

10 * Sec. 4. AS 21.06.150(e) is amended to read:

11 (e) The director may withhold from public inspection documents,
12 information, accounts, or records received during an examination or
13 investigation, and an examination or investigation reports. [REPORT]
14 for as long as the director finds [CONSIDERS] the withholding to be
15 necessary for the protection of a person [THE PERSON EXAMINED] against
16 unwarranted injury or to be in the public interest.

17 * Sec. 5. AS 21.06.160 is amended to read:

18 Sec. 21.06.160. EXAMINATION EXPENSE. (a) Each person examined,
19 other than as to examinations under AS 21.06.130, shall pay all the
20 costs of, and expenses incurred by division staff examiners, including
21 salary and benefit costs, for time spent directly or indirectly re-
22 lated to the examination, and shall pay the compensation of a contract
23 examiner, to be set at a reasonable customary rate, for conducting
24 [ACTUAL TRAVEL EXPENSES, A REASONABLE LIVING EXPENSE ALLOWANCE, AND A
25 PER DIEM AS COMPENSATION OF EXAMINERS, AS NECESSARILY INCURRED ON
26 ACCOUNT OF] the examination [, ALL AT REASONABLE RATES CUSTOMARY
27 THEREFOR AND AS ESTABLISHED OR ADOPTED BY THE DIRECTOR], upon presen-
28 tation of a detailed account of the charges and expenses by the direc-
29 tor or under an order [PURSUANT TO THE WRITTEN AUTHORIZATION] of the

1 director. The accounting may either be presented periodically during
2 the course of the examination or at the termination of the examina-
3 tion. A person may not pay and an examiner may not accept additional
4 compensation [EMOLUMENT] for an examination.

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

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

20 * Sec. 6. AS 21.06 is amended by adding a new section to read:

21 Sec. 21.06.165. IMMUNITY FOR DIRECTOR AND OTHERS. (a) The
22 director, employees or agents of the division, and the National Asso-
23 ciation of Insurance Commissioners and its employees, are not liable
24 for civil damages for an act or omission in the execution of their
25 authorized activities or duties under this title, or for the publica-
26 tion or dissemination of a report or bulletin related to their autho-
27 rized activities or duties.

28 (b) This section does not abrogate or modify the common law or
29 other statutory privilege or immunity.

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

3 * Sec. 7. AS 21.06.250 is amended to read:

4 Sec. 21.06.250. FEES AND LICENSES. The director shall collect
5 in advance a fee for each license and for services performed by the
6 division of insurance. Fees may be collected for but are not limited
7 to applications, [EXAMINATIONS,] licenses and license renewals, cer-
8 tificates of authority, service of process, printed or photocopied
9 material, and postage. The director shall adopt regulations setting
10 the fees in an amount the director determines to be sufficient to
11 reimburse the state for the actual expense incurred in providing a
12 service.

13 * Sec. 8. AS 21.09.020 is amended to read:

14 Sec. 21.09.020. EXCEPTIONS, CERTIFICATE OF AUTHORITY REQUIRE-
15 MENT. A certificate of authority is not required of an insurer, not
16 otherwise authorized in this state, in regard to

17 (1) transactions relative to its policies lawfully written
18 in the state [ALASKA], or liquidation of assets and liabilities of the
19 insurer (other than collection of new premiums), all as resulting from
20 its former authorized operations in the state [ALASKA];

21 (2) related transactions [RELATIVE THERETO] subsequent to
22 issuance of a policy covering only subjects of insurance not resident,
23 located, or expressly to be performed in the state [ALASKA] at time of
24 issuance, and which coverage was lawfully solicited, written, and
25 delivered outside the state [ALASKA];

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

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

29 * Sec. 9. AS 21.09.060 is amended to read:

1 **Sec. 21.09.060. COMBINATIONS OF INSURING POWERS IN ONE INSURER.**

2 An insurer that otherwise qualifies may be authorized to transact any
3 one kind or combination of kinds of insurance as defined in AS 21.12,
4 except that

5 (1) a life insurer may also grant annuities, but is not
6 authorized to transact any other kind of insurance than disability;
7 except that if the insurer is otherwise qualified, the director shall
8 continue to authorize a life insurer that, immediately before July 1,
9 1966, was lawfully authorized to transact in this state a kind or
10 kinds of insurance in addition to life and disability;

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

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

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

15 * Sec. 10. AS 21.09.070(a) is amended to read:

16 (a) To qualify for authority to transact any one kind of insur-
17 ance as defined in AS 21.12, or combination of kinds of insurance as
18 shown below, a foreign insurer, or a domestic insurer applying for its
19 original certificate of authority in this state, [OR AN INSURER REAP-
20 PLYING FOR A CERTIFICATE OF AUTHORITY IN THIS STATE] after having
21 withdrawn from this state for any cause, shall possess and after that
22 [THEREAFTER] maintain unimpaired basic paid-in capital stock, [() if a
23 stock insurer, ()] or unimpaired basic surplus, [() if a foreign
24 mutual insurer or foreign reciprocal insurer ()], that is unavailable
25 for dividends of any kind, and shall possess when first so authorized,
26 and maintain after that, additional money [FUNDS] in surplus, as
27 follows:

28 Kind or Kinds	Basic Capital	Additional	Additional
29 of Insurance	or Basic	Surplus <u>When</u>	<u>Maintained</u>

	<u>Guarantee Surplus</u>	<u>First Authorized</u>	<u>Surplus</u>
1			
2	Life <u>\$1,000,000</u>	<u>\$1,000,000</u>	<u>\$750,000</u>
3	[<u>\$800,000</u>]	[<u>\$800,000</u>]	
4	Disability <u>1,000,000</u>	<u>1,000,000</u>	<u>750,000</u>
5	[<u>800,000</u>]	[<u>800,000</u>]	
6	Life and		
7	Disability <u>1,250,000</u>	<u>1,250,000</u>	<u>1,000,000</u>
8	[<u>1,000,000</u>]	[<u>1,000,000</u>]	
9	Property <u>1,000,000</u>	<u>1,000,000</u>	<u>750,000</u>
10	[<u>600,000</u>]	[<u>600,000</u>]	
11	Casualty ex-		
12	cluding vehicle <u>1,000,000</u>	<u>1,000,000</u>	<u>750,000</u>
13	Vehicle <u>1,000,000</u>	<u>1,000,000</u>	<u>750,000</u>
14	[<u>800,000</u>]	[<u>800,000</u>]	
15	Marine &		
16	transportation <u>1,000,000</u>	<u>1,000,000</u>	<u>750,000</u>
17	Surety <u>1,000,000</u>	<u>1,000,000</u>	<u>750,000</u>
18	Title <u>500,000</u>	<u>500,000</u>	<u>250,000</u>
19	[<u>300,000</u>]	[<u>300,000</u>]	
20	Any <u>three</u> [TWO] or more		
21	of the following kinds		
22	of insurance:		
23	property, marine		
24	and transporta-		
25	tion, vehicle,		
26	casualty ex-		
27	cluding vehicle,		
28	surety and		
29	disability <u>3,000,000</u>	<u>3,000,000</u>	<u>2,250,000</u>

1		[1,500,000]	[1,500,000]	
2	Legal expenses	<u>1,000,000</u>	<u>1,000,000</u>	<u>750,000</u>
3		[600,000]	[600,000]	
4	Mortgage			
5	Guarantee	1,000,000	1,000,000	<u>750,000</u>

6 * Sec. 11. AS 21.09.070(b) is amended to read:

7 (b) Capital and surplus requirements are based upon all the
8 kinds of insurance transacted by the insurer in all areas in which it
9 operates or proposes to operate, whether or not only a portion of the
10 kinds of insurance are to be transacted in this state. After a hear-
11 ing, the director may for the protection of the public require an
12 insurer to maintain funds in excess of the amounts required under (1)
13 of this section, due to the amount, kind, or combination of kinds of
14 insurance transacted by the insurer. Failure of an insurer to main-
15 tain funds as ordered by the director is grounds for suspension or
16 revocation of the insurer's certificate of authority.

17 * Sec. 12. AS 21.09.070(c) is repealed and reenacted to read:

18 (c) After June 30, 1991, an insurer may not renew and continue
19 its certificate of authority unless the insurer possesses at least the
20 basic capital or basic surplus, and additional surplus required under
21 this section.

22 * Sec. 13. AS 21.09.070 is amended by adding a new subsection to read:

23 (f) On or after January 1, 1991, a domestic property or casualty
24 insurer may assume reinsurance, either new or renewal, (1) only of the
25 kinds of risks, and to retain risks, within the limits it is otherwise
26 authorized to insure; and (2) only if, in the absence of prior written
27 approval from the director, it maintains, notwithstanding (a) of this
28 section, in policyholder surplus at least \$10,000,000 as of Decem-
29 ber 31, 1990, \$15,000,000 as of December 31, 1991, and \$20,000,000 as

1 of December 31, 1992. This subsection does not apply to reinsurance
2 that is required to be assumed by applicable law or regulation or is
3 assumed under an intracompany pooling arrangement between affiliated
4 insurers.

5 * Sec. 14. AS 21.09.080(a) is repealed and reenacted to read:

6 (a) In order for a domestic insurer to renew and continue the
7 insurer's certificate of authority after June 30, 1991, the insurer
8 must possess at least the basic capital, basic guarantee surplus, and
9 additional maintained surplus required under AS 21.09.070(a).

10 * Sec. 15. AS 21.09.110(3) is amended to read:

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

16 * Sec. 16. AS 21.09.140(a) is amended to read:

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

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

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

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

26 * Sec. 17. AS 21.09.200(a) is amended to read:

27 (a) Each authorized insurer shall annually, before March 2, file
28 with the director a full and true statement of its financial condi-
29 tion, transactions, and affairs as of the preceding December 31. The

1 reporting format for a given year is the most recently approved Na-
2 tional Association of Insurance Commissioners' annual financial state-
3 ment blank form and instructions, [THE STATEMENT SHALL BE IN THE GEN-
4 ERAL FORM AND CONTEXT ACCEPTABLE TO THE DIRECTOR, AND IN CURRENT USE
5 FOR SIMILAR REPORTS TO STATES IN GENERAL WITH RESPECT TO THE TYPE OF
6 INSURER AND KINDS OF INSURANCE TO BE REPORTED UPON, AND] supplemented
7 for additional information as required by the director. The director
8 may require the statement to be filed on electronic media. The state-
9 ment shall be verified by the oath of the insurer's president or
10 vice-president, and secretary, or, if a reciprocal insurer, by oath of
11 the attorney-in-fact or its like offices if a corporation unless
12 verification is waived by the director of insurance.

13 * Sec. 18. AS 21.09.200 is amended by adding a new subsection to read:

14 (f) In addition to the requirements of (a) of this section, a
15 domestic insurer shall file its annual statement with the National
16 Association of Insurance Commissioners by the due date established by
17 the association, and shall pay the applicable filing fee. An insurer
18 that fails to comply with this subsection is subject to the penalties
19 specified in (e) of this section, calculated from the filing and fee
20 due date established by the National Association of Insurance Commis-
21 sioners.

22 * Sec. 19. AS 21.09 is amended by adding a new section to read:

23 Sec. 21.09.205. QUARTERLY STATEMENT. (a) The director may
24 require an insurer to file quarterly financial statements. If re-
25 quired, the statements must follow for a given quarter the reporting
26 format specified in the quarterly financial statement blank form and
27 instructions most recently approved by the National Association of
28 Insurance Commissioners.

29 (b) A quarterly financial statement, if required, is due 60 days

1 after the end of the quarter to which it applies.

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

5 * Sec. 20. AS 21.12.020 is repealed and reenacted to read:

6 Sec. 21.12.020. REINSURANCE CREDIT ALLOWED A DOMESTIC CEDING
7 INSURER. (a) Credit for reinsurance transactions shall be allowed a
8 domestic ceding insurer as either an asset or a deduction from liabil-
9 ity on account of reinsurance ceded only if the reinsurance is ceded
10 to an

11 (1) assuming insurer that is licensed to transact insurance
12 or reinsurance in this state;

13 (2) assuming insurer that is accredited as a reinsurer in
14 this state; an accredited reinsurer is one that

15 (A) submits to this state's jurisdiction, submits to
16 this state's authority to examine its books and records, and is
17 licensed to transact insurance or reinsurance in at least one
18 state; or

19 (B) in the case of a United States branch of an alien
20 assuming insurar, is entered through, and licensed to transact
21 insurance or reinsurance in, at least one state, files annually
22 with the director a copy of its annual financial statement that
23 is filed with the insurance regulatory agency of its state of
24 domicile, and maintains at least \$20,000,000 in policyholder sur-
25 plus;

26 (3) assuming insurer that is domiciled in a state, or in
27 the case of a United States branch of an alien assuming insurer, is
28 entered through a state that employs standards regarding credit for
29 reinsurance ceded substantially similar to those applicable under (1)

1 and (2) of this subsection, the assuming insurer maintains a policy-
2 holder surplus of at least \$20,000,000, and the assuming insurer
3 submits to the authority of this state to examine its books and re-
4 cords;

5 (4) assuming alien insurer that

6 (A) maintains a trust fund in a qualified United
7 States financial institution for the payment of the valid claims
8 of its United States policyholders and ceding insurers, and their
9 assigns and successors in interest, that conforms to the follow-
10 ing requirements:

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

23 (ii) on or before March 1 of each year the trust-
24 ees shall report in writing to the director on the balance
25 of the trust and list the trust's investments at the end of
26 the preceding year, and shall certify the date of termina-
27 tion of the trust, if so planned, or certify that the trust
28 does not expire before the following December 31;

29 (iii) in the case of a single assuming insurer, the

1 trust shall consist of trust money representing the assuming
2 insurer's liabilities attributable to business written in
3 the United States and, in addition, include a trust surplus
4 of not less than \$20,000,000; the single assuming insurer
5 shall make available to the director an annual certification
6 of the insurer's solvency by the insurer's domiciliary
7 regulator and by an independent public accountant;

8 (iv) in the case of a group of individual unin-
9 corporated insurers, the trust shall consist of trust money
10 representing the group's liabilities attributable to busi-
11 ness written in the United States and, in addition, include
12 a trust surplus not less than \$50,000,000; the group shall
13 make available to the director an annual certification of
14 the solvency of each of the individual unincorporated insur-
15 ers by the group's domiciliary regulator and by an indepen-
16 dent public accountant; and

17 (B) reports annually to the director information
18 substantially the same as that required to be reported on the
19 National Association of Insurance Commissioners' annual statement
20 form by licensed insurers to enable the director to determine the
21 sufficiency of the trust fund;

22 (5) assuming insurer that does not meet the requirements of
23 (1) - (4) of this subsection, but only with respect to the insurance
24 of risks located in jurisdictions where the reinsurance is required by
25 applicable law or regulation of that jurisdiction.

26 (b) If the assuming insurer is not licensed or accredited to
27 transact insurance or reinsurance in this state, the credit permitted
28 by (a)(1) - (4) of this section may not be allowed unless the assuming
29 insurer agrees in the reinsurance agreements

1 (1) that in the event of the failure of the assuming insur-
2 er to perform its obligations under the terms of the reinsurance
3 agreement, the assuming insurer, at the request of the ceding insurer,
4 shall submit to the jurisdiction of a court of competent jurisdiction
5 in any state of the United States, will comply with all requirements
6 necessary to give the court jurisdiction and will abide by the final
7 decision of the court or of an appellate court in the event of an
8 appeal; this provision is not intended to conflict with or override
9 the obligation of the parties to a reinsurance agreement to arbitrate
10 their disputes, if such an obligation is created in the reinsurance
11 agreement; and

12 (2) to designate the director or an attorney resident in
13 the United States as its true and lawful attorney upon whom may be
14 served lawful process in an action, suit, or proceeding instituted by
15 or on behalf of the ceding insurer.

16 (c) A reduction from liability, for reinsurance ceded to an
17 assuming insurer not meeting the requirements of (a) of this section,
18 shall be allowed in an amount not exceeding the liabilities carried by
19 the ceding insurer. The reduction shall be equal to the amount of
20 money held by or on behalf of the ceding insurer, including money held
21 in trust for the ceding insurer, under a reinsurance contract with the
22 assuming insurer as security for the payment of obligations under it.
23 If the security is held in the United States subject to withdrawal
24 solely by, and under the exclusive control of, the ceding insurer, or
25 in the case of a trust, held in a qualified United States financial
26 institution, the security must be in the form of

27 (1) cash;

28 (2) securities listed by the Securities Valuation Office of
29 the National Association of Insurance Commissioners that qualify as

1 admitted assets under AS 21.21;

2 (3) clean, irrevocable, unconditional letters of credit
3 issued or confirmed by a qualified United States financial institu-
4 tion; letters of credit meeting applicable standards of issuer accept-
5 ability as of the dates of their issuance or confirmation shall,
6 notwithstanding the issuing or confirming institution's subsequent
7 failure to meet applicable standards of issuer acceptability, continue
8 to be acceptable as security until their expiration, extension, renew-
9 al, modification, or amendment, whichever occurs first; or

10 (4) other security acceptable to and approved in advance by
11 the director.

12 (d) Notwithstanding the other provisions of this section, credit
13 may not be allowed a domestic ceding insurer unless the reinsurance
14 contract provides for payment by the assuming insurer on the basis of
15 the liability of the ceding domestic insurer under the insurance
16 contracts reinsured without diminution because of the insolvency of
17 the ceding domestic insurer.

18 (e) Upon request of the director, an insurer shall promptly
19 inform the director, in writing, of the cancellation or other material
20 change in any of its reinsurance contracts or arrangements.

21 (f) In this section, "qualified United States financial insti-
22 tution" means an institution that,

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

24 (A) is organized or, in the case of a United States
25 office of a foreign banking organization, is licensed under the
26 laws of the United States or a state of the United States;

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

1 (C) has been determined by either the director or the
2 Securities Valuation Office of the National Association of Insur-
3 ance Commissioners to meet the standards of financial condition
4 and standing that are considered necessary and appropriate to
5 regulate the quality of financial institutions whose letters of
6 credit are acceptable to the director;

7 (2) for the purposes of the provisions of this section
8 other than (c)(3) of this section, an institution that

9 (A) is organized or, in the case of a United States
10 branch or agency office of a foreign banking organization, li-
11 censed under the laws of the United States or a state of the
12 United States, and has been granted authority to operate with
13 fiduciary powers; and

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

17 * Sec. 21. AS 21.12 is amended by adding a new section to read:

18 Sec. 21.12.120. REINSURANCE TRANSACTION DEFINED. A reinsurance
19 transaction as referred to in AS 21.21.020 is a transaction stemming
20 from a contract by which the assuming insurer agrees to indemnify the
21 ceding insurer in whole or in part against liability or losses that
22 the ceding insurer might incur under a separate contract of insurance
23 with its insured.

24 * Sec. 22. AS 21.18.010 is repealed and reenacted to read:

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

28 (1) cash in the possession of the insurer, or in transit
29 under its control, including the true balance of a deposit in a

1 solvent bank, savings and loan association, or trust company;

2 (2) investments, securities, properties, and loans acquired
3 or held under this title, and in connection with those assets, the
4 following items:

5 (A) interest due or accrued on a bond or evidence of
6 indebtedness qualifying as an admitted asset that is not in
7 default and that is not valued on a basis including accrued
8 interest;

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

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

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

17 (E) interest due or accrued on a current real estate
18 mortgage loan that is an admitted asset, in an amount not exceed-
19 ing the value of the property over the unpaid loan principal less
20 delinquent taxes on the property; however, if the interest is in
21 default more than three months, or a tax or installment on the
22 property is due and unpaid for more than three months, allowance
23 may not be made for unpaid interest on the loan;

24 (F) rent due or accrued on real property if the rent
25 is not in arrears for more than three months; rent more than
26 three months in arrears is allowed if the payment of the rent is
27 secured by property with a current market value not less than 75
28 percent of the total rent due, held in the name of the tenant and
29 conveyed to the insurer as collateral;

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

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

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

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

14 (6) premiums in the course of collection, other than for
15 life insurance, not more than three months past due, less commissions
16 payable on them, except that the three-month limitation of this para-
17 graph does not apply to

18 (A) premiums payable directly or indirectly by the
19 United States government or by any of its instrumentalities;

20 (B) reinsurance premiums payable by ceding insurers
21 authorized to transact business in this state; or

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

29 (7) premiums, not more than three months past due,

1 excluding commissions payable on them, due from a controlling or
2 controlled person, to the extent that

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

17 (B) the controlling or controlled person has provided
18 to the insurer, and the insurer has maintained in its possession,
19 an unexpired, clean, irrevocable, and unconditional letter of
20 credit, payable to the insurer, for a term of not less than one
21 year with automatic extension for one year, unless the benefi-
22 ciary has received in writing notification of intention not to
23 renew 30 days before the original expiration date; the letter of
24 credit must be issued in conformity with the requirements set out
25 in this subparagraph, and the amount of the letter of credit must
26 equal or exceed the liability of the controlling or controlled
27 person to the insurer, at all times during the period that the
28 letter of credit is in effect, for premiums collected by the
29 controlling or controlled person; a letter of credit must be

1 issued under arrangements satisfactory to the division and the
2 letter must be issued by a banking institution that is a member
3 of the Federal Reserve System and that has a financial standing
4 satisfactory to the department; the director shall disapprove a
5 letter of credit that, in the director's judgment, does not
6 assure the safety of the premiums;

7 (C) the controlling or controlled person has provided
8 to the insurer, and the insurer has maintained in its possession,
9 evidence that the controlling or controlled person has purchased
10 and has currently in effect a financial guaranty bond, payable to
11 the insurer, issued for a continuous term, cancelable only on
12 30-day written notice to the beneficiary of intention to termi-
13 nate with the bond continuing in effect for acts committed before
14 the date of termination, and that is in conformity with the
15 requirements set out in (B) of this paragraph; the amount of the
16 bond must equal or exceed the liability of the controlling or
17 controlled person to the insurer, at all times during which the
18 financial guaranty bond is in effect, for the premium collected
19 by the controlling or controlled person; a financial guaranty
20 bond must be issued under an arrangement satisfactory to the
21 division, by an insurer that is authorized to transact business
22 in the state, that has a financial standing satisfactory to the
23 division and that is neither controlled nor controlling in rela-
24 tion to either the insurer or the person for whom the bond is
25 purchased; and

26 (D) a financial examination indicates that the con-
27 trolling or controlled person is solvent and has the ability to
28 pay the premiums as they become due; the financial examination,
29 as scheduled by the director, shall be based on a review of the

1 books and records of the controlling or controlled person;

2 (8) notes and written obligations not past due, taken for
3 premiums other than life insurance premiums, on policies permitted to
4 be issued on that basis and to the extent of the unearned premium
5 reserves carried on the policies;

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

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

13 (11) deposits or equities recoverable from underwriting
14 associations, syndicates, and reinsurance funds or from a suspended
15 banking institution to the extent considered by the director available
16 for the payment of losses and claims and at values to be determined by
17 the director;

18 (12) electronic data processing and related equipment, and
19 operating software constituting a data processing, record keeping, or
20 an accounting system if the cost of the system, including subsequent
21 additions to the original system, is \$50,000 or more and if that cost
22 is to be amortized in full over a period not to exceed 10 calendar
23 years;

24 (13) intercompany transactions arising from income tax
25 allocations among organizations participating in a consolidated tax
26 return, if

27 (A) there is a written agreement that is in compliance
28 with regulations adopted by the Internal Revenue Service and the
29 agreement includes a

1 (i) description of the method of allocation and
2 the manner in which intercompany balances will be settled;
3 and

4 (ii) requirement that an intercompany balance will
5 be settled within a reasonable time following the filing of
6 the consolidated tax return;

7 (B) receivables arising out of the agreement are due
8 from a solvent organization that is not in default on its obliga-
9 tions and that meets all other requirements for admitted assets;
10 and

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

14 (14) the amount of foreign exchange differential on the
15 excess of assets over liabilities recorded in foreign currencies;

16 (15) an unsecured receivables from a solvent affiliate, that
17 is not more than six months past due, if a liability to offset the
18 receivable is recorded in the affiliate's corresponding financial
19 statement;

20 (16) receivables arising from wholly and partially uninsured
21 accident and health plans;

22 (17) all assets, not inconsistent with the provisions of
23 this section, that are allowed in the annual statement form and with
24 the annual statement instructions most recently published by the
25 National Association of Insurance Commissioners and approved by the
26 director; or

27 (18) other assets, not inconsistent with the provisions of
28 this section, considered by the director to be available for the
29 payment of losses and claims, at values to be determined by the

1 director.

2 * Sec. 23. AS 21.18.030 is repealed and reenacted to read:

3 Sec. 21.18.030. ASSETS NOT ALLOWED. (a) In addition to assets
4 excluded by the application of AS 21.18.010, the following are ex-
5 pressly not allowed as assets in a determination of the financial
6 condition of an insurer:

7 (1) goodwill, trade names, and other similar intangible
8 assets;

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

12 (3) stock of the insurer, owned by it, or any material
13 equity in the stock or loans secured by the stock, or a material
14 proportionate interest in the stock acquired or held through the
15 ownership by the insurer of an interest in another firm, corporation,
16 or business unit;

17 (4) tangible personal property, including furniture, fix-
18 tures, furnishings, safes, vehicles, libraries, stationery, litera-
19 ture, and supplies, other than electronic data processing machines
20 authorized by AS 21.18.010, except property acquired through foreclo-
21 sure of chattel mortgages acquired under AS 21.21.270, or property
22 that is reasonably necessary for the maintenance and operation of real
23 estate lawfully acquired and held by the insurer other than real
24 estate used by the insurer for home office, branch office, and similar
25 purposes;

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

29 (6) bonds, notes, or other evidences of indebtedness that

1 are secured by mortgages or deeds of trust that are in default;

2 (7) payments made under the Internal Revenue Code of 1986
3 for the alternative minimum tax, or refunds receivable that are in
4 dispute from a federal or state taxing authority;

5 (8) commuted commissions by which the present value of
6 future commissions is paid in advance to agents;

7 (9) commissions and fees forwarded to agents before the
8 earning of the commissions and fees by the agent;

9 (10) unsecured loans due from outside sources.

10 (b) All nonadmitted assets and all other assets of doubtful
11 value or character included as ledger or nonledger assets in a state-
12 ment by an insurer to the director, or in an examiner's report to the
13 director, shall also be reported, to the extent of the value disallow-
14 ed, as deductions from the gross assets of the insurer, unless the
15 director permits a reserve to be carried among the liabilities of the
16 insurer in place of a deduction.

17 * Sec. 24. AS 21.18.060(a) is repealed and reenacted to read:

18 (a) Except as otherwise provided in AS 21.18.070, an insurer
19 shall maintain an unearned premium reserve on all policies in force
20 against loss or damage to property, including loss or damage under
21 general casualty or surety insurance.

22 * Sec. 25. AS 21.18.060(b) is amended to read:

23 (b) The director may require that the reserves be equal to the
24 unearned portions of the gross premiums in force after deducting
25 applicable reinsurance in solvent [INSOLVENT] insurers as computed on
26 each respective risk from the policy's date of issue. Except as
27 required by [IF] the director under this subsection [DOES NOT SO
28 REQUIRE], the portions of the gross premium in force, less applicable
29 reinsurance in solvent insurers, to be held as an unearned premium

1 reserve shall be computed according to the following table:

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

20 * Sec. 26. AS 21.18 is amended by adding new sections to read:

21 Sec. 21.18.073. **UNEARNED PREMIUM RESERVE FOR TITLE INSURANCE.**

22 In addition to an adequate reserve as to outstanding losses as requir-
23 ed under AS 21.18.050, a title insurer shall establish, segregate, and
24 maintain a guaranty fund or unearned premium reserve as provided in
25 this section. At all times and for all purposes, the sums required by
26 this section to be reserved for unearned premiums on title guarantees
27 and policies shall be considered and constitute unearned per cents of
28 the original premiums and shall be charged as a reserve liability of
29 the insurer in determining its financial condition. While the sums

1 are reserved, they are withdrawn from the use of the insurer for its
2 general purposes, constitute a trust in favor of the holders of title
3 guarantees and policies, and must be held available for reinsurance of
4 the title guarantees and policies in the event of the insolvency of
5 the insurer. This section does not preclude the insurer from invest-
6 ing the reserves in investments authorized by law for the insurer.
7 The income from invested reserves may be included in the general
8 income of the insurer to be used by the insurer for a lawful purpose.
9 The unearned premium reserve required by this section consists of not
10 less than the amount computed as follows with respect to a policy of
11 title insurance issued by a title insurer after December 31, 1990:

12 (1) 10 percent of the total amount of risk premiums written
13 in the calendar year for title insurance contracts must be assigned
14 originally to the reserve;

15 (2) during each of the 20 years immediately following the
16 year in which the title insurance contract was issued, the reserve
17 applicable to the contract must be reduced by five percent of the
18 original amount of the reserve; with respect to a policy of title
19 insurance issued by a title insurer before January 1, 1991, the insur-
20 er shall maintain at all times a reserve of not less than \$.30 for
21 each \$1,000 of the fee amount of all title guarantees and policies
22 issued during the preceding 10 years; this reserve amount, required to
23 be reserved for unearned premiums on title guarantees and policies,
24 shall at all times and for all purposes be considered and constitute
25 unearned portions of the original premiums and shall be charged as a
26 reserve liability of the insurer in determining its financial condi-
27 tion; that portion of the unearned premium reserve established with
28 respect to a title guarantee or policy issued more than 10 years
29 before January 1, 1991, shall be released, shall no longer constitute

1 part of the unearned premium reserve, and may be used for any purpose
2 by the insurer.

3 Sec. 21.18.075. BAIL BOND RESERVE. In place of the unearned
4 premium reserve required on surety bonds under AS 21.18.050, the
5 department may require a surety insurer or limited surety insurer to
6 set up and maintain a reserve on all bail bonds or other single premi-
7 um bonds without a definite expiration date, furnished in judicial
8 proceedings, equal to 25 percent of the total consideration charged
9 for the bonds that are outstanding as of the date of a current finan-
10 cial statement of the insurer.

11 * Sec. 27. AS 21.18.120(a) is amended to read:

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

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

17 (2) if purchased above or below par, on the basis of the
18 purchase price with amortization of bond premium or discount [ADJUST-
19 ED] to bring the value to par at maturity and yield in the meantime
20 the effective rate of interest at which the purchase was made, or
21 instead [IN LIEU] of this method, according to another [AN] accepted
22 method of valuation approved by the director;

23 (3) the purchase price may not [SHALL] in any [NO] case be
24 taken at a higher figure than the actual market value at the time of
25 purchase, plus actual brokerage, transfer, postage or express charges
26 paid in the acquisition of the securities;

27 (4) unless otherwise provided by valuation established or
28 approved by the director, [NO] security may not [SHALL] be carried at
29 or above the call price for the entire issue during any period within

1 which the security may be called.

2 * Sec. 28. AS 21.18 is amended by adding a new section to read:

3 Sec. 21.18.900. DEFINITIONS. In this chapter

4 (1) "admitted asset" means an asset allowed by AS 21.18.010
5 to be included in the determination of the financial condition of a
6 domestic or foreign insurer or the United States branch of an alien
7 insurer;

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

9 (3) "controlling" or "controlled" has the meaning given in
10 AS 21.22.200 and includes a person that individually, or in combina-
11 tion with other persons, owes to the insurer an amount that exceeds 50
12 percent of the insurer's total premiums in the course of collection as
13 stated on the insurer's financial statement;

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

16 (5) "ledger asset" means an asset recorded on the general
17 ledger of an insurer;

18 (6) "nonadmitted assets" means an asset recorded on the
19 insurer's ledger that is not allowed by AS 21.18.010 to be included in
20 the determination of the financial condition of a domestic or foreign
21 insurer or the United States branch of an alien insurer;

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

24 (8) "solvent" means able to satisfy all current and future
25 obligations and operate as an ongoing entity.

26 * Sec. 29. AS 21.21.020(c) is amended to read:

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

1 * Sec. 30. AS 21.21.030(c) is amended to read:

2 (c) This chapter does not prohibit the acquisition by an insurer
3 of other or additional securities or property if received as a divi-
4 dend or as a lawful distribution of assets, or, subject to (d) of this
5 section, under a lawful and bona fide agreement of bulk reinsurance,
6 merger, or consolidation. An acquired investment [SO ACQUIRED] that
7 is not otherwise eligible under this chapter or subject to (d) of this
8 section shall be disposed of under AS 21.21.300, if personal property
9 or securities, or under AS 21.21.290, if real property.

10 * Sec. 31. AS 21.21.030 is amended by adding new subsections to read:

11 (d) A bona fide agreement of bulk reinsurance, merger, or con-
12 solidation in which the consideration received is comprised of assets,
13 25 percent or more of which, as valued under AS 21.18, are ineligible
14 under this chapter, requires the specific written approval of the
15 director before the agreement is entered.

16 (e) The director may, at any time, order the immediate disposi-
17 tion of any or all of the ineligible assets received, or may order the
18 reversal of the agreement of bulk reinsurance, merger, or consolida-
19 tion, or may order other action that the director considers appro-
20 priate under the circumstances.

21 * Sec. 32. AS 21.21.050 is amended to read:

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

25 (1) [ONE PERSON:] an insurer may not, except with the
26 consent of the director, have [AT ANY ONE TIME] a combination of
27 investments in or loans upon the security of the obligations, proper-
28 ty, or securities of any one person, or insurer, aggregating an amount
29 exceeding five percent of the insurer's assets; this restriction does

1 not apply to

2 (A) general obligations of the United States; [OF
3 AMERICA] or

4 (B) general obligations of a state of the United
5 States that is not insolvent and whose securities are not then in
6 default; or

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

8 (2) [VOTING STOCK:] an insurer may not invest in or hold at
9 any one time more than 10 per cent of the outstanding voting stock of
10 a corporation, except with the consent of the director given with
11 respect to voting rights of preference stock during default of divi-
12 dends; this paragraph [PROVISION] does not apply to stock of a wholly-
13 owned subsidiary of the insurer or to controlling stock of an insurer
14 acquired under AS 21.21.170;

15 (3) [MINIMUM CAPITAL:] an insurer, other than title insur-
16 er, shall invest and maintain invested funds in an amount not less [IN
17 AMOUNT] than the higher of

18 (A) the minimum basic capital for stock insurers or
19 basic guarantee surplus for mutual insurers and additional sur-
20 plus for both stock and mutual insurers [PAID-IN CAPITAL STOCK]
21 required under AS 21.09.070; or

22 (B) 50 percent of the total capital and surplus shown
23 on the most recent statement of the insurer's financial condition
24 as filed with the director under AS 21.09.200 [THIS TITLE OF A
25 DOMESTIC STOCK INSURER TRANSACTING LIKE KINDS OF INSURANCE,] only
26 in

27 (i) cash;

28 (ii) the fully insured portion of bank deposits
29 when the insurance is provided by a solvent agency of the United

1 States government or by collateral in the form of the securities
2 provided for under AS 21.21.060 and 21.21.080; or

3 (iii) [AND] the securities provided for under
4 AS 21.21.060 and [,] 21.21.080 [AND 21.21.260];

5 (4) [LIFE INSURANCE RESERVES:] a life insurer shall [ALSO]
6 invest and keep invested its funds in an amount not less than the
7 reserves under its life insurance policies and annuity contracts,
8 other than variable annuities, in force, in cash or [AND/OR] the
9 securities or investments provided for under this chapter;

10 (5) [CORPORATE OBLIGATIONS:] except with the director's
11 written consent, an insurer may not have invested at any one time more
12 than 20 per cent of its assets in the class of securities described in
13 AS 21.21.140, exclusive of obligations of public utilities;

14 (6) [COMMON STOCKS:] an insurer may invest and have invest-
15 ed at any one time in aggregate amount not more than 10 per cent of
16 its assets in all stocks under AS 21.21.160, 21.21.170₁ and 21.21.200₁,
17 except with the director's written consent; determination of the
18 amount that [WHICH] an insurer has invested in common stocks for the
19 purposes of this paragraph is [SHALL BE] based on the cost of the
20 stocks to the insurer; this paragraph does not apply to stock of a
21 controlled or subsidiary insurance corporation or other corporation
22 held under AS 21.21.170 and 21.21.180;

23 (7) [MISCELLANEOUS:] except with the director's written
24 consent, an insurer may not have invested at any one time more than 10
25 percent of its assets in any one of the class of securities described
26 in [ANY ONE OF THE FOLLOWING SECTIONS:] AS 21.21.100, 21.21.150₁ [AND]
27 21.21.190₁ or 21.21.250(c) [;

28 (8) OTHER SPECIFIC LIMITS: LIMITS IN INVESTMENTS IN THE
29 CATEGORY OF REAL ESTATE ARE AS PROVIDED IN AS 21.21.280; AND OTHER

1 SPECIFIC LIMITS APPLY AS STATED IN THE SECTIONS DEALING WITH OTHER
2 RESPECTIVE KINDS OF INVESTMENTS].

3 * Sec 33. AS 21.21.080 is amended to read:

4 Sec. 21.21.080. STATE, COUNTY, MUNICIPAL, AND SCHOOL OBLIGA-
5 TIONS. An insurer may invest in bonds or other evidences of indebt-
6 edness that are general obligations of [, OR ARE SECURED BY PLEDGE OR
7 SPECIFIC REVENUES BY,] this state or of another state of the United
8 States or of a province of Canada, or of a political subdivision or
9 all other taxing districts of these states or provinces, if the state
10 or province

11 (1) is not insolvent;

12 (2) has the power to levy taxes for the prompt payment of
13 the principal and interest of the obligations; and

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

16 * Sec. 34. AS 21.21.130 is amended to read:

17 Sec. 21.21.130. [INTER-AMERICAN] DEVELOPMENT BANKS [BANK]. An
18 insurer may invest in obligations issued, assumed, or guaranteed by
19 the Inter-American Development Bank, the African Development Bank, or
20 the Asian Development Bank, if the bank is solvent and not in default
21 in the payment of principal or interest on any of its direct, general
22 obligations at the date of the investment.

23 * Sec. 35. AS 21.21.140(a) is amended to read:

24 (a) An insurer may invest in bonds, debentures, notes, and other
25 evidences of indebtedness issued, assumed, or guaranteed by a solvent
26 domestic debtor institution not in default in the payment of principal
27 or interest on any of its direct, general obligations on the date of
28 the investment, if the bond, debenture, note, or other evidence of
29 indebtedness [EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA

1 OR OF CANADA, OR OF A STATE OR PROVINCE, WHICH IS NOT IN DEFAULT AS TO
2 PRINCIPAL OR INTEREST AND WHICH] is secured by adequate collateral and
3 bears fixed interest and if during each of any three, including either
4 of the last two, of the five fiscal years preceding the date of acqui-
5 sition by the insurer, the net earnings of the domestic debtor [ISSU-
6 ING, ASSUMING OR GUARANTEEING] institution available for its fixed
7 charges [, DEFINED IN (d) OF THIS SECTION,] have been not less than
8 one and one-quarter times the total of its charges for that year. In
9 determining the adequacy of collateral security, not more than one-
10 third of the total value of the required collateral may consist of
11 common stock.

12 * Sec. 36. AS 21.21.140(b) is amended to read:

13 (b) An insurer may invest in secured and unsecured obligations
14 of domestic debtor [THESE] institutions, other than the obligations in
15 (a) of this section, bearing interest at a fixed rate, with mandatory
16 principal and interest due at specified times, if the net earnings of
17 the domestic debtor [ISSUING, ASSUMING OR GUARANTEEING] institution
18 available for its fixed charges for a period of five fiscal years
19 immediately preceding the date of acquisition by the insurer have
20 averaged per year not less than one and one-half times its average
21 annual fixed charges applicable to that period and if during either of
22 the last two years of that period the net earnings have been not less
23 than one and one-half times its fixed charges for the year.

24 * Sec. 37. AS 21.21.140(c) is amended to read:

25 (c) An insurer may invest in adjustment, income, or other con-
26 tingent interest obligations of domestic debtor [THESE] institutions
27 if the net earnings of the domestic debtor [ISSUING, ASSUMING OR
28 GUARANTEEING] institution available for its fixed charges for a period
29 of five fiscal years immediately preceding the date of acquisition by

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

7 * Sec. 38. AS 21.21.140(d) is repealed and reenacted to read:

8 (d) In this section, "domestic debtor" means an institution
9 existing under the laws of the United States or Canada, or a state of
10 the United States or a province of Canada.

11 * Sec. 39. AS 21.21.150 is amended to read:

12 Sec. 21.21.150. PREFERRED OR GUARANTEED STOCK. An insurer may
13 invest in preferred or guaranteed stocks or shares of a solvent insti-
14 tution, not in default on any of its obligations, existing under the
15 laws of the United States [OF AMERICA] or [OF] Canada, or of a state
16 of the United States or province of Canada [THEREOF], if all of the
17 prior obligations and prior preferred stocks, if any, of the institu-
18 tion at the date of acquisition of the investment by the insurer are
19 eligible as investments under this chapter and if the net earnings of
20 the institution available for its fixed charges during each of the
21 last two fiscal years immediately preceding the date of acquisition of
22 the investment by the insurer have been, and during each of the last
23 five fiscal years immediately preceding the date of acquisition of the
24 investment by the insurer have averaged, not less than one and one-
25 half times the sum of its average annual fixed charges, if any, its
26 average annual maximum contingent interest, if any, and its average
27 annual preferred dividend requirements whether the dividends are
28 cumulative or noncumulative and whether paid or not. [FOR THE PUR-
29 POSES OF THIS SECTION THE COMPUTATION SHALL REFER TO THE FISCAL YEARS

1 IMMEDIATELY PRECEDING THE DATE OF ACQUISITION OF THE INVESTMENT BY THE
2 INSURER, AND THE TERM "PREFERRED DIVIDEND REQUIREMENT" MEANS CUMULA-
3 TIVE OR NONCUMULATIVE DIVIDENDS, WHETHER PAID OR NOT].

4 * Sec. 40. AS 21.21.160 is amended to read:

5 Sec. 21.21.160. COMMON STOCKS. An insurer may invest in nonas-
6 sessable common stocks, other than insurance stocks, of a solvent
7 corporation, not in default on any of its obligations, existing under
8 the laws of the United States [OF AMERICA] or [OF] Canada, or a state
9 of the United States or province of Canada [THEREOF], if cash or stock
10 dividends have been earned and paid on its common stock in each of the
11 five fiscal years preceding the acquisition; and if, [FURTHER,] all
12 prior obligations or preference stock of the corporation, if any, are
13 eligible for investment under this chapter. If the issuing corpora-
14 tion has not been in legal existence for the whole of the five preced-
15 ing fiscal years but was formed as a consolidation or merger of two or
16 more businesses, the test of eligibility for investment of its common
17 stock under this section is [SHALL BE] be based upon consolidated
18 [CONSOLIDATION] pro forma statements of the predecessor or constituent
19 institutions.

20 * Sec. 41. AS 21.21.170(a) is amended to read:

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

25 * Sec. 42. AS 21.21.190 is amended to read:

26 Sec. 21.21.190. EQUIPMENT TRUST CERTIFICATES. An insurer may
27 invest in equipment trust obligations or [OF] certificates adequately
28 secured and evidencing an interest in transportation equipment, wholly
29 or in part within the United States, if the [OF AMERICA, WHICH]

1 obligations or certificates carry the right to receive determined
2 portions of rental, purchase, or other fixed obligatory payments to be
3 made for the use or purchase of the transportation equipment.

4 * Sec. 43. AS 21.21 is amended by adding a new section to read:

5 Sec. 21.21.245. POOLED INVESTMENTS. (a) An insurer may invest
6 in the securities of eligible pooled investment companies, if 90
7 percent of the assets of the pooled investment companies would other-
8 wise be eligible for investment under AS 21.21.060, 21.21.150, 21.21.-
9 160, 21.21.200, 21.21.225, or 21.21.230, if the investments were not
10 held in a pooled investment format.

11 (b) In determining adherence to the limits established under
12 AS 21.21.050, the pooled investments are measured as if the insurer
13 held pro rata the investments of the pooled investment company.

14 * Sec. 44. AS 21.21.270(b) is amended to read:

15 (b) Before the acquisition of a chattel mortgage under this
16 section, items of property to be included shall be separately apprais-
17 ed by a qualified independent appraiser and the fair market value
18 determined. A chattel mortgage loan may not exceed in amount the same
19 ratio of loan to the value of the property that is applicable to the
20 companion loan on the real property.

21 * Sec. 45. AS 21.21.270(c) is amended to read:

22 (c) This section does not prohibit an insurer from taking liens
23 on personal property

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

26 (2) to improve an insurer's collection efforts or security
27 concerning an investment either eligible or ineligible under this
28 chapter.

29 * Sec. 46. AS 21.21.280 is amended to read:

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

4 (1) the land and the buildings on the land in which it has
5 its principal office [,] and the other real estate that is required
6 [REQUISITE] for its convenient accommodation in the transaction of its
7 business; except that the aggregate investment under this paragraph
8 may not exceed 10 percent of the insurer's admitted assets as shown on
9 the insurer's most recent statement of financial condition as filed
10 with the director under AS 21.09.200 unless otherwise authorized by
11 the director;

12 (2) with the prior approval of the director, a parcel of
13 real estate acquired under (1) of this section may include excess
14 space for rent to others if it is reasonably anticipated that the
15 excess is required in order to have a building that will be a viable
16 economic unit;

17 (3) real estate acquired in satisfaction of loans, mort-
18 gages, liens, judgments, decrees, or debts previously owing to the
19 insurer in the course of its business;

20 (4) [(3)] real estate acquired in part payment of the
21 consideration on the sale of other real estate owned by the insurer
22 [IT], if the transaction does not increase the insurer's investment in
23 real estate;

24 (5) [(4)] real estate acquired by gift or devise [,] or
25 through merger, consolidation, or bulk reinsurance of another insurer
26 under this title;

27 (6) [(5)] the seller's interest in real property subject to
28 an agreement of purchase or sale, but the sum invested in a parcel of
29 real estate may [SHALL] not exceed three-fourths of the market value

1 of the parcel if [PROVIDED] it consists of one or two family residen-
2 tial property, or [AND] two-thirds of the market value of all other
3 parcels of real estate;

4 (7) [(6)] real estate, or any interest in real estate
5 acquired or held by purchase, lease, or otherwise, other than real
6 estate to be used primarily for agricultural purposes, ranching,
7 [RANCH] mining, development of oil or mineral resources, or recrea-
8 tional, amusement, or club purposes, [ACQUIRED AS AN INVESTMENT] for
9 the production of income, and other than real estate described in (1)
10 of this section, that is situated in any state of the United States,
11 and the construction of improvements upon it, on the following condi-
12 tions:

13 (A) the prior approval of the director has been ob-
14 tained; the director shall give approval on a showing by the
15 insurer that

16 (i) the insurer has adequate assets available for
17 the long-term investment and the interests of the insurer's
18 policyholders will not be jeopardized by it;

19 (ii) the investment will not exceed the reasonable
20 value of the property or of the interest in it that the
21 insurer proposes to acquire;

22 (iii) there is a reasonable probability of occupan-
23 cy of the property sufficient to make the investment profit-
24 able; and

25 (iv) there is reasonable cause to believe that the
26 insurer will be in compliance with the provisions of this
27 subparagraph over the entire period that the insurer owns
28 the property;

29 (B) the insurer must own the entire property, except

1 that it may share ownership with one or more insurers authorized
2 to do business in the state under agreements that will assure
3 concerted action in management and control of the property in
4 case of the insolvency of a participating insurer, and if each
5 investment made under this subparagraph by the insurer and by
6 each participating insurer is not less than \$250,000 unless prior
7 written approval is obtained from the director;

8 (C) the insurer, alone or in conjunction with partici-
9 pants qualified under (B) of this paragraph, may let contracts
10 for construction and pay costs of construction and leasing, hold,
11 maintain, lease, and manage the property, collect rents and other
12 income from it, and sell the property in whole or in part;

13 (D) the property may be encumbered by leases to ten-
14 ants and by rights-of-way, easements, mineral reservations,
15 building restrictions, and restrictive covenants, if

16 (i) the encumbrances do not interfere substan-
17 tially with the use of the property or result in a forfei-
18 ture of the property; or

19 (ii) a policy of title insurance, equal in amount
20 to the cost of the property, issued by a responsible title
21 insurer qualified to do business in the state in which the
22 property is located, insures the insurer against loss or
23 damage arising from such encumbrances or reversionary
24 rights;

25 (E) [OR ACQUIRED TO BE IMPROVED OR DEVELOPED FOR SUCH
26 INVESTMENT PURPOSES UNDER AN EXISTING PROGRAM; THE INSURER MAY
27 HOLD, IMPROVE, DEVELOP, MAINTAIN, MANAGE, LEASE, SELL, AND CONVEY
28 REAL ESTATE ACQUIRED BY IT UNDER THIS PARAGRAPH;] an insurer may
29 not, except with the director's written consent, have at any one

1 time invested in real estate [UNDER THIS PARAGRAPH] an amount
2 exceeding five percent of its admitted assets;

3 (8) [(7)] additional real estate and equipment incident to
4 real estate, if necessary or convenient for the purpose of enhancing
5 the sale or other value of real estate previously acquired or held by
6 the insurer under (3) - (5) or (7) [(2) - (4), OR (6)] of this sec-
7 tion; the real estate and equipment shall be included together with
8 the real estate that is enhanced [FOR THE ENHANCEMENT OF WHICH IT WAS
9 ACQUIRED], for the purpose of applicable investment limits, and are
10 [SHALL BE] subject to disposal at the same time and under the same
11 conditions as those applying to the enhanced real estate under AS 21.-
12 21.290;

13 (9) [(8)] except with the director's consent, all real
14 estate owned by the insurer [UNDER THIS SECTION], except the seller's
15 interest specified in (6) [(5)] of this section, may not at any one
16 time exceed 15 percent of the insurer's assets.

17 * Sec. 47. AS 21.21.290(b) is amended to read:

18 (b) Except as provided in (c) of this section, the insurer shall
19 dispose of real estate acquired under AS 21.21.280(3) - (5) [AS 21.-
20 21.280(2)-(4)], within five years after the date of acquisition.

21 * Sec. 48. AS 21.21.310(a) is amended to read:

22 (a) Real estate, personal property, or securities lawfully
23 acquired and held by an insurer after expiration of the period for
24 disposal of them or any extension of the period granted by the direc-
25 tor, as provided in AS 21.21.290 and 21.21.300, may not be allowed as
26 admitted asset of the insurer.

27 * Sec. 49. AS 21.21 is amended by adding new sections to read:

28 Sec. 21.21.350. INVESTMENT TRANSACTIONS WITH AFFILIATED OR
29 CONTROLLING PERSONS. (a) Except as provided in this section or

1 AS 21.21.180, an insurer may not

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

4 (2) purchase from an affiliated party an otherwise eligible
5 investment; or

6 (3) use the services of a broker or commissioned sales
7 agent who is an affiliated or controlling person in securing an other-
8 wise eligible investment without first fulfilling the obligations
9 imposed under this section.

10 (b) Before completing investment activities with or through
11 affiliated or controlling persons, an insurer shall fully disclose and
12 document in writing to its board of directors and the committee au-
13 thorized by the board and charged with the supervision or making of
14 the investment or loan involved, the material facts concerning the
15 affiliation or circumstances of control. An insurer may not complete
16 an investment activity with or through affiliated or controlling
17 persons, unless the board of directors by specific board action,
18 authorizes the transaction and concludes that the transaction complies
19 with (c) and (d) of this section. The vote of the board authorizing
20 the transaction must be recorded in the minutes, on a member-by-member
21 basis, and must indicate each vote approving, disapproving, or ab-
22 staining on the transaction.

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

27 (d) The insurer's board of directors is responsible for de-
28 termining that the transfer prices are at current market and determin-
29 ing the commercial reasonableness of the transactions with affiliated

1 or controlling persons. The board of directors may rely on indepen-
2 dent third-party experts in making its determination.

3 (e) This section does not apply to policy loans or in circum-
4 stances in which the financial interest of the affiliated or control-
5 ling party is only nominal or so remote as not to give rise to a
6 conflict of interest.

7 Sec. 21.21.355. CERTAIN DEPOSITS NOT PROHIBITED. This chapter
8 does not prevent the board of directors of an insurer from depositing
9 securities

10 (1) with a committee appointed for the purpose of protect-
11 ing the interests of policyholders;

12 (2) with the authorities of a state or country in which it
13 is necessary to do so in order to secure permission to transact its
14 appropriate business; or

15 (3) as collateral for the securing of a bond required for
16 the business of the insurer.

17 Sec. 21.21.360. OPTIONS AND FUTURES CONTRACTS. (a) With the
18 prior written approval of the director of a policy of hedging under-
19 taken to reduce an insurer's risk from market fluctuations or the
20 effect of inflation, and adoption in writing of the policy by an
21 insurer's board of directors, an insurer may invest in options and
22 futures contracts.

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

25 (1) for hedges of items carried at amortised cost:

26 (A) options owned are valued at the premium paid to
27 purchase the option;

28 (B) options sold must have the proceeds reserved at
29 full value until the option either expires, is exercised, or a

1 closing transaction has been effected;

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

6 (D) unrealized gains or losses over the life of the
7 option are deferred until the ultimate disposition occurs; at
8 disposition, if the hedge was effective, the gain or loss is
9 recognized as an adjustment to the basis of the hedged item
10 acquired and amortized into income over the remaining life of the
11 hedged item, or deducted from the consideration received for the
12 security sold; if the hedge was not effective and the option
13 expires or is terminated through a closing transaction, the gain
14 or loss is recognized on the date of expiration or termination;

15 (E) for effective hedges, that are impractical to
16 match against specific hedged assets or liabilities, an insurer
17 not wishing to use the accounting specified in (D) of this para-
18 graph may, at its discretion, recognize the gain or loss of the
19 option upon its disposition;

20 (2) for hedges of items carried at market value:

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

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

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

29 (3) for options acquired or sold not involving a hedging

1 transaction, the cost or other carrying value is not allowed as an
2 admitted asset.

3 (c) Stock options and purchase warrants that are transferable
4 into securities that are not restricted as to transferability are
5 valued as follows, whether or not physically attached to any other
6 security:

7 (1) publicly traded warrants and options, other than ex-
8 change traded, are valued at market value;

9 (2) a warrant or option having no public market that is
10 currently transferable into shares of common stock that have no public
11 market is valued at the difference resulting from the subtraction from
12 the analytically determined value of the stock of the transfer price
13 for the warrant or option;

14 (3) a warrant or option having no public market that is
15 currently transferable into shares of common stock that have a coun-
16 terpart public market but that are themselves restricted is valued at
17 \$1; the warrant or option is not allowed as an admitted asset;

18 (4) a warrant or option that has no public market and for
19 which the first transfer date is subsequent to the date of the state-
20 ment has no value for statement purposes.

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

23 (1) positions in futures contracts are initially valued at
24 the amount of a cash deposit, if any, placed with a broker;

25 (2) gains or losses on futures contracts that insurers are
26 permitted to defer are to be added, in the case of losses, or deduct-
27 ed, in the case of gains, to the basis of the contract;

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

29 (A) gains or losses may be deferred until the earliest

1 of the completion of the hedging transaction or the determination
2 that the anticipated transaction will no longer take place;

3 (B) if, during the life of the hedge, the futures
4 contract is no longer effective as a hedge, deferral accounting
5 ceases and a gain or loss is recognized to the extent that the
6 futures results have not been offset by the effects of price or
7 interest rate changes on the hedged item;

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

11 (D) upon completion of the hedging transaction, the
12 deferred gains or losses are added to the basis of the hedged
13 item;

14 (E) upon completion of the hedging transaction, if it
15 is impractical to match gains or losses to specific hedged assets
16 or liabilities, an insurer not wishing to use the accounting
17 method specified in (D) of this paragraph may recognize the
18 previously deferred gains or losses upon completion of the hedg-
19 ing transaction;

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

22 (5) for futures contracts not involved hedging transac-
23 tions, gains or losses are recognized currently.

24 (e) The cost of or other carrying value of warrants or options
25 exercisable into securities that are restricted as to transferability,
26 and the restricted securities into which they are transferable, are
27 not allowed as admitted assets.

28 (f) Without the express, written permission of the director
29 before a change, the alternative methods of adjusting the hedged item

1 or recognizing gains or losses at disposition as described in this
2 section must be consistently applied from period-to-period for a
3 particular type of hedging program. Appropriate disclosures shall be
4 made as to whether one or both methods are used and the basis for
5 determining the method or methods used.

6 * Sec. 50. AS 21.21.600 is amended to read:

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

8 In this chapter, unless the context requires otherwise,

9 (1) "affiliated" has the meaning given in AS 21.22.200;

10 (2) "assets" means assets that are allowable assets under
11 AS 21.18.010;

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

18 (4) "control" and "controlling" have the meaning given in
19 AS 21.22.200;

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

1 written everywhere in the United States for the three year or lesser
2 period, as reported in its three most recent annual statements;

3 (6) "durable equipment" means only mechanical refrigera-
4 tors, air conditioning equipment, mechanical laundering machines,
5 heating and cooking stoves and ranges; in the case of apartment
6 houses, motels, and hotels, "durable equipment" includes room furni-
7 ture and furnishings;

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

11 (8) "independent" means not affiliated or not controlled;

12 (9) "most recent statement of financial condition" means
13 the annual report or quarterly report most recently filed under
14 AS 21.09.200 and 21.09.205;

15 (10) "net earnings available for fixed charges" means net
16 income after deducting operating and maintenance expenses, taxes other
17 than federal income taxes, depreciation, and depletion, excluding
18 extraordinary nonrecurring items of income or expenses appearing in
19 the regular financial statement of an issuing, assuming, or guarantee-
20 ing institution;

21 (11) "options and futures contracts" means a put or call
22 option on underlying common stocks, debt instruments, and stock in-
23 dices, other stock options, purchase warrants, and financial futures
24 contracts;

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

1 (13) "preferred dividend requirement" means cumulative or
2 noncumulative dividends, whether paid or not;

3 (14) "savings and loan" means an organization organized
4 under the laws of a state that has qualified for the insurance protec-
5 tion provided by the Federal Savings and Loan Insurance Corporation;

6 (15) "solvent agency of the United States government" means
7 an agency of the government of the United States whose assets exceed
8 its liabilities, and that has not been defined as insolvent by the
9 director for purposes of administering this chapter;

10 (16) "solvent institution or person or company" means an
11 institution, person, or company whose assets exceed its liabilities
12 and that has not been defined as insolvent by the director for pur-
13 poses of administering this chapter.

14 * Sec. 51. AS 21.34.040(c) is amended to read:

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

17 (1) a foreign but nonalien stock insurer may qualify under
18 this subsection if it has the [A] minimum unimpaired basic capital and
19 additional surplus equal to that required in its domiciliary jurisdic-
20 tion, or maintains [\$1,500,000 ON SEPTEMBER 18, 1984, \$2,500,000 ON
21 JUNE 20, 1985, \$3,500,000 ON JUNE 20, 1986, AND] \$5,000,000 as of [ON]
22 June 20, 1987, \$6,000,000 as of December 31, 1990, \$10,000,000 as of
23 December 31, 1991, \$12,500,000 as of December 31, 1992, and
24 \$15,000,000 as of December 31, 1993, whichever is greater;

25 (2) a foreign but nonalien mutual insurer, a reciprocal
26 insurer, or a mutual protection and indemnity association may qualify
27 under this subsection if it has the minimum unimpaired basic surplus
28 and additional surplus equal to that required in its domiciliary
29 jurisdiction or maintains \$6,000,000 as of December 31, 1990.

1 \$10,000,000 as of December 31, 1991, \$12,500,000 as of December 31,
2 1992, and \$15,000,000 as of December 31, 1993, whichever is greater;

3 (3) an alien insurer may qualify under this subsection if
4 it meets the minimum [CAPITAL AND SURPLUS] requirements in (1) or (2)
5 of this subsection and maintains in the United States an irrevocable
6 trust fund in either a national bank or a member of the Federal Re-
7 serve System [SYSTEM], in an amount not less than \$2,500,000, as
8 security to the full amount [\$1,500,000], for the protection of all
9 its policyholders and creditors of each member of the mutual insurer,
10 reciprocal insurer, or mutual protection and indemnity association in
11 the United States; the trust fund must consist of instruments of
12 substantially the same character and quality as those that are eligi-
13 ble investments for the capital and statutory reserves of admitted
14 insurers authorized to write like kinds of insurance in this state or
15 of irrevocable, clean, and unconditional letters of credit; the trust
16 fund must have an expiration [EXPIRY] date that at no time is less
17 than five years;

18 (4) [(3)] a Lloyd's or other similar unincorporated group
19 of alien individual insurers may qualify if it maintains a trust fund
20 in an amount not less than \$50,000,000, as security to the full
21 amount, for the protection of all its policy holders and creditors of
22 each member of the group in the United States; the trust fund must
23 consist of instruments of substantially the same character and quality
24 as those that are eligible investments for the capital and statutory
25 reserves of admitted insurers authorized to write like kinds of insur-
26 ance in this state or of irrevocable, clean, and unconditional letters
27 of credit; the trust fund must have an expiration date that at no time
28 is less than five years;

29 (5) [OF NOT LESS THAN \$50,000,000 AS SECURITY TO THE FULL

1 AMOUNT, FOR ALL POLICY HOLDERS AND CREDITORS IN THE UNITED STATES, OF
2 EACH MEMBER OF THE GROUP; (4)] an "insurance exchange" created by the
3 laws of individual states may qualify if it maintains capital and
4 surplus, or the substantial equivalent, of not less than \$50,000,000
5 [\$15,000,000] in the aggregate; for insurance exchanges that maintain
6 funds for the protection of all insurance exchange policyholders, each
7 individual syndicate shall maintain minimum capital and surplus, or
8 the substantial equivalent, of not less than \$3,000,000; in the event
9 the insurance exchange does not maintain funds for the protection of
10 all its policyholders, each individual syndicate shall meet the mini-
11 mum [CAPITAL AND SURPLUS] requirements of (1) or (2) of this sub-
12 section.

13 * Sec. 52. AS 21.36 is amended by adding a new section to read:

14 Sec. 21.36.365. IMMUNITY FOR REPORTS ON FRAUD. (a) A person is
15 not liable for civil damages for filing a report with or furnishing
16 other information whether written or oral, concerning suspected,
17 anticipated, or completed fraudulent acts to

18 (1) law enforcement officials, their agents and employees;
19 (2) the National Association of Insurance Commissioners,
20 the division of insurance, an agency in a state that regulates insur-
21 ance, or an organization established to detect and prevent fraudulent
22 insurance acts, their agents, employees, or designees.

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

25 * Sec. 53. AS 21.66.080 is amended to read:

26 Sec. 21.66.080. ANNUAL STATEMENT. Every corporation, on or
27 before March 1 [MARCH 2] of each year, shall furnish the director a
28 sworn statement of assets and liabilities, and of all title premiums
29 received by it during the preceding calendar year, setting out among

1 other things that three percent of all gross premiums on title insur-
2 ance policies issued by it during the year₁ covering property in this
3 state₁ have been set aside and held by it in an account known as the
4 Title Insurance Unearned Premium Reserve Fund₁ as provided in this
5 chapter. The reporting format for a given year is the most recently
6 approved National Association of Insurance Commissioners' Annual
7 Financial Statement blank form and instructions, supplemented for
8 additional information as required by the director. The director may
9 require the statement to be filed on electronic media. The statement
10 must [SHALL] also show [IN THE FORM WHICH MAY BE PRESCRIBED BY THE
11 DIRECTOR] all unpaid losses and claims upon title insurance policies
12 of which the corporation has received due notice in writing from or on
13 behalf of the insured. With the filing of the statement the corpora-
14 tion shall pay a filing fee set under AS 21.06.250.

15 * Sec. 54. AS 21.66.080 is amended by adding a new subsection to read:

16 (b) A domestic title insurance company shall comply with AS 21.-
17 09.200(f).

18 * Sec. 55. AS 21.66 is amended by adding a new section to read:

19 Sec. 21.66.085. QUARTERLY STATEMENT. (a) The director may
20 require an insurer to file quarterly financial statements. If requir-
21 ed, the statements must follow the format specified in AS 21.66.-
22 080(a).

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

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

28 * Sec. 56. AS 21.66.090(b) is amended to read:

29 (b) With the filing of the application₁ the corporation shall

1 pay a fee set under AS 21.06.250 and, in addition, shall pay all
2 [TRAVELING] expenses [OF THE DIRECTOR OR AN AUTHORIZED REPRESENTATIVE
3 OF THE DIRECTOR AND PER DIEM AT THE CURRENT LEVEL FOR STATE EMPLOYEES
4 AT THE LOCATION OF THE EXAMINATION] incurred in examining the appli-
5 cant's title plant or plants, as required by AS 21.06.160.

6 * Sec. 57. AS 21.66.130 is repealed and reenacted to read:

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

10 * Sec. 58. AS 21.69.530(a) is amended to read:

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

20 * Sec. 59. AS 21.78.020 is repealed and reenacted to read:

21 Sec. 21.78.020. COMMENCEMENT OF DELINQUENCY PROCEEDINGS. (a) A
22 delinquency proceeding may not be commenced under this chapter, unless
23 commenced by the director. A court does not have jurisdiction to
24 entertain, hear, or determine a delinquency proceeding commenced by a
25 person other than the director.

26 (b) The director shall commence the proceedings by application
27 to the court for an order directing the insurer to show cause why the
28 director should not have the relief requested. On the return of the
29 order to show cause, and after a full hearing, the court shall either

1 deny the application or grant the application, together with other
2 relief that the nature of the case and the interest of the policyhold-
3 ers, creditors, stockholders, members, subscribers, or the public
4 might require.

5 (c) A court does not have jurisdiction to entertain, hear, or
6 determine a complaint asking for an injunction or restraining order or
7 other relief concerning the dissolution, liquidation, rehabilitation,
8 sequestration, conservation, or receivership of an insurer, other than
9 as provided under this chapter.

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

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

20 (2) served is a reinsurer who has at any time written a
21 policy of reinsurance for an insurer against which a rehabilitation or
22 liquidation order is in effect when the action is commenced, or is an
23 agent or broker of or for the reinsurer, in any action or incident
24 related to the reinsurance contract; or

25 (3) is or has been an officer, manager, trustee, organizer,
26 promoter, or person in a position of comparable authority or influence
27 in an insurer against which a rehabilitation or liquidation order is
28 in effect when the action is commenced, in any action resulting from
29 such a relationship with the insurer.

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

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

7 * Sec. 60. AS 21.78.030 is repealed and reenacted to read:

8 Sec. 21.78.030. INJUNCTIONS AND ORDERS. (a) A receiver ap-
9 pointed in a proceeding under this chapter may at any time apply for,
10 and a court may grant, a restraining order, preliminary or permanent
11 injunction, or other order considered necessary to prevent

12 (1) the transaction of further business;

13 (2) the transfer of property;

14 (3) interference with the receiver or with a proceeding
15 under this chapter;

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

17 (5) dissipation and transfer of bank accounts;

18 (6) the institution or further prosecution of any actions
19 or proceedings;

20 (7) the obtaining of preferences, judgments, attachments,
21 garnishments, or liens against the insurer, its assets, or its policy-
22 holders;

23 (8) the levying of execution against the insurer, its
24 assets, or its policyholders;

25 (9) the making of a sale or deed for nonpayment of taxes or
26 assessments that would lessen the value of the assets of the insurer;

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

29 or

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

5 (b) The receiver may apply to a court outside of the state for
6 the relief described in (a) of this section.

7 (c) A bond may not be required of the director as a prerequisite
8 to issuing an injunction or restraining order under this section.

9 * Sec. 61. AS 21.78.040 is amended by adding new paragraphs to read:

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

15 (12) after demand by the director under AS 21.06.120 or
16 under this chapter, has failed to promptly make available for ex-
17 amination its own property, books, accounts, documents, or other
18 records, or those of a subsidiary or related company within the con-
19 trol of the insurer, or those of a person having executive authority
20 in the insurer so far as they pertain to the insurer;

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

25 (14) has failed to file, within the time allowed by law, its
26 annual report or other financial report required by statute and, after
27 written demand by the director, has failed to give an immediate and
28 adequate explanation.

29 * Sec. 62. AS 21.78.040 is amended by adding a new subsection to read:

1 (b) The director may apply to the court for an order appointing
2 the director as receiver of a domestic insurer, and directing the
3 director to rehabilitate the insurer if

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

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

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

20 * Sec. 63. AS 21.78.090 is amended by adding new subsections to read:

21 (d) An order issued under this section must require an account-
22 ing to the court by the receiver. Accountings must be at the in-
23 tervals that the court specifies in its order.

24 (e) Entry of an order of rehabilitation does not constitute an
25 anticipatory breach of contracts of the issuer.

26 (f) A court in this state before which an action or proceeding
27 is pending in which the insurer is a party or in which the insurer is
28 obligated to defend a party, shall stay the action or proceeding when
29 a rehabilitation order against the insurer is entered. The stay shall

1 be imposed for that period of time necessary for the receiver to
2 obtain proper representation and prepare for further proceedings. The
3 receiver shall take action respecting the pending litigation that the
4 receiver considers necessary in the interests of justice and for the
5 protection of creditors, policyholders, and the public. The receiver
6 shall immediately consider all litigation pending outside this state,
7 and shall petition the courts having jurisdiction over that litigation
8 for stays if necessary to protect the estate of the insurer.

9 (g) A statute of limitations or defense of laches does not run
10 with respect to an action by or against an insurer between the filing
11 of a petition for appointment of a receiver for the insurer and the
12 order granting or denying that petition. An action by or against the
13 insurer that might have been commenced when the petition was filed may
14 be commenced for at least 60 days after the order of rehabilitation is
15 entered or the petition is denied.

16 (h) A guaranty association or foreign guaranty association has
17 standing to appear in a court proceeding concerning the rehabilitation
18 of a domestic insurer if the association is or might become liable to
19 act as a result of the rehabilitation.

20 * Sec. 64. AS 21.78.100 is amended by adding new subsections to read:

21 (c) An order issued under this section must require an account-
22 ing to the court by the receiver. Accountings must be at the in-
23 tervals that the court specifies in its order.

24 (d) Policies, other than life or health insurance or annuities,
25 in effect at the time of issuance of an order of liquidation continue
26 in force only for the lesser of

27 (1) a period of 30 days after the date of entry of the
28 liquidation order;

29 (2) the expiration of the policy coverage;

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

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

6 (e) For purposes of any other provision of law, an order of
7 liquidation terminates policy coverage at the time specified in (d) of
8 this section.

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

13 (g) A policy of life, health insurance, or annuities, and any
14 period of coverage not covered by a guaranty association or foreign
15 guaranty association terminates as provided in (d) and (e) of this
16 section.

17 (h) Upon issuance of an order appointing a receiver of a domes-
18 tic insurer or of an alien insurer domiciled in this state, an action
19 may not be brought against the insurer or receiver, whether in this
20 state or elsewhere, and an existing action may not be maintained or
21 further presented after issuance of an order. A court of this state
22 shall give full faith and credit to an injunction against the receiver
23 or the company, or against the continuation of an existing action
24 against the receiver or the company, if an injunction is included in
25 an order to liquidate an insurer that is issued under corresponding
26 provisions in another state. If, in the receiver's judgment, protec-
27 tion of the estate of the insurer necessitates intervention in an
28 action against the insurer that is pending outside this state, the
29 receiver may intervene in the action. The receiver may defend an

1 action in which the receiver intervenes under this section at the
2 expense of the estate of the insurer.

3 (i) The receiver may, within two years after an order for liq-
4 uidation, or within the additional time that applicable law permits,
5 institute an action or proceeding on behalf of the estate of the
6 insurer if the period of limitation applicable to the action or pro-
7 ceeding fixed by law has not expired at the time of the filing of the
8 petition upon which the liquidation order is entered. If, by agree-
9 ment, a period of limitation is fixed for instituting a suit or pro-
10 ceeding upon a claim, or for filing a claim, proof of claim, proof of
11 loss, demand, or notice, or if in a judicial or other proceeding a
12 period of limitation is fixed, either in the proceeding or by applica-
13 ble law, for taking an action, filing a claim or pleading, or doing an
14 act, and if the period had not expired as of the date of the filing of
15 the petition for liquidation, the receiver may, for the benefit of the
16 estate, take an action or do an act, required of or permitted to the
17 insurer, within a period of 180 days after the entry of an order for
18 liquidation, or within a longer period that is shown to the satisfac-
19 tion of the court not to be unfairly prejudicial to the other party.

20 (j) A statute of limitations or defense of laches does not run
21 with respect to an action against an insurer between the filing of a
22 petition for liquidation against an insurer and the denial of the
23 petition. An action against the insurer that might have been com-
24 menced when the petition was filed may be commenced for at least 60
25 days after the petition is denied.

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

1 * Sec. 65. AS 21.78.130 is amended by adding new subsections to read:

2 (g) If it appears to the receiver that there has been a vio-
3 lation of civil or criminal law, or breach of a contractual or fiduci-
4 ary obligation detrimental to the insurer by an officer, manager,
5 agent, broker, employee, or other person, the receiver may pursue all
6 appropriate legal remedies on behalf of the insurer.

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

22 (i) If the property of the insurer does not contain sufficient
23 cash or liquid assets to defray the costs incurred, the director may
24 advance the costs incurred out of an appropriation to the division for
25 that purpose. Amounts advanced for expenses of administration must be
26 repaid to the state out of the first available money of the insurer.

27 (j) The receiver may

28 (1) hold hearings, subpoena witnesses to compel their
29 attendance, administer oaths, examine a person under oath, and compel

1 a person to subscribe to the person's testimony after it has been
2 correctly reduced to writing, and may require the production of books,
3 papers, records, or other documents that the receiver determines are
4 relevant to the inquiry;

5 (2) remove records and property of the insurer to the
6 offices of the director or to another place that is convenient for the
7 purposes of efficient and orderly execution of the liquidation; a
8 guaranty association or a foreign guaranty association shall be allow-
9 ed reasonable access to the records of the insurer that is necessary
10 for the association to carry out its statutory obligations;

11 (3) intervene in a proceeding, wherever instituted, that
12 might lead to the appointment of a receiver or trustee, and may act as
13 the receiver or trustee if the appointment is offered;

14 (4) enter into agreements with a receiver or commissioner
15 of another state relating to the rehabilitation, liquidation, conser-
16 vation, or dissolution of an insurer doing business in both this state
17 and the other state.

18 * Sec. 66. AS 21.78.170(c) is repealed and reenacted to read:

19 (c) If a claim is denied in whole or in part by the receiver,
20 written notice of the determination shall be given to the claimant or
21 the claimant's attorney by first class mail at the address shown in
22 the proof of claim. An objection by the claimant must be filed with
23 the receiver within 60 days after the date of mailing of the notice.
24 If an objection is not filed, the claimant may not object to the
25 determination.

26 * Sec. 67. AS 21.78.170(d) is repealed and reenacted to read:

27 (d) If an objection is filed with the receiver and the receiver
28 does not alter the denial of the claim as a result of the objection,
29 the receiver shall ask the court for a hearing as soon as practicable

1 and give notice of the hearing by first class mail to the claimant or
2 the claimant's attorney and to any other person directly affected, not
3 less than 10 nor more than 30 days before the date of the hearing.

4 * Sec. 68. AS 21.78.170 is amended by adding new subsections to read:

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

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

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

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

25 * Sec. 69. AS 21.78.180(d) is repealed and reenacted to read:

26 (d) The determination of the value of a security held by a
27 secured creditor shall be under the supervision and control of the
28 court, with due regard for recommendations made by the receiver. The
29 value determined must be credited upon the secured claim, and a

1 deficiency must be treated as an unsecured claim. If the claimant
2 surrenders the security to the receiver, the entire claim shall be
3 allowed as if unsecured. The value of a security held by a secured
4 creditor must be determined in one of the following ways, as the court
5 directs:

6 (1) by converting the security into money according to the
7 terms of the agreement under which the security was delivered to the
8 creditor; or

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

11 * Sec. 70. AS 21.78.180 is amended by adding a new subsection to read:

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

26 * Sec. 71. AS 21.78.200(a) is amended to read:

27 (a) AS 21.78.020, 21.78.030, 21.78.130 - 21.78.190 and AS 21.-
28 78.330(2) - (5) [21.78.330(1) - (5)] and (7) - (13) constitute and may
29 be referred to as the Uniform Insurers Liquidation Act.

1 * Sec. 72. AS 21.78.250 is repealed and reenacted to read:

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

20 (b) A transfer

21 (1) of property other than real property is considered to
22 be made when it becomes so far perfected that no subsequent lien
23 obtainable by legal or equitable proceedings on a simple contract
24 could become superior to the rights of the transferee under AS 21.78.-
25 252;

26 (2) of real property is considered to be made when it
27 becomes so far perfected that no subsequent bona fide purchaser from
28 the insurer could obtain rights superior to the rights of the trans-
29 feree;

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

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

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

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

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

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

22 * Sec. 73. AS 21.78 is amended by adding new sections to read:

23 Sec. 21.78.251. FRAUDULENT TRANSFER AFTER PETITION. (a) After
24 a petition for rehabilitation or liquidation has been filed, a trans-
25 fer of the real property of the insurer made to a person acting in
26 good faith is valid against the receiver if made for a present fair
27 equivalent value, or, if not made for a present fair equivalent value,
28 then to the extent of the present consideration actually paid, for
29 which amount the transferee has a lien on the property transferred.

1 The commencement of a proceeding in rehabilitation or liquidation is
2 constructive notice upon the recording of a copy of the petition for,
3 or order of, rehabilitation or liquidation with the recorder of deeds
4 in the jurisdiction where the real property in question is located.
5 The exercise by a court of the United States, or any state or juris-
6 diction, to authorize or effect a judicial sale of real property of
7 the insurer in any county or borough in any state is not impaired by
8 the pendency of a proceeding unless the copy is recorded in the county
9 or borough before the consummation of the judicial sale.

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

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

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

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

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

1 (c) Except as otherwise provided in this section, a transfer by
2 or on behalf of the insurer after the date of the petition for liq-
3 uidation by a person other than the receiver is not valid against the
4 receiver.

5 (d) Nothing in this section impairs the negotiability of curren-
6 cy or negotiable instruments.

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

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

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

21 (2) the transfer was made within the four months before the
22 filing of the petition;

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

27 (4) the creditor receiving it was an officer, or was an
28 employee, attorney, or other person who acted in that capacity whether
29 or not the creditor held such a position, or was a shareholder holding

1 directly or indirectly more than five percent of a class of an equity
2 security issued by the insurer, or was another person, firm, corpora-
3 tion, association, or group of persons with whom the insurer did not
4 deal at arm's length.

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

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

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

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

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

28 (4) not perfected before the filing of a petition for
29 liquidation is considered to be made immediately before the filing of

1 the successful petition.

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

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

9 (2) could become superior to the rights of a transferee, or
10 a purchaser could obtain rights superior to the rights of a transferee
11 within the meaning of (d) of this section, if the consequences would
12 follow only from the lien or purchase itself, or from the lien or
13 purchase followed by a step completely within the control of the
14 respective lienholder or purchaser, with or without the aid of minis-
15 terial action by public officials; a lien could not, however, become
16 superior and a person could not create superior rights for the purpose
17 of (d) of this section through acts subsequent to the obtaining of a
18 lien or subsequent to a purchase that requires the agreement or con-
19 currence of a third party or that requires further judicial action or
20 ruling.

21 (f) A transfer of property for or on account of a new and con-
22 temporaneous consideration that is considered under (d) of this sec-
23 tion to be made after the transfer because of delay in perfecting it,
24 does not become a transfer for or on account of an antecedent debt if
25 acts required by the applicable law to be performed in order to per-
26 fect the transfer against a lien or bona fide purchaser's rights are
27 performed within 21 days, or a period expressly allowed by the law,
28 whichever is less. A transfer to secure a future loan, if a loan is
29 actually made, or a transfer that becomes security for a future loan,

1 has the same effect as a transfer for or on account of a new and
2 contemporaneous consideration.

3 (g) If a lien that is considered voidable under (b) of this
4 section has been dissolved by the furnishing of a bond or other obli-
5 gation, and the bond or other obligation has been indemnified directly
6 or indirectly by the transfer or creation of a lien upon property of
7 an insurer before the filing of a petition under this chapter that
8 results in a liquidation order, the indemnifying transfer or lien is
9 also considered voidable.

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

17 (i) The court has jurisdiction of a proceeding by the receiver
18 to hear and determine the rights of parties under this section.
19 Reasonable notice of a hearing in the proceeding shall be given to all
20 parties in interest, including the obligee of a releasing bond or
21 other like obligation. If an order is entered for the recovery of
22 indemnifying property in kind or for the avoidance of an indemnifying
23 lien, the court, upon application of a party in interest, shall in the
24 same proceeding determine the value of the property or lien, and if
25 the value of the property is less than the amount of the indemnity or
26 the amount of the lien, the transferee or lienholder may elect to
27 retain the property or lien upon payment of its value, as determined
28 by the court, to the receiver, within the time that the court fixes.

29 (j) The liability of a surety under a releasing bond or other

1 obligation shall be discharged to the extent of the value of the
2 indemnifying property recovered or the indemnifying lien avoided by
3 the receiver, or, if the property is retained under (i) of this sec-
4 tion, to the extent of the amount paid to the receiver.

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

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

24 (m) An officer, manager, employee, shareholder, member subscrib-
25 er, attorney, or other person acting on behalf of an insurer, who
26 knowingly participates in giving a preference even though the person
27 has reasonable cause to believe that the insurer is, or is about to
28 become, insolvent at the time of the preference, is personally liable
29 to the receiver for the amount of the preference. It is a rebuttable

1 presumption that a preference was given with reasonable cause to
2 believe the insurer is or is about to become insolvent if the transfer
3 was made within four months before the filing of a successful petition
4 for liquidation.

5 (n) If a person receives property from the insurer, or the
6 benefit of the property, and the preference for the property is found
7 voidable under (b) of this section, the person is personally liable
8 for the value of the property and shall account to the receiver for
9 it.

10 (o) Nothing in (m) or (n) of this section affects any other
11 claim by the receiver against any person.

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

13 (a) A claim of a creditor who has received or acquired a preference,
14 lien, conveyance, transfer, assignment, or encumbrance that is void-
15 able under this chapter, may not be allowed unless the creditor sur-
16 renders the preference, lien, conveyance, transfer, assignment, or
17 encumbrance. If the avoidance is affected by a proceeding in which a
18 final judgment has been entered, the claim may not be allowed unless
19 the money is paid or the property is delivered to the receiver within
20 30 days after the date of the entering of the final judgment, except
21 that the court having jurisdiction over the liquidation may allow
22 further time if there is an appeal or other continuation of the pro-
23 ceeding.

24 (b) A claim allowable under (a) of this section by reason of
25 avoidance, whether voluntary or involuntary, or a preference, lien,
26 conveyance, transfer, assignment, or encumbrance, may be filed as an
27 excused late filing under AS 21.78.290 if filed within 30 days after
28 the date of avoidance, or within the further time allowed by the court
29 under (a) of this section.

1 * Sec. 74. AS 21.78.260 is repealed and reenacted to read:

2 Sec. 21.78.260. PRIORITY OF DISTRIBUTION. The priority of
3 distribution of claims from an insurer's estate is in accordance with
4 the order in which each class of claims is set out in this section.
5 Every claim in each class must be paid in full, or adequate money
6 retained for payment, before the members of the next class may receive
7 payment. A subclass may not be established within a class. The order
8 of distribution of claims is:

9 (1) class 1: the costs and expenses of administration
10 during rehabilitation and liquidation, including the following:

11 (A) the actual and necessary costs preserving or
12 recovering the assets of the insurer;

13 (B) compensation for all services rendered in the
14 rehabilitation and liquidation;

15 (C) any necessary filing fees;

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

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

19 (F) the reasonable expenses of a guaranty association
20 or foreign guaranty association that is handling claims;

21 (2) class 2: reasonable compensation to employees for
22 services performed, to the extent that the claim does not exceed two
23 months of monetary compensation and represents payment for services
24 performed within one year before the filing of the petition for liq-
25 uidation or, if rehabilitation preceded liquidation, within one year
26 before the filing of the petition for rehabilitation; principal offi-
27 cers and directors of the insurer are not entitled to the benefit of
28 this priority except as otherwise approved by the receiver and the
29 court; the priority in this paragraph is in place of any other similar

1 priority that might be authorized by law as to wages or compensation
2 of employees;

3 (3) class 3: all claims under policies, including claims
4 of the federal, or a state or local government, for losses incurred,
5 including third-party claims, and all claims of a guaranty association
6 or foreign guaranty association; all claims under life insurance and
7 annuity policies, whether for death proceeds, annuity proceeds, or
8 investment values, shall be treated as loss claims; that portion of a
9 loss for which indemnification is provided by other benefits or advan-
10 tages recovered by the claimant, may not be included in this class,
11 other than benefits or advantages recovered or recoverable in dis-
12 charge of familial obligations or support, or by way of succession at
13 death, or as proceeds of life insurance, or as gratuities; payment by
14 an employer to an employee may not be treated as a gratuity;

15 (4) class 4: claims under nonassessable policies for
16 unearned premium or other premium refunds and claims of general credi-
17 tors, including claims of ceding and assuming companies under con-
18 tracts of reinsurance;

19 (5) class 5: claims of the federal, or a state or local
20 government, other than claims under (3) of this section; claims,
21 including those of a government body for a penalty or forfeiture,
22 shall be allowed in this class only to the extent of the pecuniary
23 loss sustained from the act, transaction, or proceeding out of which
24 the penalty or forfeiture arose, along with reasonable and actual
25 costs attributable to it; the remaining portion of the claims are in
26 the class of claims set out in (8) of this section;

27 (6) class 6: claims filed late, or any other claims other
28 than claims under (7) and (8) of this section;

29 (7) class 7: surplus or contribution notes, or similar

1 obligations, and premium refunds on assessable policies; payments to
2 members of domestic mutual insurance companies shall be limited in
3 accordance with law;

4 (8) class 8: the claims of shareholders or other owners,
5 in their capacity as shareholders.

6 * Sec. 75. AS 21.78.270 is repealed and reenacted to read:

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

12 (b) A setoff or counterclaim may not be allowed in favor of a
13 person if the obligation of the

14 (1) insurer to the person would not, at the date of the
15 filing of a petition for liquidation, entitle the person to share as a
16 claimant in the assets of the insurer;

17 (2) insurer to the person was purchased by or transferred
18 to the person with a view to its being used as a setoff;

19 (3) person is to pay an assessment levied against the
20 members or subscribers of the insurer, or is to pay a balance upon a
21 subscription to the capital stock of the insurer, or is in any other
22 way in the nature of a capital contribution; or

23 (4) person is to pay premiums, whether earned or unearned,
24 to the insurer.

25 * Sec. 76. AS 21.78 is amended by adding new sections to read:

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

27 (1) agent, broker, premium finance company, or any other
28 person, other than the insured, responsible for the payment of a
29 premium is obligated to pay an unpaid earned premium due the insurer

1 at the time of the declaration of insolvency, as shown on the records
2 of the insurer; neither a credit nor a setoff is allowed to an agent,
3 broker, or premium finance company for an amount advanced to the
4 insurer by the agent, broker, or premium finance company on behalf of,
5 but in the absence of a payment by, the insured;

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

9 (b) If there are grounds for believing that a person has violat-
10 ed this section, the director may initiate proceedings under AS 21.-
11 06.170 - 21.06.230.

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

16 Sec. 21.78.272. REINSURER'S LIABILITY. The amount recoverable
17 by the receiver from reinsurers may not be reduced as a result of
18 delinquency proceedings, regardless of a provision in the reinsurance
19 contract or other agreement. Payment made directly to an insured or
20 other creditor does not diminish the reinsurer's obligation to the
21 insurer's estate unless the reinsurance contract provided for direct
22 coverage of a named insured and the payment was made in discharge of
23 that obligation.

24 * Sec. 77. AS 21.78.280 is repealed and reenacted to read:

25 Sec. 21.78.280. SPECIAL CLAIMS. (a) A contingent and unliq-
26 uidated claim may not share in a distribution of the assets of an
27 insurer that has been adjudicated to be insolvent by an order made
28 under this chapter, except that the claim shall be considered, if
29 properly presented, and may be allowed to share if

1 (1) the claim becomes absolute against the insurer on or
2 before the last day for filing claims against the assets of the insurer;
3 or

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

6 (b) The claim of a third party, that is contingent only on the
7 third party claimant first obtaining a judgment against the insured,
8 shall be considered and allowed as if there were not a contingency.

9 (c) A claim may be allowed even if contingent, if it is filed
10 under AS 21.78.292. It may be allowed and may participate in all
11 distributions declared after it is filed to the extent that it does
12 not prejudice the orderly administration of the liquidation.

13 (d) A claim that is due except for the passage of time shall be
14 treated as an absolute claim is treated, except that the claim may be
15 discounted at the legal rate of interest.

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

21 * Sec. 78. AS 21.78 is amended by adding a new section to read:

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

26 (b) Whether or not the third party files a claim, the insured
27 may file a claim on the insured's own behalf in the liquidation. If
28 the insured fails to file a claim by the date for filing claims specified
29 in the order of liquidation or within 60 days after mailing of

1 the notice required by AS 21.78.290, whichever is later, the insured
2 is an unexcused late filer.

3 (c) The receiver shall make a recommendation to the court under
4 AS 21.78.260 for the allowance of an insured's claim under (b) of this
5 section after consideration of the probable outcome of a pending
6 action against the insured on which the claim is based, the probable
7 damages recoverable in the action, and the probable costs and expenses
8 of defense. After allowance by the court, the receiver shall withhold
9 from the undistributed assets of the insurer as a reserve the amounts
10 payable on the claim, pending the outcome of litigation and nego-
11 tiation with the insured. If appropriate, the receiver may reconsider
12 the claim on the basis of additional information and may amend recom-
13 mendations made to the court. The insured shall be afforded the same
14 notice and opportunity to be heard on all changes in the recommenda-
15 tions as in its initial determination. The court may amend its allow-
16 ance. As claims against the insured are settled or barred, the in-
17 sured shall be paid from the amount withheld the same percentage as
18 was paid on other claims of like property, based on the lesser of (1)
19 the amount actually recovered from the insured by action or paid by
20 agreement plus the reasonable costs and expenses of defense, or (2)
21 the amount allowed on the claims by the court. After all claims are
22 settled or barred, any sum remaining from the amount withheld reverts
23 to the undistributed assets of the insurer. Delay in final payment
24 under this subsection is not a reason for unreasonable delay of the
25 final distribution and discharge of the receiver.

26 (d) If several claims founded upon one policy are filed, whether
27 by third parties or as claims by the insured under this section, and
28 the aggregate allowed amount of the claims to which the same limit of
29 liability in the policy is applicable exceeds that limit, each claim

1 as allowed shall be reduced in the same proportion so that the total
2 amount of the claims equals the policy limit. Claims by the insured
3 shall be evaluated as in (c) of this section. If an insured's claim
4 is subsequently reduced under (c) of this section, the amount avail-
5 able shall be apportioned ratably among the claims that have been
6 reduced under this subsection.

7 (e) A claim may not be presented under this section if it is or
8 might be covered by a guaranty association or foreign guaranty asso-
9 ciation.

10 * Sec. 79. AS 21.78.290 is repealed and reenacted to read:

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

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

18 (2) by first class mail to a guaranty association or a
19 foreign guaranty association that is or that might become obligated as
20 a result of the liquidation;

21 (3) by first class mail to all insurance agents of the
22 insurer;

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

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

1 (b) Notice to potential claimants under (a) of this section must
2 state that a claimant shall file a claim with the receiver, along with
3 the information required by AS 21.78.170(a), on or before the date
4 specified in the notice. The time specified in the notice may not be
5 less than six months after the date the liquidation order was entered.
6 The liquidation need not require a person claiming a cash surrender
7 value or other investment value in life insurance and annuities to
8 file a claim. A claimant has a duty to keep the receiver informed of
9 a change of address.

10 * Sec. 80. AS 21.78 is amended by adding new sections to read:

11 Sec. 21.78.291. DUTIES OF AGENTS. (a) A person who receives
12 notice in the form prescribed in AS 21.78.290 that an insurer that the
13 person represents as an agent is the subject of a liquidation order,
14 shall, within 15 days after receipt of that notice, give written
15 notice of the liquidation order as provided in this section. The
16 notice shall be in writing and shall be sent by first class mail to
17 each policyholder or other person named in a policy issued through the
18 agent by the insurer, at the last address contained in the agent's
19 records. A policy is considered to be issued through an agent if the
20 agent has a property interest in the expiration of the policy, or if
21 the agent has had in the agent's possession a copy of the declarations
22 of the policy at any time during the life of the policy, unless the
23 ownership of the expiration of the policy has been transferred to
24 another. The written notice issued under this section must include
25 the name and address of the insurer, the name and address of the
26 agent, identification of the policy impaired and the nature of the
27 impairment, including termination of coverage as specified in AS 21.-
28 78.100(d) - (g). Notice under this section by a general agent satis-
29 fies the notice requirement for an agent under contract to the general

1 agent. Each agent obligated to give notice under this section shall
2 file a report of compliance with the receiver.

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

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

11 Sec. 21.78.292. FILING OF CLAIMS. (a) Proof of a claim shall
12 be filed with the receiver, in the form required by AS 21.78.170, on
13 or before the last day for filing specified in the notice required
14 under this chapter, except that proof of a claim for cash surrender
15 value or other investment value in life insurance and annuities need
16 not be filed unless expressly required by the receiver.

17 (b) The receiver may, under the following circumstances, permit
18 a claimant who makes a late filing to share in distributions, whether
19 past or future, as if the claim was not late, to the extent that a
20 payment does not prejudice the orderly administration of the liq-
21 uidation:

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

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

28 (3) the valuation under AS 21.78.180(d), of security held
29 by a secured creditor, shows a deficiency, a claim for which is filed

1 within 30 days after the valuation.

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

8 (d) The receiver may consider a claim that is filed late and
9 that is not covered by (b) of this section, and may permit it to
10 receive distributions that are subsequently declared on any claims of
11 the same or lower priority, if the payment does not prejudice the
12 orderly administration of the liquidation. The late-filing claimant
13 shall receive, at each distribution, the same percentage of the amount
14 allowed on the claim as is then being paid to claimants of a lower
15 priority, until the claim has been paid in full.

16 Sec. 21.78.293. RECEIVER'S RECOMMENDATION TO THE COURT. (a)
17 The receiver shall review all claims filed in the liquidation and
18 shall make further investigation that the receiver considers neces-
19 sary. The receiver may compound, compromise, or negotiate the amount
20 for which a claim will be recommended to the court, unless the re-
21 ceiver is required by law to accept a claim as settled by a person or
22 organization, including a guaranty association or foreign guaranty
23 association. As soon as practicable, the receiver shall present to
24 the court a report of the claims against the insurer, along with the
25 receiver's recommendations. The report must include the name and
26 address of each claimant and the amount of the claim finally recom-
27 mended, if any. If the insurer has issued annuities or life insurance
28 policies, the receiver shall report the persons to whom, according to
29 the records of the insurer, amounts are owed as cash surrender values

1 or other investment values, and the amounts owed.

2 (b) The court may approve, disapprove, or modify the receiver's
3 report on claims. Claims in a report that are not modified by the
4 court within a period of 60 days following submission by the receiver
5 shall be treated by the receiver as allowed claims.

6 Sec. 21.78.294. DISTRIBUTION OF ASSETS. Under the direction of
7 the court, the receiver shall distribute assets in a manner that will
8 assure the proper recognition of priorities and a reasonable balance
9 between the expeditious completion of the liquidation and the pro-
10 tection of unliquidated and undetermined claims, including third-party
11 claims. Distribution of assets in kind may be made at valuations set
12 by agreement between the receiver and the creditor, and approved by
13 the court.

14 Sec. 21.78.295. UNCLAIMED AND WITHHELD MONEY. (a) All un-
15 claimed money that is subject to distribution and remains in the
16 receiver's hands when the receiver is ready to apply to the court for
17 discharge, including the amount distributable to a creditor, share-
18 holder, member, or other person who is unknown and cannot be found,
19 shall be deposited with the Department of Revenue, and shall be paid,
20 without interest, to the person entitled to receive it or to the
21 person's legal representative upon proof satisfactory to the Depart-
22 ment of Revenue of the person's right to it. Notwithstanding the
23 provisions of AS 34.45, an amount on deposit with the Department of
24 Revenue that is not claimed within six years after the discharge of
25 the receiver, is considered to be abandoned, and shall, without fur-
26 ther proceedings, be deposited in the general fund.

27 (b) All money retained for claims described in AS 21.78.280 and
28 not distributed, shall, upon discharge of the receiver, be deposited
29 with the Department of Revenue and paid in accordance with

1 AS 21.78.260. Any amount remaining that, under AS 21.78.260, would
2 revert to the undistributed assets of the insurer, shall be trans-
3 ferred to the Department of Revenue. Remaining amounts become the
4 property of the state under (a) of this section, unless the director,
5 in the director's discretion, petitions the court to reopen the liq-
6 uidation under AS 21.78.297.

7 Sec. 21.78.296. TERMINATION OF PROCEEDINGS. (a) When all
8 assets justifying the expense of collection and distribution have been
9 collected and distributed under this chapter, the receiver shall apply
10 to the court for discharge. The court may grant the discharge and
11 make additional orders the court considers appropriate.

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

16 Sec. 21.78.297. REOPENING LIQUIDATION. After the liquidation
17 proceeding has been terminated and the receiver discharged, the direc-
18 tor or an interested party may at any time petition the court to
19 reopen the proceedings for good cause, including the discovery of
20 additional assets. If the court is satisfied that there is justifi-
21 cation for reopening, it shall order the liquidation proceeding re-
22 opened.

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

29 * Sec. 81. AS 21.88.050(a) is amended to read:

1 (a) The corporation shall
2 (1) in the form approved by the director, issue to all
3 physicians, nurses, and hospitals who are found to be acceptable risks
4 under standards developed under (5) of this subsection, and who pay
5 the premiums for it, a contract or contracts indemnifying physicians,
6 nurses, and hospitals and their employees who are health care pro-
7 viders against loss by reason of liability for covered claims for an
8 act or omission in the delivery of professional health care in this
9 state, and agreeing to tender on behalf of the physicians, nurses, and
10 hospitals and their employees who are health care providers a defense
11 to a covered claim in a proceeding brought under AS 09.55.530 - 09.-
12 55.560; the limits of liability for policies issued by the corporation
13 shall be approved by the director; the contract shall cover the de-
14 fense against but need not indemnify liability for punitive damages
15 arising from a covered claim; at the option of the corporation, if
16 approved by the director, and for an additional premium the contract
17 may cover claims against the physician, nurse, or hospital that arise
18 out of professional services performed by the physician, nurse, or
19 hospital for any period before the contract is issued, except that
20 coverage will not be provided for a claim already filed or that the
21 physician, nurse, or hospital had or reasonably should have had notice
22 at the time the retroactive insurance was purchased;

23 (2) charge a premium for the protection provided by the
24 contracts issued by the corporation which shall be determined by the
25 board of governors in accordance with AS 21.88.080 and subject to the
26 approval of the director;

27 (3) comply with or be subject to AS 21.06.090, 21.06.120,
28 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,
29 21.09.280, AS 21.12.020 [AS 21.12.020(b) - (e)], AS 21.18, AS 21.21,

1 AS 21.24 and AS 21.36; and shall be exempt from participation as a
2 member insurer in the Alaska Insurance Guaranty Corporation;

3 (4) carry out the obligations of the contracts issued by
4 the corporation by defending all covered claims made against insured
5 health care providers and by paying all liabilities that are finally
6 adjudicated against the insured health care provider or that may in
7 the opinion of the corporation reasonably be expected to be finally
8 adjudicated against the health care provider to the extent of the
9 contract obligation;

10 (5) establish standards for the acceptability of risks; in
11 establishing these standards the corporation may exclude an applicant
12 for insurance based on individual risk selection factors, but may not
13 exclude an applicant based only on the classification of the appli-
14 cant.

15 * Sec. 82. AS 21.90.900 is amended by adding new paragraphs to read:

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

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

20 (B) an insurer is being operated in a manner that has
21 caused or might cause irreparable loss and injury to the insurer
22 or to the public;

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

25 (26) "policyholder surplus" means

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

29 (B) for a mutual insurer, its surplus, both basic

1 guaranteed and additional, if any;

2 (C) for an insurer other than a stock or mutual insurer,
3 the net worth of the insurer, calculated as its recorded
4 assets less its liabilities, as determined by the accounting
5 criteria set out in this title.

6 * Sec. 83. APPLICABILITY OF REINSURANCE CREDIT. AS 21.12.020, as
7 repealed and reenacted in sec. 20 of this Act, applies to all reinsurance
8 transactions having an inception, anniversary, or renewal date on or after
9 July 1, 1991.

10 * Sec. 84. APPLICABILITY OF CAPITAL AND SURPLUS REQUIREMENTS.
11 AS 21.09.070(a), as amended in sec. 10 of this Act, does not apply to an
12 insurer that is admitted in the state before the effective date of this
13 Act. An insurer admitted in the state before the effective date of this
14 Act shall maintain the capital and surplus required under AS 21.09.070(a)
15 before the effective date of this Act.

16 * Sec. 85. AS 21.09.080(b), 21.09.080(c); AS 21.21.020(b), 21.21.-
17 270(d); and AS 21.78.330(1) are repealed.

18 * Sec. 86. Section 84 of this Act is repealed January 1, 1992.

19 * Sec. 87. AS 21.78.090(f) added by sec. 63 of this Act, has the effect
20 of changing Alaska Rule of Civil Procedure 62(a), and Alaska Rules of
21 Appellate Procedure 205, 405, 603, and 611(d), by providing for an automa-
22 tic stay of action in a rehabilitation proceeding.

23 * Sec. 88. AS 21.78.030(c), as repealed and reenacted by sec. 60 of
24 this Act, has the effect of changing Alaska Rule of Civil Procedure 65(c),
25 by providing that a bond may not be required of the director of the divi-
26 sion of insurance as a prerequisite to the court's issuing an injunction or
27 restraining order.

28 * Sec. 89. AS 21.78.100(h), added by sec. 64 of this Act, has the
29 effect of changing Alaska Rule of Civil Procedure 41, and Alaska Rules of

1 Appellate Procedure 511 and 606, by providing that an action may not be
2 brought against the insurer or receiver, and existing actions may not be
3 litigated after a receiver is appointed by the court.

4 * Sec. 90. AS 21.78.130(j)(3), added by sec. 65 of this Act, has the
5 effect of changing Alaska Rule of Civil Procedure 19, by allowing a receiv-
6 er to intervene in a court proceeding.

7 * Sec. 91. This Act takes effect immediately under AS 01.10.070(c).