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1 IN THE SENATE BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 212 (Judiciary)

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 examinations, fees, licenses,
7 certificates, capital, surplus, and other require-
8 ments, assets and liabilities, investments, and
9 insolvency proceedings of insurers; immunity for
10 persons performing activities related to insurance
11 and for persons who report insurance fraud; changing
12 Alaska Rules of Civil Procedure 19, 41, 62(a), and
13 65(c); changing Alaska Rules of Appellate Procedure
14 205, 405, 511, 603, 606, and 611(d); and providing
15 for an effective date."

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

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

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

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

29 (d) The director may examine insurers in participation with the

1 National Association of Insurance Commissioners.

2 (e) The director may use a contract examiner to carry out the
3 functions of this section. The selection of a contract examiner and
4 the award of a contract is subject to AS 36.30 (State Procurement
5 Code).

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

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

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

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

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

23 Sec. 21.06.160. EXAMINATION EXPENSE. (a) Each person examined,
24 other than as to examinations under AS 21.06.130, shall pay all the
25 costs of, and expenses incurred by division staff examiners, including
26 salary and benefit costs, for time spent directly or indirectly re-
27 lated to the examination, and shall pay the compensation of a contract
28 examiner, to be set at a reasonable customary rate, for conducting
29 [ACTUAL TRAVEL EXPENSES, A REASONABLE LIVING EXPENSE ALLOWANCE, AND A

1 PER DIEM AS COMPENSATION OF EXAMINERS, AS NECESSARILY INCURRED ON
2 ACCOUNT OF] the examination [, ALL AT REASONABLE RATES CUSTOMARY
3 THEREFOR AND AS ESTABLISHED OR ADOPTED BY THE DIRECTOR], upon presen-
4 tation of a detailed account of the charges and expenses by the direc-
5 tor or under an order [PURSUANT TO THE WRITTEN AUTHORIZATION] of the
6 director. The accounting may either be presented periodically during
7 the course of the examination or at the termination of the examina-
8 tion. A person may not pay and an examiner may not accept additional
9 compensation [EMOLUMENT] for an examination.

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

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

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

26 Sec. 21.06.165. IMMUNITY FOR DIRECTOR AND OTHERS. (a) The
27 director, employees or agents of the division, and the National Asso-
28 ciation of Insurance Commissioners and its employees, are not liable
29 for civil damages for an act or omission in the execution of their

1 authorized activities or duties under this title, or for the
2 publication or dissemination of a report or bulletin related to their
3 authorized activities or duties.

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

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

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

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

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

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

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

26 (2) related transactions [RELATIVE THERETO] subsequent to
27 issuance of a policy covering only subjects of insurance not resident,
28 located, or expressly to be performed in the state [ALASKA] at time of
29 issuance, and which coverage was lawfully solicited, written, and

1 delivered outside the state [ALASKA];

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

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

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

6 Sec. 21.09.060. COMBINATIONS OF INSURING POWERS IN ONE INSURER.

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

10 (1) a life insurer may also grant annuities, but is not
11 authorized to transact any other kind of insurance than disability;
12 except that if the insurer is otherwise qualified, the director shall
13 continue to authorize a life insurer that, immediately before July 1,
14 1966, was lawfully authorized to transact in this state a kind or
15 kinds of insurance in addition to life and disability;

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

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

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

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

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

1 for dividends of any kind, and shall possess when first so authorized,
 2 and maintain after that, additional money [FUNDS] in surplus, as
 3 follows:

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

1	tion, vehicle,			
2	casualty ex-			
3	cluding vehicle,			
4	surety and			
5	disability	<u>3,000,000</u>	<u>3,000,000</u>	<u>2,250,000</u>
6		[1,500,000]	[1,500,000]	
7	Legal expenses	<u>1,000,000</u>	<u>1,000,000</u>	<u>750,000</u>
8		[600,000]	[600,000]	
9	Mortgage			
10	Guarantee	1,000,000	1,000,000	<u>750,000</u>

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

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

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

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

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

28 (f) On or after January 1, 1991, a domestic property or casualty
29 insurer may assume reinsurance, either new or renewal, (1) only of the

1 kinds of risks, and to retain risks, within the limits it is otherwise
2 authorized to insure; and (2) only if, in the absence of prior written
3 approval from the director, it maintains, notwithstanding (a) of this
4 section, in policyholder surplus at least \$10,000,000 as of Decem-
5 ber 31, 1990, \$15,000,000 as of December 31, 1991, and \$20,000,000 as
6 of December 31, 1992. This subsection does not apply to reinsurance
7 that is required to be assumed by applicable law or regulation or is
8 assumed under an intracompany pooling arrangement between affiliated
9 insurers.

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

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

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

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

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

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

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

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

28 (3) if the insurer's authority to transact insurance is
29 suspended or revoked by its state of domicile, or state of entry into

1 the United States if an alien insurer.

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

3 (a) Each authorized insurer shall annually, before March 2, file
4 with the director a full and true statement of its financial condi-
5 tion, transactions, and affairs as of the preceding December 31. The
6 reporting format for a given year is the most recently approved Na-
7 tional Association of Insurance Commissioners' annual financial state-
8 ment blank form and instructions, [THE STATEMENT SHALL BE IN THE GEN-
9 ERAL FORM AND CONTEXT ACCEPTABLE TO THE DIRECTOR, AND IN CURRENT USE
10 FOR SIMILAR REPORTS TO STATES IN GENERAL WITH RESPECT TO THE TYPE OF
11 INSURER AND KINDS OF INSURANCE TO BE REPORTED UPON, AND] supplemented
12 for additional information as required by the director. The director
13 may require the statement to be filed on electronic media. The state-
14 ment shall be verified by the oath of the insurer's president or
15 vice-president, and secretary, or, if a reciprocal insurer, by oath of
16 the attorney-in-fact or its like offices if a corporation unless
17 verification is waived by the director of insurance.

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

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

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

28 Sec. 21.09.205. QUARTERLY STATEMENT. (a) The director may
29 require an insurer to file quarterly financial statements. If re-

1 quired, the statements must follow for a given quarter the reporting
2 format specified in the quarterly financial statement blank form and
3 instructions most recently approved by the National Association of
4 Insurance Commissioners.

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

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

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

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

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

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

20 (A) submits to this state's jurisdiction, submits to
21 this state's authority to examine its books and records, and is
22 licensed to transact insurance or reinsurance in at least one
23 state; or

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

1 plus; the surplus requirements in this subparagraph do not apply
2 to reinsurance ceded and assumed under a pooling arrangement
3 among insurers in the same holding company system;

4 (3) assuming insurer that is domiciled in a state, or in
5 the case of a United States branch of an alien assuming insurer, is
6 entered through a state that employs standards regarding credit for
7 reinsurance ceded substantially similar to those applicable under (1)
8 and (2) of this subsection, the assuming insurer maintains a policy-
9 holder surplus of at least \$20,000,000, and the assuming insurer
10 submits to the authority of this state to examine its books and re-
11 cords; the surplus requirements in this paragraph do not apply to
12 reinsurance ceded and assumed under a pooling arrangement among insur-
13 ers in the same holding company system;

14 (4) assuming alien insurer that

15 (A) maintains a trust fund in a qualified United
16 States financial institution for the payment of the valid claims
17 of its United States policyholders and ceding insurers, and their
18 assigns and successors in interest, that conforms to the follow-
19 ing requirements:

20 (i) the trust shall be established in a form
21 approved by the director; the trust instrument must provide
22 that contested claims are valid and enforceable upon the
23 final order of any court of competent jurisdiction in the
24 United States; the trust shall vest legal title to its
25 assets in the trustees of the trust for its United States
26 policyholders and ceding insurers, their assigns and succes-
27 sors in interest; the trust and the assuming insurer are
28 subject to examination as determined by the director; the
29 trust must remain in effect for so long as the assuming

1 insurer has outstanding liabilities due under the
2 reinsurance agreements subject to the trust;

3 (ii) on or before March 1 of each year the trust-
4 ees shall report in writing to the director on the balance
5 of the trust and list the trust's investments at the end of
6 the preceding year, and shall certify the date of termina-
7 tion of the trust, if so planned, or certify that the trust
8 does not expire before the following December 31;

9 (iii) in the case of a single assuming insurer, the
10 trust shall consist of trust money representing the assuming
11 insurer's liabilities attributable to business written in
12 the United States and, in addition, include a trust surplus
13 of not less than \$20,000,000; the single assuming insurer
14 shall make available to the director an annual certification
15 of the insurer's solvency by the insurer's domiciliary
16 regulator and by an independent public accountant;

17 (iv) in the case of a group of individual unin-
18 corporated insurers, the trust shall consist of trust money
19 representing the group's liabilities attributable to busi-
20 ness written in the United States and, in addition, include
21 a trust surplus not less than \$50,000,000; the group shall
22 make available to the director an annual certification of
23 the solvency of each of the individual unincorporated insur-
24 ers by the group's domiciliary regulator and by an indepen-
25 dent public accountant; and

26 (B) reports annually to the director information
27 substantially the same as that required to be reported on the
28 National Association of Insurance Commissioners' annual statement
29 form by licensed insurers to enable the director to determine the

1 sufficiency of the trust fund;

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

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

10 (1) that in the event of the failure of the assuming insurer
11 to perform its obligations under the terms of the reinsurance
12 agreement, the assuming insurer, at the request of the ceding insurer,
13 shall submit to the jurisdiction of a court of competent jurisdiction
14 in any state of the United States, will comply with all requirements
15 necessary to give the court jurisdiction and will abide by the final
16 decision of the court or of an appellate court in the event of an
17 appeal; this provision is not intended to conflict with or override
18 the obligation of the parties to a reinsurance agreement to arbitrate
19 their disputes, if such an obligation is created in the reinsurance
20 agreement; and

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

25 (c) A reduction from liability, for reinsurance ceded to an
26 assuming insurer not meeting the requirements of (a) of this section,
27 shall be allowed in an amount not exceeding the liabilities carried by
28 the ceding insurer. The reduction shall be equal to the amount of
29 money held by or on behalf of the ceding insurer, including money held

1 in trust for the ceding insurer, under a reinsurance contract with the
2 assuming insurer as security for the payment of obligations under it.
3 If the security is held in the United States subject to withdrawal
4 solely by, and under the exclusive control of, the ceding insurer, or
5 in the case of a trust, held in a qualified United States financial
6 institution, the security must be in the form of

7 (1) cash;

8 (2) securities listed by the Securities Valuation Office of
9 the National Association of Insurance Commissioners that qualify as
10 admitted assets under AS 21.21;

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

19 (4) other security acceptable to and approved in advance by
20 the director.

21 (d) Notwithstanding the other provisions of this section, credit
22 may not be allowed a domestic ceding insurer unless the reinsurance
23 contract provides for payment by the assuming insurer on the basis of
24 the liability of the ceding domestic insurer under the insurance
25 contracts reinsured without diminution because of the insolvency of
26 the ceding domestic insurer.

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

1 (f) In this section, "qualified United States financial
2 institution" means an institution that,

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

4 (A) is organized or, in the case of a United States
5 office of a foreign banking organization, is licensed under the
6 laws of the United States or a state of the United States;

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

10 (C) has been determined by either the director or the
11 Securities Valuation Office of the National Association of Insur-
12 ance Commissioners to meet the standards of financial condition
13 and standing that are considered necessary and appropriate to
14 regulate the quality of financial institutions whose letters of
15 credit are acceptable to the director;

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

18 (A) is organized or, in the case of a United States
19 branch or agency office of a foreign banking organization, li-
20 censed under the laws of the United States or a state of the
21 United States, and has been granted authority to operate with
22 fiduciary powers; and

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

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

27 Sec. 21.12.120. REINSURANCE TRANSACTION DEFINED. A reinsurance
28 transaction as referred to in AS 21.21.020 is a transaction stemming
29 from a contract by which the assuming insurer agrees to indemnify the

1 ceding insurer in whole or in part against liability or losses that
2 the ceding insurer might incur under a separate contract of insurance
3 with its insured.

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

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

8 (1) cash in the possession of the insurer, or in transit
9 under its control, including the true balance of a deposit in a sol-
10 vent bank, savings and loan association, or trust company;

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

14 (A) interest due or accrued on a bond or evidence of
15 indebtedness qualifying as an admitted asset that is not in
16 default and that is not valued on a basis including accrued
17 interest;

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

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

22 (D) interest due or accrued on deposits in solvent
23 banks, savings and loan associations, and trust companies, and
24 interest due or accrued on other assets, if the interest is, in
25 the judgment of the director a collectible asset;

26 (E) interest due or accrued on a current real estate
27 mortgage loan that is an admitted asset, in an amount not exceed-
28 ing the value of the property over the unpaid loan principal less
29 delinquent taxes on the property; however, if the interest is in

1 default more than three months, or a tax or installment on the
2 property is due and unpaid for more than three months, allowance
3 may not be made for unpaid interest on the loan;

4 (F) rent due or accrued on real property if the rent
5 is not in arrears for more than three months; rent more than
6 three months in arrears is allowed if the payment of the rent is
7 secured by property with a current market value not less than 75
8 percent of the total rent due, held in the name of the tenant and
9 conveyed to the insurer as collateral;

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

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

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

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

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

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

29 (B) reinsurance premiums payable by ceding insurers

1 authorized to transact business in this state; or

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

9 (7) premiums, not more than three months past due, exclud-
10 ing commissions payable on them, due from a controlling or controlled
11 person, to the extent that

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

26 (B) the controlling or controlled person has provided
27 to the insurer, and the insurer has maintained in its possession,
28 an unexpired, clean, irrevocable, and unconditional letter of
29 credit, payable to the insurer, for a term of not less than one

1 year with automatic extension for one year, unless the
2 beneficiary has received in writing notification of intention not
3 to renew 30 days before the original expiration date; the letter
4 of credit must be issued in conformity with the requirements set
5 out in this subparagraph, and the amount of the letter of credit
6 must equal or exceed the liability of the controlling or con-
7 trolled person to the insurer, at all times during the period
8 that the letter of credit is in effect, for premiums collected by
9 the controlling or controlled person; a letter of credit must be
10 issued under arrangements satisfactory to the division and the
11 letter must be issued by a banking institution that is a member
12 of the Federal Reserve System and that has a financial standing
13 satisfactory to the department; the director shall disapprove a
14 letter of credit that, in the director's judgment, does not
15 assure the safety of the premiums;

16 (C) the controlling or controlled person has provided
17 to the insurer, and the insurer has maintained in its possession,
18 evidence that the controlling or controlled person has purchased
19 and has currently in effect a financial guaranty bond, payable to
20 the insurer, issued for a continuous term, cancelable only on
21 30-day written notice to the beneficiary of intention to termi-
22 nate with the bond continuing in effect for acts committed before
23 the date of termination, and that is in conformity with the
24 requirements set out in (B) of this paragraph; the amount of the
25 bond must equal or exceed the liability of the controlling or
26 controlled person to the insurer, at all times during which the
27 financial guaranty bond is in effect, for the premium collected
28 by the controlling or controlled person; a financial guaranty
29 bond must be issued under an arrangement satisfactory to the

1 division, by an insurer that is authorized to transact business
2 in the state, that has a financial standing satisfactory to the
3 division and that is neither controlled nor controlling in rela-
4 tion to either the insurer or the person for whom the bond is
5 purchased; and

6 (D) a financial examination indicates that the con-
7 trolling or controlled person is solvent and has the ability to
8 pay the premiums as they become due; the financial examination,
9 as scheduled by the director, shall be based on a review of the
10 books and records of the controlling or controlled person;

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

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

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

22 (11) deposits or equities recoverable from underwriting
23 associations, syndicates, and reinsurance funds or from a suspended
24 banking institution to the extent considered by the director available
25 for the payment of losses and claims and at values to be determined by
26 the director;

27 (12) electronic data processing and related equipment, and
28 operating software constituting a data processing, record keeping, or
29 an accounting system if the cost of the system, including subsequent

1 additions to the original system, is \$50,000 or more and if that cost
2 is to be amortized in full over a period not to exceed 10 calendar
3 years;

4 (13) intercompany transactions arising from income tax'
5 allocations among organizations participating in a consolidated tax
6 return, if

7 (A) there is a written agreement that is in compliance
8 with regulations adopted by the Internal Revenue Service and the
9 agreement includes a

10 (i) description of the method of allocation and
11 the manner in which intercompany balances will be settled;
12 and

13 (ii) requirement that an intercompany balance will
14 be settled within a reasonable time following the filing of
15 the consolidated tax return;

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

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

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

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

29 (16) receivables arising from wholly and partially uninsured

1 accident and health plans;

2 (17) all assets, not inconsistent with the provisions of
3 this section, that are allowed in the annual statement form and with
4 the annual statement instructions most recently published by the
5 National Association of Insurance Commissioners and approved by the
6 director; or

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

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

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

16 (1) goodwill, trade names, and other similar intangible
17 assets;

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

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

26 (4) tangible personal property, including furniture, fix-
27 tures, furnishings, safes, vehicles, libraries, stationery, litera-
28 ture, and supplies, other than electronic data processing machines
29 authorized by AS 21.18.010, except property acquired through foreclo-

1 sure of chattel mortgages acquired under AS 21.21.270, or property
2 that is reasonably necessary for the maintenance and operation of real
3 estate lawfully acquired and held by the insurer other than real
4 estate used by the insurer for home office, branch office, and similar
5 purposes;

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

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

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

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

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

18 (10) unsecured loans due from outside sources.

19 (b) All nonadmitted assets and all other assets of doubtful
20 value or character included as ledger or nonledger assets in a state-
21 ment by an insurer to the director, or in an examiner's report to the
22 director, shall also be reported, to the extent of the value disallow-
23 ed, as deductions from the gross assets of the insurer, unless the
24 director permits a reserve to be carried among the liabilities of the
25 insurer in place of a deduction.

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

27 (a) Except as otherwise provided in AS 21.18.070, an insurer
28 shall maintain an unearned premium reserve on all policies in force
29 against loss or damage to property, including loss or damage under

1 general casualty or surety insurance.

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

3 (b) The director may require that the reserves be equal to the
4 unearned portions of the gross premiums in force after deducting
5 applicable reinsurance in solvent [INSOLVENT] insurers as computed on
6 each respective risk from the policy's date of issue. Except as
7 required by [IF] the director under this subsection [DOES NOT SO
8 REQUIRE], the portions of the gross premium in force, less applicable
9 reinsurance in solvent insurers, to be held as an unearned premium
10 reserve shall be computed according to the following table:

11	Term for Which Policy	Reserve for Unearned
12	Was Written	Premium
13	1 year or less	1/2
14	2 years	1st year 3/4
15		2nd year 1/4
16	3 years	1st year 5/6
17		2nd year 1/2
18		3rd year 1/6
19	4 years	1st year 7/8
20		2nd year 5/8
21		3rd year 3/8
22		4th year 1/8
23	5 years	1st year 9/10
24		2nd year 7/10
25		3rd year 1/2
26		4th year 3/10
27		5th year 1/10
28	Over 5 years	pro rata

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

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

2 In addition to an adequate reserve as to outstanding losses as requir-
3 ed under AS 21.18.050, a title insurer shall establish, segregate, and
4 maintain a guaranty fund or unearned premium reserve as provided in
5 this section. At all times and for all purposes, the sums required by
6 this section to be reserved for unearned premiums on title guarantees
7 and policies shall be considered and constitute unearned portions of
8 the original premiums and shall be charged as a reserve liability of
9 the insurer in determining its financial condition. While the sums
10 are reserved, they are withdrawn from the use of the insurer for its
11 general purposes, constitute a trust in favor of the holders of title
12 guarantees and policies, and must be held available for reinsurance of
13 the title guarantees and policies in the event of the insolvency of
14 the insurer. This section does not preclude the insurer from invest-
15 ing the reserves in investments authorized by law for the insurer.
16 The income from invested reserves may be included in the general
17 income of the insurer to be used by the insurer for a lawful purpose.
18 The unearned premium reserve required by this section consists of not
19 less than the amount computed as follows with respect to a policy of
20 title insurance issued by a title insurer after December 31, 1990:

21 (1) 10 percent of the total amount of risk premiums written
22 in the calendar year for title insurance contracts must be assigned
23 originally to the reserve;

24 (2) during each of the 20 years immediately following the
25 year in which the title insurance contract was issued, the reserve
26 applicable to the contract must be reduced by five percent of the
27 original amount of the reserve; with respect to a policy of title
28 insurance issued by a title insurer before January 1, 1991, the insur-
29 er shall maintain at all times a reserve of not less than \$.30 for

1 each \$1,000 of the fee amount of all title guarantees and policies
2 issued during the preceding 10 years; this reserve amount, required to
3 be reserved for unearned premiums on title guarantees and policies,
4 shall at all times and for all purposes be considered and constitute
5 unearned portions of the original premiums and shall be charged as a
6 reserve liability of the insurer in determining its financial condi-
7 tion; that portion of the unearned premium reserve established with
8 respect to a title guarantee or policy issued more than 10 years
9 before January 1, 1991, shall be released, shall no longer constitute
10 part of the unearned premium reserve, and may be used for any purpose
11 by the insurer.

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

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

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

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

1 instead [IN LIEU] of this method, according to another [AN] accepted
2 method of valuation approved by the director;

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

7 (4) unless otherwise provided by valuation established or
8 approved by the director, [NO] security may not [SHALL] be carried at
9 or above the call price for the entire issue during any period within
10 which the security may be called.

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

12 Sec. 21.18.900. DEFINITIONS. In this chapter

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (e) The director may, at any time, order the immediate disposi-
26 tion of any or all of the ineligible assets received, or may order the
27 reversal of the agreement of bulk reinsurance, merger, or consolida-
28 tion, or may order other action that the director considers appro-
29 priate under the circumstances.

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

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

5 (1) [ONE PERSON:] an insurer may not, except with the
6 consent of the director, have [AT ANY ONE TIME] a combination of
7 investments in or loans upon the security of the obligations, proper-
8 ty, or securities of any one person, or insurer, aggregating an amount
9 exceeding five percent of the insurer's assets; this restriction does
10 not apply to

11 (A) general obligations of the United States; [OF
12 AMERICA] or

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

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

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

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

27 (A) the minimum basic capital for stock insurers or
28 basic guarantee surplus for mutual insurers and additional sur-
29 plus for both stock and mutual insurers [PAID-IN CAPITAL STOCK]

1 required under AS 21.09.070; or

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

7 (i) cash;

8 (ii) the fully insured portion of bank deposits
9 when the insurance is provided by a solvent agency of the United
10 States government or by collateral in the form of the securities
11 provided for under AS 21.21.060 and 21.21.080; or

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

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

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

23 (6) [COMMON STOCKS:] an insurer may invest and have invest-
24 ed at any one time in aggregate amount not more than 10 per cent of
25 its assets in all stocks under AS 21.21.160, 21.21.170, and 21.21.200,
26 except with the director's written consent; determination of the
27 amount that [WHICH] an insurer has invested in common stocks for the
28 purposes of this paragraph is [SHALL BE] based on the cost of the
29 stocks to the insurer; this paragraph does not apply to stock of a

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

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

8 (8) OTHER SPECIFIC LIMITS: LIMITS IN INVESTMENTS IN THE
9 CATEGORY OF REAL ESTATE ARE AS PROVIDED IN AS 21.21.280; AND OTHER
10 SPECIFIC LIMITS APPLY AS STATED IN THE SECTIONS DEALING WITH OTHER
11 RESPECTIVE KINDS OF INVESTMENTS].

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

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

20 (1) is not insolvent;

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

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

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

26 Sec. 21.21.130. [INTER-AMERICAN] DEVELOPMENT BANKS [BANK]. An
27 insurer may invest in obligations issued, assumed, or guaranteed by
28 the Inter-American Development Bank, the African Development Bank, or
29 the Asian Development Bank, if the bank is solvent and not in default

1 in the payment of principal or interest on any of its direct, general
2 obligations at the date of the investment.

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

4 (a) An insurer may invest in bonds, debentures, notes, and other
5 evidences of indebtedness issued, assumed, or guaranteed by a solvent
6 domestic debtor institution not in default in the payment of principal
7 or interest on any of its direct, general obligations on the date of
8 the investment, if the bond, debenture, note, or other evidence of
9 indebtedness [EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
10 OR OF CANADA, OR OF A STATE OR PROVINCE, WHICH IS NOT IN DEFAULT AS TO
11 PRINCIPAL OR INTEREST AND WHICH] is secured by adequate collateral and
12 bears fixed interest and if during each of any three, including either
13 of the last two, of the five fiscal years preceding the date of acqui-
14 sition by the insurer, the net earnings of the domestic debtor [ISSU-
15 ING, ASSUMING OR GUARANTEEING] institution available for its fixed
16 charges [, DEFINED IN (d) OF THIS SECTION,] have been not less than
17 one and one-quarter times the total of its charges for that year. In
18 determining the adequacy of collateral security, not more than one-
19 third of the total value of the required collateral may consist of
20 common stock.

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

22 (b) An insurer may invest in secured and unsecured obligations
23 of domestic debtor [THESE] institutions, other than the obligations in
24 (a) of this section, bearing interest at a fixed rate, with mandatory
25 principal and interest due at specified times, if the net earnings of
26 the domestic debtor [ISSUING, ASSUMING OR GUARANTEEING] institution
27 available for its fixed charges for a period of five fiscal years
28 immediately preceding the date of acquisition by the insurer have
29 averaged per year not less than one and one-half times its average

1 annual fixed charges applicable to that period and if during either of
2 the last two years of that period the net earnings have been not less
3 than one and one-half times its fixed charges for the year.

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

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

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

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

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

21 Sec. 21.21.150. PREFERRED OR GUARANTEED STOCK. An insurer may
22 invest in preferred or guaranteed stocks or shares of a solvent insti-
23 tution, not in default on any of its obligations, existing under the
24 laws of the United States [OF AMERICA] or [OF] Canada, or of a state
25 of the United States or province of Canada [THEREOF], if all of the
26 prior obligations and prior preferred stocks, if any, of the institu-
27 tion at the date of acquisition of the investment by the insurer are
28 eligible as investments under this chapter and if the net earnings of
29 the institution available for its fixed charges during each of the

1 last two fiscal years immediately preceding the date of acquisition of
2 the investment by the insurer have been, and during each of the last
3 five fiscal years immediately preceding the date of acquisition of the
4 investment by the insurer have averaged, not less than one and one-
5 half times the sum of its average annual fixed charges, if any, its
6 average annual maximum contingent interest, if any, and its average
7 annual preferred dividend requirements whether the dividends are
8 cumulative or noncumulative and whether paid or not. [FOR THE PUR-
9 POSES OF THIS SECTION THE COMPUTATION SHALL REFER TO THE FISCAL YEARS
10 IMMEDIATELY PRECEDING THE DATE OF ACQUISITION OF THE INVESTMENT BY THE
11 INSURER, AND THE TERM "PREFERRED DIVIDEND REQUIREMENT" MEANS CUMULA-
12 TIVE OR NONCUMULATIVE DIVIDENDS, WHETHER PAID OR NOT].

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

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

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

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

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

6 Sec. 21.21.190. EQUIPMENT TRUST CERTIFICATES. An insurer may
7 invest in equipment trust obligations or [OF] certificates adequately
8 secured and evidencing an interest in transportation equipment, wholly
9 or in part within the United States, if the [OF AMERICA, WHICH] obli-
10 gations or certificates carry the right to receive determined portions
11 of rental, purchase, or other fixed obligatory payments to be made for
12 the use or purchase of the transportation equipment.

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

14 Sec. 21.21.245. POOLED INVESTMENTS. (a) An insurer may invest
15 in the securities of eligible pooled investment companies, if 90
16 percent of the assets of the pooled investment companies would other-
17 wise be eligible for investment under AS 21.21.060, 21.21.150, 21.21.-
18 160, 21.21.200, 21.21.225, or 21.21.230, if the investments were not
19 held in a pooled investment format.

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

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

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

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

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

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

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

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

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

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

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

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

29 (4) ~~[(3)]~~ real estate acquired in part payment of the

1 consideration on the sale of other real estate owned by the insurer
2 [IT], if the transaction does not increase the insurer's investment in
3 real estate;

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

7 (6) [(5)] the seller's interest in real property subject to
8 an agreement of purchase or sale, but the sum invested in a parcel of
9 real estate may [SHALL] not exceed three-fourths of the market value
10 of the parcel if [PROVIDED] it consists of one or two family residen-
11 tial property, or [AND] two-thirds of the market value of all other
12 parcels of real estate;

13 (7) [(6)] real estate, or any interest in real estate
14 acquired or held by purchase, lease, or otherwise, other than real
15 estate to be used primarily for agricultural purposes, ranching,
16 [RANCH] mining, development of oil or mineral resources, or recrea-
17 tional, amusement, or club purposes, [ACQUIRED AS AN INVESTMENT] for
18 the production of income, and other than real estate described in (1)
19 of this section, that is situated in any state of the United States,
20 and the construction of improvements upon it, on the following condi-
21 tions:

22 (A) the prior approval of the director has been ob-
23 tained; the director shall give approval on a showing by the
24 insurer that

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

28 (ii) the investment will not exceed the reasonable
29 value of the property or of the interest in it that the

1 insurer proposes to acquire;

2 (iii) there is a reasonable probability of occupan-
3 cy of the property sufficient to make the investment profit-
4 able; and

5 (iv) there is reasonable cause to believe that the
6 insurer will be in compliance with the provisions of this
7 subparagraph over the entire period that the insurer owns
8 the property;

9 (B) the insurer must own the entire property, except
10 that it may share ownership with one or more insurers authorized
11 to do business in the state under agreements that will assure
12 concerted action in management and control of the property in
13 case of the insolvency of a participating insurer, and if each
14 investment made under this subparagraph by the insurer and by
15 each participating insurer is not less than \$250,000 unless prior
16 written approval is obtained from the director;

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

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

25 (i) the encumbrances do not interfere substan-
26 tially with the use of the property or result in a forfei-
27 ture of the property; or

28 (ii) a policy of title insurance, equal in amount
29 to the cost of the property, issued by a responsible title

1 insurer qualified to do business in the state in which the
2 property is located, insures the insurer against loss or
3 damage arising from such encumbrances or reversionary
4 rights;

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

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

22 (9) [(8)] except with the director's consent, all real
23 estate owned by the insurer [UNDER THIS SECTION], except the seller's
24 interest specified in (6) [(5)] of this section, may not at any one
25 time exceed 15 percent of the insurer's assets.

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

27 (b) Except as provided in (c) of this section, the insurer shall
28 dispose of real estate acquired under AS 21.21.280(3) - (5) [AS 21.-
29 21.280(2)-(4)], within five years after the date of acquisition.

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

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

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

8 Sec. 21.21.350. INVESTMENT TRANSACTIONS WITH AFFILIATED OR
9 CONTROLLING PERSONS. (a) Except as provided in this section or
10 AS 21.21.180, an insurer may not

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

13 (2) purchase from an affiliated party an otherwise eligible
14 investment; or

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

19 (b) Before completing investment activities with or through
20 affiliated or controlling persons, an insurer shall fully disclose and
21 document in writing to its board of directors and the committee au-
22 thorized by the board and charged with the supervision or making of
23 the investment or loan involved, the material facts concerning the
24 affiliation or circumstances of control. An insurer may not complete
25 an investment activity with or through affiliated or controlling
26 persons, unless the board of directors by specific board action,
27 authorizes the transaction and concludes that the transaction complies
28 with (c) and (d) of this section. The vote of the board authorizing
29 the transaction must be recorded in the minutes, on a member-by-member

1 basis, and must indicate each vote approving, disapproving, or
2 abstaining on the transaction.

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

7 (d) The insurer's board of directors is responsible for de-
8 termining that the transfer prices are at current market and determin-
9 ing the commercial reasonableness of the transactions with affiliated
10 or controlling persons. The board of directors may rely on indepen-
11 dent third-party experts in making its determination.

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

16 Sec. 21.21.355. CERTAIN DEPOSITS NOT PROHIBITED. This chapter
17 does not prevent the board of directors of an insurer from depositing
18 securities

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

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

24 (3) as collateral for the securing of a bond required for
25 the business of the insurer.

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

1 insurer's board of directors, an insurer may invest in options and
2 futures contracts.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (2) a warrant or option having no public market that is
19 currently transferable into shares of common stock that have no public
20 market is valued at the difference resulting from the subtraction from
21 the analytically determined value of the stock of the transfer price
22 for the warrant or option;

23 (3) a warrant or option having no public market that is
24 currently transferable into shares of common stock that have a coun-
25 terpart public market but that are themselves restricted is valued at
26 \$1; the warrant or option is not allowed as an admitted asset;

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

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

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

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

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

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

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

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

20 (D) upon completion of the hedging transaction, the
21 deferred gains or losses are added to the basis of the hedged
22 item;

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

29 (4) for hedges of items carried at market, the gains or

1 losses on futures contracts are recognized currently;

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

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

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

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

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

17 In this chapter, unless the context requires otherwise,

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

19 (2) "assets" means assets that are allowable assets under
20 AS 21.18.010;

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

27 (4) "control" and "controlling" have the meaning given in
28 AS 21.22.200;

29 (5) "domestic insurer" has the meaning given in AS 21.90.-

1 900 and, in addition, for the purposes of this chapter, includes an
2 insurer that [WHICH] has been authorized to do business in this state
3 and that [WHICH], during its three preceding fiscal years taken to-
4 gether, or during any lesser period of time if it has been licensed to
5 transact its business in this state [THE STATE OF ALASKA] only for
6 such lesser periods of time, has written an average of more gross
7 premiums in this state [THE STATE OF ALASKA] than it has written in
8 its state of domicile during the same period, and the gross premiums
9 written constitute 33 percent or more of its total gross premiums
10 written everywhere in the United States for the three year or lesser
11 period, as reported in its three most recent annual statements;

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

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

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

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

24 (10) "net earnings available for fixed charges" means net
25 income after deducting operating and maintenance expenses, taxes other
26 than federal income taxes, depreciation, and depletion, excluding
27 extraordinary nonrecurring items of income or expenses appearing in
28 the regular financial statement of an issuing, assuming, or guarantee-
29 ing institution;

1 (11) "options and futures contracts" means a put or call
2 option on underlying common stocks, debt instruments, and stock in-
3 indices, other stock options, purchase warrants, and financial futures
4 contracts;

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

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

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

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

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

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

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

26 (1) a foreign but nonalien stock insurer may qualify under
27 this subsection if it has the [A] minimum unimpaired basic capital and
28 additional surplus equal to that required in its domiciliary jurisdic-
29 tion, or maintains [\$1,500,000 ON SEPTEMBER 18, 1984, \$2,500,000 ON

1 JUNE 20, 1985, \$3,500,000 ON JUNE 20, 1986, AND] \$5,000,000 as of [ON]
2 June 20, 1987, \$6,000,000 as of December 31, 1990, \$10,000,000 as of
3 December 31, 1991, \$12,500,000 as of December 31, 1992, and
4 \$15,000,000 as of December 31, 1993, whichever is greater;

5 (2) a foreign but nonalien mutual insurer, a reciprocal
6 insurer, or a mutual protection and indemnity association may qualify
7 under this subsection if it has the minimum unimpaired basic surplus
8 and additional surplus equal to that required in its domiciliary
9 jurisdiction or maintains \$6,000,000 as of December 31, 1990,
10 \$10,000,000 as of December 31, 1991, \$12,500,000 as of December 31,
11 1992, and \$15,000,000 as of December 31, 1993, whichever is greater;

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

27 (4) [(3)] a Lloyd's or other similar unincorporated group
28 of alien individual insurers may qualify if it maintains a trust fund
29 in an amount not less than \$50,000,000, as security to the full

1 amount, for the protection of all its policy holders and creditors of
2 each member of the group in the United States; the trust fund must
3 consist of instruments of substantially the same character and quality
4 as those that are eligible investments for the capital and statutory
5 reserves of admitted insurers authorized to write like kinds of insur-
6 ance in this state or of irrevocable, clean, and unconditional letters
7 of credit; the trust fund must have an expiration date that at no time
8 is less than five years;

9 (5) [OF NOT LESS THAN \$50,000,000 AS SECURITY TO THE FULL
10 AMOUNT, FOR ALL POLICY HOLDERS AND CREDITORS IN THE UNITED STATES, OF
11 EACH MEMBER OF THE GROUP; (4)] an "insurance exchange" created by the
12 laws of individual states may qualify if it maintains capital and
13 surplus, or the substantial equivalent, of not less than \$50,000,000
14 [\$15,000,000] in the aggregate; for insurance exchanges that maintain
15 funds for the protection of all insurance exchange policyholders, each
16 individual syndicate shall maintain minimum capital and surplus, or
17 the substantial equivalent, of not less than \$3,000,000; in the event
18 the insurance exchange does not maintain funds for the protection of
19 all its policyholders, each individual syndicate shall meet the mini-
20 imum [CAPITAL AND SURPLUS] requirements of (1) or (2) of this sub-
21 section.

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

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

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

28 (2) the National Association of Insurance Commissioners,
29 the division of insurance, an agency in a state that regulates insur-

1 ance, or an organization established to detect and prevent fraudulent
2 insurance acts, their agents, employees, or designees.

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

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

6 Sec. 21.66.080. ANNUAL STATEMENT. Every corporation, on or
7 before March 1 [MARCH 2] of each year, shall furnish the director a
8 sworn statement of assets and liabilities, and of all title premiums
9 received by it during the preceding calendar year, setting out among
10 other things that three percent of all gross premiums on title insur-
11 ance policies issued by it during the year, covering property in this
12 state, have been set aside and held by it in an account known as the
13 Title Insurance Unearned Premium Reserve Fund, as provided in this
14 chapter. The reporting format for a given year is the most recently
15 approved National Association of Insurance Commissioners' Annual
16 Financial Statement blank form and instructions, supplemented for
17 additional information as required by the director. The director may
18 require the statement to be filed on electronic media. The statement
19 must [SHALL] also show [IN THE FORM WHICH MAY BE PRESCRIBED BY THE
20 DIRECTOR] all unpaid losses and claims upon title insurance policies
21 of which the corporation has received due notice in writing from or on
22 behalf of the insured. With the filing of the statement the corpora-
23 tion shall pay a filing fee set under AS 21.06.250.

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

25 (b) A domestic title insurance company shall comply with AS 21.-
26 09.200(f).

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

28 Sec. 21.66.085. QUARTERLY STATEMENT. (a) The director may
29 require an insurer to file quarterly financial statements. If requir-

1 ed, the statements must follow the format specified in
2 AS 21.66.080(a).

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

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

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

9 (b) With the filing of the application, the corporation shall
10 pay a fee set under AS 21.06.250 and, in addition, shall pay all
11 [TRAVELING] expenses [OF THE DIRECTOR OR AN AUTHORIZED REPRESENTATIVE
12 OF THE DIRECTOR AND PER DIEM AT THE CURRENT LEVEL FOR STATE EMPLOYEES
13 AT THE LOCATION OF THE EXAMINATION] incurred in examining the appli-
14 cant's title plant or plants, as required by AS 21.06.160.

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

16 Sec. 21.66.130. EXPENSES OF EXAMINATION. Expenses incurred due
17 to an examination of the company shall be paid as required by AS 21.-
18 06.160.

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

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

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

1 Sec. 21.78.020. COMMENCEMENT OF DELINQUENCY PROCEEDINGS. (a) A
2 delinquency proceeding may not be commenced under this chapter, unless
3 commenced by the director. A court does not have jurisdiction to
4 entertain, hear, or determine a delinquency proceeding commenced by a
5 person other than the director.

6 (b) The director shall commence the proceedings by application
7 to the court for an order directing the insurer to show cause why the
8 director should not have the relief requested. On the return of the
9 order to show cause, and after a full hearing, the court shall either
10 deny the application or grant the application, together with other
11 relief that the nature of the case and the interest of the policyhold-
12 ers, creditors, stockholders, members, subscribers, or the public
13 might require.

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

19 (d) In addition to other grounds for jurisdiction provided by
20 the laws of this state, a court having jurisdiction of the subject
21 matter has jurisdiction over a person served under the Alaska Rules of
22 Civil Procedure or other applicable provisions of law in an action
23 brought by the receiver of a domestic insurer or an alien insurer
24 domiciled in this state if the person

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

29 (2) served is a reinsurer who has at any time written a

1 policy of reinsurance for an insurer against which a rehabilitation or
2 liquidation order is in effect when the action is commenced, or is an
3 agent or broker of or for the reinsurer, in any action or incident
4 related to the reinsurance contract; or

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

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

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

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

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

21 (1) the transaction of further business;

22 (2) the transfer of property;

23 (3) interference with the receiver or with a proceeding
24 under this chapter;

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

26 (5) dissipation and transfer of bank accounts;

27 (6) the institution or further prosecution of any actions
28 or proceedings;

29 (7) the obtaining of preferences, judgments, attachments,

1 garnishments, or liens against the insurer, its assets, or its
2 policyholders;

3 (8) the levying of execution against the insurer, its
4 assets, or its policyholders;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (d) An order issued under this section must require an
2 accounting to the court by the receiver. Accountings must be at the
3 intervals that the court specifies in its order.

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

6 (f) A court in this state before which an action or proceeding
7 is pending in which the insurer is a party or in which the insurer is
8 obligated to defend a party, shall stay the action or proceeding when
9 a rehabilitation order against the insurer is entered. The stay shall
10 be imposed for that period of time necessary for the receiver to
11 obtain proper representation and prepare for further proceedings. The
12 receiver shall take action respecting the pending litigation that the
13 receiver considers necessary in the interests of justice and for the
14 protection of creditors, policyholders, and the public. The receiver
15 shall immediately consider all litigation pending outside this state,
16 and shall petition the courts having jurisdiction over that litigation
17 for stays if necessary to protect the estate of the insurer.

18 (g) A statute of limitations or defense of laches does not run
19 with respect to an action by or against an insurer between the filing
20 of a petition for appointment of a receiver for the insurer and the
21 order granting or denying that petition. An action by or against the
22 insurer that might have been commenced when the petition was filed may
23 be commenced for at least 60 days after the order of rehabilitation is
24 entered or the petition is denied.

25 (h) A guaranty association or foreign guaranty association has
26 standing to appear in a court proceeding concerning the rehabilitation
27 of a domestic insurer if the association is or might become liable to
28 act as a result of the rehabilitation.

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

1 (c) An order issued under this section must require an
2 accounting to the court by the receiver. Accountings must be at the
3 intervals that the court specifies in its order.

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

7 (1) a period of 30 days after the date of entry of the
8 liquidation order;

9 (2) the expiration of the policy coverage;

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

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

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

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

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

26 (h) Upon issuance of an order appointing a receiver of a domes-
27 tic insurer or of an alien insurer domiciled in this state, an action
28 may not be brought against the insurer or receiver, whether in this
29 state or elsewhere, and an existing action may not be maintained or

1 further presented after issuance of an order. A court of this state
2 shall give full faith and credit to an injunction against the receiver
3 or the company, or against the continuation of an existing action
4 against the receiver or the company, if an injunction is included in
5 an order to liquidate an insurer that is issued under corresponding
6 provisions in another state. If, in the receiver's judgment, protec-
7 tion of the estate of the insurer necessitates intervention in an
8 action against the insurer that is pending outside this state, the
9 receiver may intervene in the action. The receiver may defend an
10 action in which the receiver intervenes under this section at the
11 expense of the estate of the insurer.

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

29 (j) A statute of limitations or defense of laches does not run

1 with respect to an action against an insurer between the filing of a
2 petition for liquidation against an insurer and the denial of the
3 petition. An action against the insurer that might have been com-
4 menced when the petition was filed may be commenced for at least 60
5 days after the petition is denied.

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

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

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

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

1 extent, considered necessary.

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

7 (j) The receiver may

8 (1) hold hearings, subpoena witnesses to compel their
9 attendance, administer oaths, examine a person under oath, and compel
10 a person to subscribe to the person's testimony after it has been
11 correctly reduced to writing, and may require the production of books,
12 papers, records, or other documents that the receiver determines are
13 relevant to the inquiry;

14 (2) remove records and property of the insurer to the
15 offices of the director or to another place that is convenient for the
16 purposes of efficient and orderly execution of the liquidation; a
17 guaranty association or a foreign guaranty association shall be allow-
18 ed reasonable access to the records of the insurer that is necessary
19 for the association to carry out its statutory obligations;

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

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

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

28 (c) If a claim is denied in whole or in part by the receiver,
29 written notice of the determination shall be given to the claimant or

1 the claimant's attorney by first class mail at the address shown in
2 the proof of claim. An objection by the claimant must be filed with
3 the receiver within 60 days after the date of mailing of the notice.
4 If an objection is not filed, the claimant may not object to the
5 determination.

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

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

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

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

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

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

1 liability or of the amount of damages.

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

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

6 (d) The determination of the value of a security held by a
7 secured creditor shall be under the supervision and control of the
8 court, with due regard for recommendations made by the receiver. The
9 value determined must be credited upon the secured claim, and a defi-
10 ciency must be treated as an unsecured claim. If the claimant surren-
11 ders the security to the receiver, the entire claim shall be allowed
12 as if unsecured. The value of a security held by a secured creditor
13 must be determined in one of the following ways, as the court directs:

14 (1) by converting the security into money according to the
15 terms of the agreement under which the security was delivered to the
16 creditor; or

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

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

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

1 the entire claim of the creditor. Any excess received by the creditor
2 shall be held by the creditor in trust for the other person. In this
3 subsection, "other person" does not include a guaranty association or
4 foreign guaranty association.

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

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

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

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

28 (b) A transfer

29 (1) of property other than real property is considered to

1 be made when it becomes so far perfected that no subsequent lien
2 obtainable by legal or equitable proceedings on a simple contract
3 could become superior to the rights of the transferee under AS 21.78.-
4 252;

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

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

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

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

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

21 (1) the transaction consists of the termination, adjust-
22 ment, or settlement of a reinsurance contract in which the reinsurer
23 is released from a part of its duty to pay the originally specified
24 share of losses that occurred before the time of the transaction,
25 unless the reinsurer gives a present fair equivalent value for the
26 release; and

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

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

2 Sec. 21.78.251. FRAUDULENT TRANSFER AFTER PETITION. (a) After
3 a petition for rehabilitation or liquidation has been filed, a trans-
4 fer of the real property of the insurer made to a person acting in
5 good faith is valid against the receiver if made for a present fair
6 equivalent value, or, if not made for a present fair equivalent value,
7 then to the extent of the present consideration actually paid, for
8 which amount the transferee has a lien on the property transferred.
9 The commencement of a proceeding in rehabilitation or liquidation is
10 constructive notice upon the recording of a copy of the petition for,
11 or order of, rehabilitation or liquidation with the recorder of deeds
12 in the jurisdiction where the real property in question is located.
13 The exercise by a court of the United States, or any state or juris-
14 diction, to authorize or effect a judicial sale of real property of
15 the insurer in any county or borough in any state is not impaired by
16 the pendency of a proceeding unless the copy is recorded in the county
17 or borough before the consummation of the judicial sale.

18 (b) After a petition for rehabilitation or liquidation has been
19 filed, and before either the receiver takes possession of the property
20 of the insurer or an order of rehabilitation or liquidation is gran-
21 ted,

22 (1) a transfer of any of the property of the insurer, other
23 than real property, made to a person acting in good faith is valid
24 against the receiver if made for a present fair equivalent value, or,
25 if not made for a fair equivalent value, then to the extent of the
26 present consideration actually paid, for which amount the transferee
27 has a lien on the property transferred;

28 (2) a person indebted to the insurer or holding property of
29 the insurer may, if acting in good faith, pay the indebtedness or

1 deliver the property, or any part of it, to the insurer or upon the
2 insurer's order, with the same effect as if the petition were not
3 pending;

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

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

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

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

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

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

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

29 (2) the transfer was made within the four months before the

1 filing of the petition;

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

6 (4) the creditor receiving it was an officer, or was an
7 employee, attorney, or other person who acted in that capacity whether
8 or not the creditor held such a position, or was a shareholder holding
9 directly or indirectly more than five percent of a class of an equity
10 security issued by the insurer, or was another person, firm, corpora-
11 tion, association, or group of persons with whom the insurer did not
12 deal at arm's length.

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

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

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

29 (2) of real property is considered to be made when it

1 becomes so far perfected that no subsequent bona fide purchaser from
2 the insurer could obtain rights superior to the rights of the trans-
3 feree;

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

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

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

11 (1) upon a contract is one arising in the ordinary course
12 of a proceeding upon the entry or docketing of a judgment or decree,
13 or upon attachment, garnishment, execution, or like process, whether
14 before, upon, or after judgment or decree and whether before or upon
15 levy; it does not include a lien that, under applicable law, is given
16 a special priority over other liens that are prior in time; or

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

29 (f) A transfer of property for or on account of a new and con-

1 temporaneous consideration that is considered under (d) of this
2 section to be made after the transfer because of delay in perfecting
3 it, does not become a transfer for or on account of an antecedent debt
4 if acts required by the applicable law to be performed in order to
5 perfect the transfer against a lien or bona fide purchaser's rights
6 are performed within 21 days, or a period expressly allowed by the
7 law, whichever is less. A transfer to secure a future loan, if a loan
8 is actually made, or a transfer that becomes security for a future
9 loan, has the same effect as a transfer for or on account of a new and
10 contemporaneous consideration.

11 (g) If a lien that is considered voidable under (b) of this
12 section has been dissolved by the furnishing of a bond or other obli-
13 gation, and the bond or other obligation has been indemnified directly
14 or indirectly by the transfer or creation of a lien upon property of
15 an insurer before the filing of a petition under this chapter that
16 results in a liquidation order, the indemnifying transfer or lien is
17 also considered voidable.

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

25 (i) The court has jurisdiction of a proceeding by the receiver
26 to hear and determine the rights of parties under this section.
27 Reasonable notice of a hearing in the proceeding shall be given to all
28 parties in interest, including the obligee of a releasing bond or
29 other like obligation. If an order is entered for the recovery of

1 indemnifying property in kind or for the avoidance of an indemnifying
2 lien, the court, upon application of a party in interest, shall in the
3 same proceeding determine the value of the property or lien, and if
4 the value of the property is less than the amount of the indemnity or
5 the amount of the lien, the transferee or lienholder may elect to
6 retain the property or lien upon payment of its value, as determined
7 by the court, to the receiver, within the time that the court fixes.

8 (j) The liability of a surety under a releasing bond or other
9 obligation shall be discharged to the extent of the value of the
10 indemnifying property recovered or the indemnifying lien avoided by
11 the receiver, or, if the property is retained under (i) of this sec-
12 tion, to the extent of the amount paid to the receiver.

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

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

1 attorney for services rendered or to be rendered is governed by (b)(4)
2 of this section.

3 (m) An officer, manager, employee, shareholder, member subscrib-
4 er, attorney, or other person acting on behalf of an insurer, who
5 knowingly participates in giving a preference even though the person
6 has reasonable cause to believe that the insurer is, or is about to
7 become, insolvent at the time of the preference, is personally liable
8 to the receiver for the amount of the preference. It is a rebuttable
9 presumption that a preference was given with reasonable cause to
10 believe the insurer is or is about to become insolvent if the transfer
11 was made within four months before the filing of a successful petition
12 for liquidation.

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

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

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

21 (a) A claim of a creditor who has received or acquired a preference,
22 lien, conveyance, transfer, assignment, or encumbrance that is void-
23 able under this chapter, may not be allowed unless the creditor sur-
24 renders the preference, lien, conveyance, transfer, assignment, or
25 encumbrance. If the avoidance is affected by a proceeding in which a
26 final judgment has been entered, the claim may not be allowed unless
27 the money is paid or the property is delivered to the receiver within
28 30 days after the date of the entering of the final judgment, except
29 that the court having jurisdiction over the liquidation may allow

1 further time if there is an appeal or other continuation of the
2 proceeding.

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

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

10 Sec. 21.78.260. PRIORITY OF DISTRIBUTION. The priority of
11 distribution of claims from an insurer's estate is in accordance with
12 the order in which each class of claims is set out in this section.
13 Every claim in each class must be paid in full, or adequate money
14 retained for payment, before the members of the next class may receive
15 payment. A subclass may not be established within a class. The order
16 of distribution of claims is:

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

19 (A) the actual and necessary costs preserving or
20 recovering the assets of the insurer;

21 (B) compensation for all services rendered in the
22 rehabilitation and liquidation;

23 (C) any necessary filing fees;

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

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

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

29 (2) class 2: reasonable compensation to employees for

1 services performed, to the extent that the claim does not exceed two
2 months of monetary compensation and represents payment for services
3 performed within one year before the filing of the petition for liq-
4 uidation or, if rehabilitation preceded liquidation, within one year
5 before the filing of the petition for rehabilitation; principal offi-
6 cers and directors of the insurer are not entitled to the benefit of
7 this priority except as otherwise approved by the receiver and the
8 court; the priority in this paragraph is in place of any other similar
9 priority that might be authorized by law as to wages or compensation
10 of employees;

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

23 (4) class 4: claims under nonassessable policies for
24 unearned premium or other premium refunds and claims of general credi-
25 tors, including claims of ceding and assuming companies under con-
26 tracts of reinsurance;

27 (5) class 5: claims of the federal, or a state or local
28 government, other than claims under (3) of this section; claims,
29 including those of a government body for a penalty or forfeiture,

1 shall be allowed in this class only to the extent of the pecuniary
2 loss sustained from the act, transaction, or proceeding out of which
3 the penalty or forfeiture arose, along with reasonable and actual
4 costs attributable to it; the remaining portion of the claims are in
5 the class of claims set out in (8) of this section;

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

8 (7) class 7: surplus or contribution notes, or similar
9 obligations, and premium refunds on assessable policies; payments to
10 members of domestic mutual insurance companies shall be limited in
11 accordance with law;

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

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

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

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

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

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

27 (3) person is to pay an assessment levied against the
28 members or subscribers of the insurer, or is to pay a balance upon a
29 subscription to the capital stock of the insurer, or is in any other

1 way in the nature of a capital contribution; or

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

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

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

6 (1) agent, broker, premium finance company, or any other
7 person, other than the insured, responsible for the payment of a
8 premium is obligated to pay an unpaid earned premium due the insurer
9 at the time of the declaration of insolvency, as shown on the records
10 of the insurer; neither a credit nor a setoff is allowed to an agent,
11 broker, or premium finance company for an amount advanced to the
12 insurer by the agent, broker, or premium finance company on behalf of,
13 but in the absence of a payment by, the insured;

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

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

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

24 Sec. 21.78.272. REINSURER'S LIABILITY. The amount recoverable
25 by the receiver from reinsurers may not be reduced as a result of
26 delinquency proceedings, regardless of a provision in the reinsurance
27 contract or other agreement. Payment made directly to an insured or
28 other creditor does not diminish the reinsurer's obligation to the
29 insurer's estate unless the reinsurance contract provided for direct

1 coverage of a named insured and the payment was made in discharge of
2 that obligation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 insurer;

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

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

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

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

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

1 of the policy at any time during the life of the policy, unless the
2 ownership of the expiration of the policy has been transferred to
3 another. The written notice issued under this section must include
4 the name and address of the insurer, the name and address of the
5 agent, identification of the policy impaired and the nature of the
6 impairment, including termination of coverage as specified in AS 21.-
7 78.100(d) - (g). Notice under this section by a general agent satis-
8 fies the notice requirement for an agent under contract to the general
9 agent. Each agent obligated to give notice under this section shall
10 file a report of compliance with the receiver.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 opened.

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

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

9 (a) The corporation shall

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

1 at the time the retroactive insurance was purchased;

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

6 (3) comply with or be subject to AS 21.06.090, 21.06.120,
7 21.06.140, 21.06.160, 21.06.250, AS 21.09.180 - 21.09.200, 21.09.250,
8 21.09.280, AS 21.12.020 [AS 21.12.020(b) - (e)], AS 21.18, AS 21.21,
9 AS 21.24 and AS 21.36; and shall be exempt from participation as a
10 member insurer in the Alaska Insurance Guaranty Corporation;

11 (4) carry out the obligations of the contracts issued by
12 the corporation by defending all covered claims made against insured
13 health care providers and by paying all liabilities that are finally
14 adjudicated against the insured health care provider or that may in
15 the opinion of the corporation reasonably be expected to be finally
16 adjudicated against the health care provider to the extent of the
17 contract obligation;

18 (5) establish standards for the acceptability of risks; in
19 establishing these standards the corporation may exclude an applicant
20 for insurance based on individual risk selection factors, but may not
21 exclude an applicant based only on the classification of the appli-
22 cant.

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

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

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

28 (B) an insurer is being operated in a manner that has
29 caused or might cause irreparable loss and injury to the insurer

1 or to the public;

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

4 (26) "policyholder surplus" means

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

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

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

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

18 * Sec. 84. APPLICABILITY OF CAPITAL AND SURPLUS REQUIREMENTS. AS 21.-
19 09.070(a), as amended in sec. 10 of this Act, does not apply to an insurer
20 that is admitted in the state before the effective date of this Act. An
21 insurer admitted in the state before the effective date of this Act shall
22 maintain the capital and surplus required under AS 21.09.070(a) before the
23 effective date of this Act.

24 * Sec. 85. AS 21.09.080(b), 21.09.080(c); AS 21.21.020(b), 21.21.-
25 270(d); and AS 21.78.330(1) are repealed.

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

27 * Sec. 87. AS 21.78.090(f) added by sec. 63 of this Act, has the effect
28 of changing Alaska Rule of Civil Procedure 62(a), and Alaska Rules of
29 Appellate Procedure 205, 405, 603, and 611(d), by providing for an automa-

1 tic stay of action in a rehabilitation proceeding.

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

7 * Sec. 89. AS 21.78.100(h), added by sec. 64 of this Act, has the
8 effect of changing Alaska Rule of Civil Procedure 41, and Alaska Rules of
9 Appellate Procedure 511 and 606, by providing that an action may not be
10 brought against the insurer or receiver, and existing actions may not be
11 litigated after a receiver is appointed by the court.

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

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