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Judiciary and Finance

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1 IN THE SENATE

BY THE RULES COMMITTEE BY
REQUEST OF THE GOVERNOR

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SENATE BILL NO. 259

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IN THE LEGISLATURE OF THE STATE OF ALASKA

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SIXTEENTH LEGISLATURE - FIRST SESSION

5

A BILL

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For an Act entitled: "An Act relating to insurance guaranty funds; changing Rule 62(a), Rules of Civil Procedure; and providing for an effective date."

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

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* Section 1. AS 21.36 is amended by adding a new section to read:

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Sec. 21.36.035. PROHIBITED ADVERTISEMENTS AND REPRESENTATIONS.

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(a) A person may not place before the public an advertisement, announcement, or statement that uses the existence of the Alaska Life and Disability Insurance Guaranty Association created by AS 21.79.040 to sell, solicit, or induce the public to purchase any form of insurance covered by AS 21.79.

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(b) A person having a beneficial interest in any form of insurance covered by AS 21.79 may not represent to a lender or any other person that the insurance or form of insurance has value as collateral for a loan because the insurance is covered by the Alaska Life and Disability Insurance Guaranty Association. This subsection does not apply to the Alaska Life and Disability Insurance Guaranty Association itself, or to any other entity that does not sell or solicit insurance.

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* Sec. 2. AS 21 is amended by adding a new chapter to read:

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CHAPTER 79. ALASKA LIFE AND DISABILITY INSURANCE

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GUARANTY ASSOCIATION.

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Sec. 21.79.010. PURPOSE. The purposes of this chapter are to

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provide a mechanism for the payment of covered claims under life

1 insurance policies, disability insurance policies, annuity contracts,
2 and supplemental contracts; to protect policyholders; and to avoid
3 financial loss to claimants or policyholders because of the impairment
4 or insolvency of a member insurer issuing those policies or contracts.

5 Sec. 21.79.020. SCOPE. (a) This chapter applies to the pol-
6 icies and contracts specified in (b) of this section and to persons
7 who

8 (1) except for nonresident certificate holders under group
9 policies or contracts, are the beneficiaries, assignees, or payees of
10 the persons described in (2) of this paragraph, and

11 (2) are owners of, or certificate holders under, those
12 policies or contracts, or, in the case of unallocated annuity con-
13 tracts, to the persons who are the contract holders, and who

14 (A) are residents, or

15 (B) are not residents, if the following conditions are
16 satisfied:

17 (i) the insurers that issued the policies or
18 contracts are domiciled in this state;

19 (ii) the insurers never held a license or certifi-
20 cate of authority in the states in which the persons reside;

21 (iii) those states have associations similar to the
22 association created by this chapter; and

23 (iv) the persons are not eligible for coverage of
24 those associations.

25 (b) This chapter applies to the persons specified in (a) of this
26 section and to direct, nongroup life, disability, annuity, and supple-
27 mental policies or contracts, to certificates under direct group
28 policies and contracts, and to unallocated annuity contracts issued by
29 member insurers, except as otherwise limited by this chapter.

1 (c) This chapter does not apply to

2 (1) that part of a policy or contract which is not guaran-
3 teed by the insurer;

4 (2) that part of the risk borne by the policy or contract
5 holder;

6 (3) a policy or contract of reinsurance, unless assumption
7 certificates have been issued;

8 (4) that part of a policy or contract on which the rate of
9 interest

10 (A) averaged over the period of four years before the
11 date on which the association becomes obligated with respect to
12 the policy or contract, exceeds a rate of interest determined by
13 subtracting two percentage points from the published monthly
14 average for that same four-year period or for a lesser period if
15 the policy or contract was issued less than four years before the
16 association became obligated; and

17 (B) on and after the date on which the association
18 becomes obligated with respect to the policy or contract, exceeds
19 the rate of interest determined by subtracting three percentage
20 points from the most recent published monthly average;

21 (5) a plan or program of an employer, association, or
22 similar entity to provide life, disability, or annuity benefits to its
23 employees or members, to the extent that the plan or program is self-
24 funded or uninsured, including benefits payable by the employer,
25 association or similar entity under

26 (A) a multiple employer welfare arrangement as defined
27 in 26 U.S.C. 414 (sec. 514, of the Employee Retirement Income
28 Security Act of 1974, as amended);

29 (B) a minimum premium group insurance plan;

1 (C) a stop-loss group insurance plan; or
2 (D) an administrative services only contract;
3 (6) that part of a policy or contract which provides divi-
4 dends or experience rating credits, or provides that fees or allow-
5 ances be paid to a person, including the policy or contract holder, in
6 connection with the service to or administration of the policy or
7 contract; and

8 (7, a policy or contract issued in this state by a member
9 insurer at a time when it was not licensed or did not have a certifi-
10 cate of authority to issue the policy or contract in this state.

11 (d) In (c)(4) of this section, "published monthly average" means
12 the monthly average of corporate bond yields as published by Moody's
13 Investor Service, Inc., or its successor, or if Moody's corporate bond
14 yield average-monthly average corporates is not published, a substan-
15 tially similar average, established by regulation adopted by the
16 director.

17 Sec. 21.79.025. LIABILITY LIMITS. The benefits for which the
18 association may become liable shall not exceed the lesser of

19 (1) the contractual obligations for which the insurer is
20 liable or would have been liable if it were not an impaired or insol-
21 vent insurer, or

22 (2) with respect to any one life, regardless of the number
23 of policies or contracts, and subject to an aggregate of \$300,000,

24 (A) \$300,000 in life insurance death benefits, but not
25 more than \$100,000 in net cash surrender and net cash withdrawal
26 values for life insurance;

27 (B) \$100,000 in disability insurance benefits, includ-
28 ing any net cash withdrawal values;

29 (C) \$100,000 in the present value of annuity benefits,

1 including net cash surrender and net cash withdrawal values;

2 (3) with respect to any one contract holder, \$5,000,000 in
3 unallocated annuity contract benefits, irrespective of the number of
4 contracts held by that contract holder.

5 Sec. 21.79.030. CONSTRUCTION. This chapter shall be liberally
6 construed to effect the purposes set out in AS 21.79.010.

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

17 (1) the disability insurance account; and

18 (2) the life insurance, annuity, and unallocated annuity
19 contract account;

20 (b) The association is under the supervision of the director and
21 is subject to the insurance laws of the state. Except as provided in
22 AS 21.79.110(b), meetings or records of the association may be opened
23 to the public upon majority vote of the board of governors of the
24 association.

25 Sec. 21.79.050. BOARD OF GOVERNORS. (a) The board of governors
26 of the association consists of not less than five nor more than nine
27 member insurers. Terms of office for members of the board must be
28 established in the plan of operation submitted under AS 21.79.080.
29 Member insurers shall select the members of the board, subject to the

1 approval of the director. A vacancy on the board must be filled for
2 the unexpired term by a majority vote of the remaining board members,
3 subject to the approval of the director. To select the first board of
4 governors and organize the association, the director shall give notice
5 to all member insurers of the time and place of the organization
6 meeting. Each member insurer is entitled to one vote in person or by
7 proxy at the organization meeting. If the members of the board are
8 not selected within 60 days after notice of the meeting, the director
9 may appoint the members.

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

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

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

20 (1) guarantee, assume, reinsure, or provide for the guaran-
21 tee, assumption, or reinsurance of the policies or contracts of the
22 impaired insurer;

23 (2) provide money, pledges, notes, guarantees, or other
24 means that are necessary to act under (1) of this subsection and to
25 assure payment of the contractual obligations of the impaired insurer
26 until those obligations are guaranteed, reinsured, or assumed; or

27 (3) loan money to the impaired insurer.

28 (b) If a member insurer is an impaired insurer, and the insurer
29 is not paying claims in a timely manner, the association may

1 (1) take any of the actions specified in (a) of this sec-
2 tion, or

3 (2) provide substitute benefits in lieu of the contractual
4 obligations of the impaired insurer solely for:

5 (A) disability claims;

6 (B) periodic annuity benefit payments;

7 (C) death benefits;

8 (D) supplemental benefits; and

9 (E) cash withdrawals for policy or contract owners who
10 petition under claims of emergency or hardship in accordance with
11 standards proposed by the association and approved by the direc-
12 tor.

13 (c) The actions specified in (b) of this section may not be
14 taken unless

15 (1) the laws of the impaired insurer's state of domicile
16 provide that until all payments of or on account of the impaired
17 insurer's contractual obligations by all guaranty associations, along
18 with all expenses and interest on all payments and expenses, shall
19 have been repaid to the guaranty associations or a plan of repayment
20 by the impaired insurer shall have been approved by the guaranty
21 associations,

22 (A) the delinquency proceeding shall not be dismissed,

23 (B) neither the impaired insurer nor its assets shall
24 be returned to the control of its shareholders or private manage-
25 ment, and

26 (C) no solicitation or acceptance of new business, or
27 restoration of any suspended or revoked license shall be permit-
28 ted, and

29 (2) if the impaired insurer is a

1 (A) domestic insurer, it has been placed under an
2 order of rehabilitation by a superior court in this state; or

3 (B) foreign or alien insurer,

4 (i) it has been prohibited from soliciting or
5 accepting new business in this state;

6 (ii) its certificate of authority has been sus-
7 pended or revoked in this state; and

8 (iii) a petition for rehabilitation or liquidation
9 has been filed in a court of competent jurisdiction in its
10 state of domicile by the insurance commissioner of that
11 state.

12 (d) If a member insurer becomes insolvent, the association
13 shall, with the approval of the director,

14 (1) guarantee, assume, reinsure or provide for the guaran-
15 tee, assumption, or reinsurance of the covered policies of the insol-
16 vent insurer held by residents; or

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

19 (3) provide money, pledges, notes, guarantees, or other
20 means necessary to discharge its duties under this subsection; or

21 (4) with respect only to life and disability insurance
22 policies, provide benefits and coverages in accordance with (e) of
23 this section.

24 (e) When proceeding under (b)(2) or (d)(4) of this section, the
25 association shall, with respect to only life or disability insurance
26 policies

27 (1) assure payment of benefits for premiums identical to
28 the premiums and benefits, other than terms of conversion and re-
29 newability, that would have been payable under the policies of the

1 insolvent insurer, for claims incurred

2 (A) with respect to group policies, not later than the
3 earlier of the next renewal date under the policies or contracts
4 or 45 days, but in no event less than 30 days, after the date on
5 which the association becomes obligated with respect to the
6 policies;

7 (B) with respect to individual policies, not later
8 than the earlier of the next renewal date, if any, under the
9 policies or one year, but in no event less than 30 days, from the
10 date on which the association becomes obligated with respect to
11 the policies;

12 (2) make diligent efforts to provide all known insurers or
13 group policyholders with respect to group policies 30 days notice of
14 the termination of the benefits provided;

15 (3) with respect to individual policies, make available to
16 each known insured, or owner if other than the insured, and with
17 respect to an individual formerly insured under a group policy who is
18 not eligible for replacement group coverage, make available substitute
19 coverage on an individual basis in accordance with the provisions of
20 (f) of this section, if the insureds had a right under law or the
21 terminated policy to convert coverage to individual coverage or to
22 continue an individual policy in force until a specified age or for a
23 specific time, during which the insurer had no right unilaterally, to
24 make changes in any provision of the policy or had a right only to
25 make changes in premium by class.

26 (f) With respect to life and disability insurance policies, the
27 association

28 (1) in providing the substitute coverage in (3) of this
29 subsection, shall either offer to reissue the terminated coverage or

1 to issue an alternate policy;

2 (2) shall offer alternative or reissued policies without
3 requiring evidence of insurability, and shall not provide for any
4 waiting period or exclusion that would not have applied under the
5 terminated policy; and

6 (3) may reinsure any alternative or reissued policy.

7 (g) An alternative life or disability policy shall,

8 (1) if adopted by the association, be subject to the ap-
9 proval of the director; the association may adopt alternative policies
10 of various types for future issuance without regard to any particular
11 impairment or insolvency;

12 (2) contain at least the minimum statutory provisions
13 required in this state and provide benefits that shall not be unrea-
14 sonable in relation to the premium charged; the association shall set
15 the premium in accordance with a table of rates which it shall adopt;
16 the premium shall reflect the amount of insurance to be provided and
17 the age and class of risk of each insured, but shall not reflect any
18 changes in the health of the insured after the original policy was
19 last underwritten;

20 (3) if issued by the association, provide coverage of a
21 type similar to that of the policy issued by the impaired or insolvent
22 insurer, as determined by the association.

23 (h) If the association elects to reissue terminated coverage at
24 a premium rate different from that charged under the terminated poli-
25 cy, the premium shall be set by the association in accordance with the
26 amount of insurance provided and the age and class of risk, subject to
27 approval of the director or by a court of competent jurisdiction.

28 (i) The association's obligations with respect to coverage under
29 any policy of the impaired or insolvent insurer or under any reissue

1 or alternative policy shall cease on the date such coverage or policy
2 is replaced by another similar policy by the policyholder, the
3 insured, or the association.

4 (j) When proceeding under (b)(2) or (d) of this section with
5 respect to any policy or contract carrying guaranteed minimum interest
6 rates, the association shall assure the payment or crediting of a rate
7 of interest consistent with AS 21.79.020(c)(3).

8 (k) Nonpayment of premiums within 31 days after the date
9 required under the terms of any guaranteed, assumed, alternative or
10 reissued policy or contract or substitute coverage shall terminate the
11 association's obligations under such policy or coverage under this
12 chapter with respect to the policy or coverage, except with respect to
13 any claims incurred or any net cash surrender value which may be due
14 in accordance with the provisions of this chapter.

15 (l) Premiums due for coverage after entry of an order of liq-
16 uidation of an insolvent insurer shall belong to and be payable at the
17 direction of the association, and the association shall be liable for
18 unearned premiums due to policy or contract owners arising after the
19 entry of the order.

20 (m) The protection provided by this chapter shall not apply
21 where any guaranty protection is provided to residents of this state
22 by the laws of the domiciliary state or jurisdiction of the impaired
23 or insolvent insurer other than this state.

24 (n) In carrying out its duties under (b), (c) and (d) of this
25 section, the association may impose permanent policy liens or contract
26 liens in connection with any guarantee, assumption, or reinsurance
27 agreement, if the court

28 (1) finds that

29 (A) the amount which may be assessed under this

1 chapter is less than the amount needed to assure full and prompt
2 performance of the insolvent insurer's contractual obligations; or

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

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

7 (o) Before taking action under (b) - (e) of this section, the
8 association may request a superior court to impose temporary stays on
9 the payment of cash value and policy loans, or any other right to
10 withdraw funds held in connection with policies or contracts, in
11 addition to any contractual provisions for deferral of cash or policy
12 loan values.

13 (p) If the association fails to take action under (b) - (e) of
14 this section within a reasonable period of time after a member insurer
15 becomes insolvent, the director shall assume the powers of the asso-
16 ciation under (b) - (e) of this section.

17 (q) If requested by the director, the association may assist and
18 advise the director concerning rehabilitation, payment of claims,
19 continuance of coverage, or the performance of other contractual
20 obligations of any impaired or insolvent insurer.

21 (r) The association may appear in any court proceeding in the
22 state involving an impaired or insolvent insurer. The standing con-
23 ferred by this subsection extends to all matters germane to the powers
24 and duties of the association, including proposals to reinsure or
25 guarantee the covered policies of the impaired or insolvent insurer
26 and the determination of the covered policies and contractual obliga-
27 tions.

28 (s) A person who receives benefits under this chapter is con-
29 sidered to have assigned the rights under the covered policy to the

1 association to the extent of the benefits received under this chapter.
2 The association may require an assignment to it of those rights by any
3 payees, policy or contract owner, beneficiary, insured, or annuitant
4 before a person may receive any rights or benefits conferred by this
5 chapter. The association is subrogated to these rights against the
6 assets of any insolvent insurer. The priority of the association's
7 subrogation right to the assets of the insolvent insurer is the same
8 as the priority of the person entitled to benefits under this chapter.

9 (t) The association may

10 (1) enter into contracts which are necessary or proper to
11 carry out the provisions of this chapter;

12 (2) sue or be sued, and take any legal action necessary or
13 proper for recovery of any unpaid assessments under AS 21.79.070;

14 (3) borrow money to carry out the purposes of this chapter;

15 (4) employ or retain those persons necessary to handle the
16 financial transactions of the association and other functions under
17 this chapter;

18 (5) negotiate and contract with any liquidator, rehabil-
19 itator, conservator, or ancillary receiver to carry out the powers and
20 duties of the association;

21 (6) exercise, for the purposes of this chapter and to the
22 extent approved by the director, the powers of a domestic life or
23 disability insurer; however, the association may not issue insurance
24 policies or annuity contracts other than those issued to perform the
25 contractual obligations of an impaired or insolvent insurer;

26 (7) take legal action to prevent the payment of improper
27 claims;

28 (8) perform all other acts necessary or proper to implement
29 the purposes of this chapter; and

1 (9) join an organization of one or more other state asso-
2 ciations with similar purposes.

3 Sec. 21.79.070. ASSESSMENTS. (a) To provide money for the
4 association, the board of governors shall assess member insurers
5 separately for each account. The assessment shall be at the rate of
6 two percent of premiums and is payable quarterly. The assessment must
7 be reported and paid to the association not later than 60 days after
8 the end of each quarter, and accrues interest at 10 percent per year
9 from the date payment is due.

10 (b) The money resulting from assessment shall be maintained in a
11 fund in this state and shall be used to

12 (1) carry out the powers and duties of the association
13 under AS 21.79.060 with regard to an impaired or insolvent insurer;
14 and

15 (2) pay administrative costs and other general expenses of
16 the association and the cost of an examination conducted under
17 AS 21.79.100(b) that is not related to a particular impaired or insol-
18 vent insurer.

19 (c) The association may abate or defer, in whole or in part, the
20 assessment of a member insurer if, in the opinion of the board, pay-
21 ment of the assessment would endanger the ability of the member insur-
22 er to fulfill its contractual obligations.

23 (d) The board may provide in its plan of operation, a method of
24 allocating funds among claims, whether relating to one or more im-
25 paired or insolvent insurers, when the amount in the assessment fund
26 is insufficient to cover anticipated claims.

27 (e) The board may, in accordance with its plan of operation,
28 reduce the rate of assessment, if the assessment fund amount exceeds
29 \$50,000,000 or an amount considered sufficient to meet anticipated

1 claims, whichever is greater.

2 (f) The board may, in accordance with its plan of operation,
3 increase the amounts for which the association may be liable under
4 AS 21.79.025, if the assessment fund amount exceeds \$50,000,000 or an
5 amount considered sufficient to meet anticipated claims, whichever is
6 greater.

7 (g) A member insurer, in determining its premium rates and
8 dividends for a policy of insurance listed in AS 21.79.020(b), may
9 consider the amount reasonably necessary to meet its assessment
10 obligations under this chapter.

11 Sec. 21.79.080. PLAN OF OPERATION. (a) The association shall
12 submit to the director a plan of operation, and any amendments, to
13 assure the fair, reasonable, and equitable administration of the
14 association. The plan of operation and any amendments take effect on
15 the approval of the plan, in writing, by the director.

16 (b) Notwithstanding (a) of this section, if the association
17 fails to submit a plan of operation acceptable to the director within
18 180 days after the effective date of this chapter, or if at any later
19 time the association fails to submit suitable amendments to the plan,
20 the director shall, after notice and hearing, adopt regulations to
21 implement this chapter. These regulations remain in effect until
22 amended or repealed by the director or superseded by a plan submitted
23 by the association which is approved by the director.

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

26 (1) establish procedures for handling assets of the asso-
27 ciation;

28 (2) establish the amount and method of reimbursing members
29 of the board under AS 21.79.050(c);

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

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

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

8 (6) establish any additional procedures for assessments
9 under AS 21.79.070; and

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

12 (d) The plan of operation may delegate any powers and duties of
13 the association, other than those under AS 21.79.060(t)(3) and
14 21.79.070, to a corporation or other organization performing functions
15 similar to those of the association, or its equivalent, in two or more
16 states. The association shall reimburse the corporation or orga-
17 nization for any payments made for the association and for performing
18 any function of the association. A delegation under this subsection
19 takes effect only with the approval of the board and the director.

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

24 (b) The director may

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

29 (2) levy a penalty on any member insurer which fails to

1 comply with the plan of operation; or

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

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

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

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

20 (1) revocation of a license;

21 (2) suspension of a license; or

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

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

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

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

7 (d) The director shall furnish the board with the NAIC Insurance
8 Regulatory Information System (IRIS) ratios and listings of companies
9 not included in the ratios developed by the NAIC, and the board may
10 use that information to carry out its duties and responsibilities
11 under this section. The information must be kept confidential by the
12 board until it is made public by the director.

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

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

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

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

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

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

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

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

24 (b) The association shall keep records of negotiations and
25 meetings relating to its activities. Records of negotiations or
26 meetings may only be made public under AS 21.79.040(b)

27 (1) after the termination of a liquidation, rehabilitation,
28 or conservation proceeding which involves the impaired or insolvent
29 insurer;

1 (2) after the insurer is no longer impaired or insolvent;
2 or

3 (3) upon the order of a court of competent jurisdiction.

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

19 (d) Before the termination of any liquidation, rehabilitation,
20 or conservation proceeding, the court may consider the contributions
21 of the respective parties, including the association, the shareholders
22 and policyholders of the impaired or insolvent insurer, and any other
23 party with a bona fide interest, in distributing the ownership rights
24 of the impaired or insolvent insurer. The court shall consider the
25 welfare of policyholders of the continuing or successor insurers. A
26 distribution to stockholders of an impaired or insolvent insurer may
27 not be made until the total amount of valid claims of the association
28 for money spent in carrying out its powers and duties under AS 21.-
29 79.060, with respect to the insurer, has been fully recovered by the

1 association.

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

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

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

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

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

1 report for the preceding calendar year, in a form approved by the
2 director, and a report of its activities during the preceding calendar
3 year. Nothing in AS 21.79.110(b) limits the duty of the association
4 to report under this section.

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

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

12 Sec. 21.79.150. STAY OF PROCEEDING, REOPENING DEFAULT JUDGMENTS.
13 Proceedings which involve the enforcement of a judgment of liquida-
14 tion, rehabilitation, or conservation against an impaired or insolvent
15 insurer may not be taken until at least 60 days after the entry of the
16 judgment set aside and may defend against the suit on the merits.

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

19 Sec. 21.79.900. Definitions in this chapter,

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

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

24 (3) "board" means the board of governors of the asso-
25 ciation;

26 (4) "contractual obligation" means an obligation under a
27 policy, contract, or certificate under a group policy or contract, or
28 a portion of one;

29 (5) "covered policy" means a policy or contract described

1 in AS 21.79.020(a) and (b);

2 (6) "director" means the director of the division of insur-
3 ance in the Department of Commerce and Economic Development;

4 (7) "impaired insurer" and "insolvent insurer" mean a
5 member insurer that becomes impaired or insolvent as defined in
6 AS 21.90.900 after January 1, 1990;

7 (8) "member insurer" means an insurer or hospital or med-
8 ical service organization licensed to transact insurance in the state
9 which issues a policy described in AS 21.79.020(a) and (b), and in-
10 cludes an insurer whose license or certificate of authority in this
11 state may have been suspended, revoked, not renewed or voluntarily
12 withdrawn, but does not include a

13 (A) health maintenance organization

14 (B) fraternal benefit society;

15 (C) mandatory state pooling plan;

16 (D) mutual assessment company or any entity that
17 operates on an assessment basis; or

18 (E) insurance exchange.

19 (9) "NAIC" means the National Association of Insurance
20 Commissioners;

21 (10) "premiums" means amounts received on covered policies
22 or contracts less premiums, considerations and deposits returned, and
23 less dividends and experience credits, but does not include any
24 amounts received for any policies or contracts or for the portions of
25 any policies or contracts for which coverage is not provided under
26 AS 21.79.020(b) and (c) except that an assessable premium shall not be
27 reduced on accounts for AS 21.79.020(c)(3) relating to interest
28 limitations and AS 21.79.020(d)(2) relating to limitations with re-
29 spect to any one life and any one contract holder;

1 (11) "resident" means any person who resides in this state
2 at the time a member insurer is determined to be an impaired or insol-
3 vent insurer and to which a contractual obligation is owed; a person
4 may be a resident of only one state; which in the case of a person
5 other than a natural person shall be its principal place of business;

6 (12) "supplemental contract" means any agreement entered into
7 for the distribution of policy or contract benefits;

8 (13) "unallocated annuity contract" means any annuity con-
9 tract or group annuity certificate which is not issued to and owned by
10 an individual, except to the extent of annuity benefits guaranteed to
11 an individual by an insurer under such contract or certificate.

12 * Sec. 3. AS 21.80.020 is amended to read:

13 Sec. 21.80.020. APPLICABILITY. This chapter applies to all
14 kinds of direct insurance, except life, title, surety, disability,
15 credit, mortgage guaranty, and wet marine and transportation [OCEAN
16 MARINE] insurance as it applies to vessels at least 100 feet long as
17 measured at the water line.

18 * Sec. 4. AS 21.80.040 is amended to read:

19 Sec. 21.80.040. CREATION OF ASSOCIATION. There is created a
20 nonprofit incorporated legal entity to be known as the Alaska Insur-
21 ance Guaranty Association. All insurers defined as member insurers in
22 AS 21.80.180(6) shall be and remain members of the association as a
23 condition of their authority to transact insurance in this state. The
24 association shall perform its functions under a plan of operation
25 established and approved under AS 21.80.070 and shall exercise its
26 powers through a board of directors established under AS 21.80.050.
27 For purposes of administration and assessment, the association shall
28 be divided into four [THREE] separate accounts:

29 (1) the workers' compensation insurance account;

- 1 (2) the automobile insurance account;
2 (3) the marine insurance account; and
3 (4) the account for all other insurance to which this
4 chapter applies.

5 * Sec. 5. AS 21.80.050(a) is amended to read:

6 (a) The board of directors of the association consists of not
7 fewer than five nor more than nine persons serving terms as estab-
8 lished in the plan of operation. The members of the board shall be
9 selected by member insurers subject to the approval of the director.
10 Vacancies of the board shall be filled for the remaining period of the
11 term in the same manner as initial appointments. If no members are
12 selected to fill a vacancy on the board of directors within 90 days of
13 the vacancy, the director may appoint a member for the remaining
14 period of the term.

15 * Sec. 6. AS 21.80.060(a) is amended to read:

16 (a) The association shall

17 (1) be obligated to the extent of the covered claims exist-
18 ing before the determination of insolvency and arising within 30 days
19 after the determination of insolvency, or before the policy expiration
20 date if less than 30 days after the determination, or before the
21 insured replaces the policy or causes its cancellation, if the insured
22 does so within 30 days of the termination, but this obligation in-
23 cludes only that amount of each covered claim which is in excess of
24 \$100 and is less than \$500,000 [\$300,000], except that the association
25 shall pay the full amount of any covered claim arising out of a work-
26 ers' compensation policy; in no event is the association obligated to
27 a policyholder or claimant in an amount in excess of the obligation of
28 the insolvent insurer under the policy from which the claim arises;

29 (2) be considered the insurer to the extent of its

1 obligation on the covered claims and to that extent has all rights,
2 duties, and obligations of the insolvent insurer as if the insurer had
3 not become insolvent;

4 (3) allocate claims paid [AND EXPENSES INCURRED AMONG THE
5 THREE ACCOUNTS SEPARATELY, AND ASSESS MEMBER INSURERS SEPARATELY FOR
6 EACH ACCOUNT AMOUNTS NECESSARY TO PAY THE OBLIGATION OF THE ASSO-
7 CIATION UNDER (a)(1) OF THIS SECTION SUBSEQUENT TO AN INSOLVENCY, THE
8 EXPENSES OF HANDLING COVERED CLAIMS SUBSEQUENT TO AN INSOLVENCY], the
9 cost of examinations under AS 21.80.110, and other expenses authorized
10 by this chapter[;] among the four accounts separately and assess [THE
11 ASSESSMENTS OF] each member insurer for each account in the amount of
12 four percent of [SHALL BE IN THE PROPORTION THAT] the net direct
13 written premiums of the member insurer for the preceding calendar
14 quarter [YEAR] on the kinds of insurance in the account until December
15 31, 1994, and thereafter two percent [BEARS TO THE NET DIRECT WRITTEN
16 PREMIUMS OF ALL MEMBER INSURERS FOR THE PRECEDING CALENDAR YEAR ON THE
17 KINDS OF INSURANCE IN THE ACCOUNT]; the assessment is due 30 days
18 following the end of each calendar quarter; assessment funds shall be
19 invested or maintained in this state; [EACH MEMBER INSURER SHALL BE
20 NOTIFIED OF THE ASSESSMENT NOT LATER THAN 30 DAYS BEFORE IT IS DUE; A
21 MEMBER INSURER MAY NOT BE ASSESSED IN ANY YEAR ON ANY ACCOUNT AN
22 AMOUNT GREATER THAN TWO PERCENT OF THE MEMBER INSURER'S NET DIRECT
23 WRITTEN PREMIUMS FOR THE PRECEDING CALENDAR YEAR ON THE KINDS OF
24 INSURANCE IN THE ACCOUNT;] if the [MAXIMUM] assessment, together with
25 the other assets of the association in any account, does not provide
26 in any one year in any account an amount sufficient to make all
27 necessary payments. from that account, the funds available shall be
28 prorated and the unpaid portion shall be paid as soon thereafter as
29 funds become available; [THE ASSOCIATION MAY EXEMPT OR DEFER, IN WHOLE

1 OR IN PART, THE ASSESSMENT OF ANY MEMBER INSURER, IF THE ASSESSMENT
2 WOULD CAUSE THE MEMBER INSURER'S FINANCIAL STATEMENT TO REFLECT
3 AMOUNTS OF CAPITAL OR SURPLUS LESS THAN THE MINIMUM AMOUNTS REQUIRED
4 FOR A CERTIFICATE OF AUTHORITY BY ANY JURISDICTION IN WHICH THE MEMBER
5 INSURER IS AUTHORIZED TO TRANSACT INSURANCE;] each member insurer may
6 set off against an assessment, authorized payments made on covered
7 claims and expenses incurred in the payment of these claims by the
8 member insurer if they are chargeable to the account for which the
9 assessment is made;

10 (4) investigate claims brought against the association and
11 adjust, compromise, settle, and pay covered claims to the extent of
12 the association's obligation and deny all other claims and may review
13 settlements, releases, and judgments to which the insolvent insurer or
14 its insureds were parties to determine the extent to which settle-
15 ments, releases, and judgments may be properly contested;

16 (5) notify persons as the director directs under
17 AS 21.80.080(b)(1);

18 (6) handle claims through its employees or through one or
19 more insurers or other persons designated as servicing facilities; a
20 servicing facility shall operate and maintain its principal office in
21 this state; designation of a servicing facility is subject to the
22 approval of the director, but designation may be declined by a member
23 insurer;

24 (7) reimburse each servicing facility for obligations of
25 the association paid by the facility and for expenses incurred by the
26 facility while handling claims on behalf of the association and shall
27 pay the other expenses of the association authorized by this chapter.

28 * Sec. 7. AS 21.80 is amended by adding a new section to read:

29 Sec. 21.80.065. LIMIT ON ASSESSMENT. During the third quarter

1 of each year, the board of directors shall review the anticipated
2 claim and expense obligations of the association for each account for
3 the coming calendar year. If after consideration of these obliga-
4 tions, the amount in any account will exceed the total of the net
5 direct written premiums for the previous year, the board shall defer
6 collection of the assessment or modify the rate of assessment for the
7 affected account for the coming calendar year. The board of directors
8 shall file such intent with the director by September 1 and if the
9 director concurs, the association will notify all member companies of
10 the change in assessment for the coming year.

11 * Sec. 8 AS 21.80.070(a) is amended to read:

12 (a) The association shall submit to the director a plan of
13 operation and any amendments necessary or suitable to assure the fair,
14 reasonable, and equitable administration of the association. The plan
15 of operation and amendments become effective upon approval in writing
16 by the director. If [THE ASSOCIATION FAILS TO SUBMIT A SUITABLE PLAN
17 OF OPERATION BY NOVEMBER 4, 1970 OR IF AT ANY SUBSEQUENT TIME] the
18 association fails to submit suitable amendments to the plan, the
19 director shall, after notice and hearing, adopt reasonable regulations
20 necessary or advisable to effectuate the provisions of this chapter.
21 These regulations shall continue in force until modified by the direc-
22 tor or superseded by a plan submitted by the association and approved
23 by the director.

24 * Sec. 9. AS 21.80.080(b) is amended to read:

25 (b) The director may
26 (1) require that the association notify the insureds of the
27 insolvent insurer and any other interested parties of the determi-
28 nation of insolvency and of their rights under this chapter; this
29 notification shall be by mail at their last known address, when

1 available, but if sufficient information for notification by mail is
2 not available, notice by publication in a newspaper of general circu-
3 lation is sufficient;

4 (2) suspend or revoke, after notice and hearing, the cer-
5 tificate of authority to transact insurance in this state of any
6 member insurer that [WHICH] fails to pay an assessment when due or
7 fails to comply with the plan of operation; as an alternative, the
8 director may levy a fine on any member insurer that [WHICH] fails to
9 pay an assessment when due; this fine may not exceed five percent of
10 the unpaid assessment per month or portion of a month, except that no
11 fine may be less than \$250 [\$100] a month;

12 (3) revoke the designation of any servicing facility upon a
13 finding that claims are being handled unsatisfactorily;

14 (4) upon declaration of a state of emergency, following a
15 failure of the board of directors to comply with a requirement of this
16 chapter or the plan of operation, assume the powers of the board of
17 directors under AS 21.80.060 and 21.80.065.

18 * Sec. 10. AS 21.80.120 is amended to read:

19 Sec. 21.80.120. EXAMINATION OF THE ASSOCIATION. The association
20 is subject to examination and regulation by the director. The board
21 of directors shall submit, not later than March 30 of each year, a
22 certified financial report for the preceding calendar year in a form
23 approved by the director.

24 * Sec. 11. AS 21.80.140 is amended to read:

25 Sec. 21.80.140. RECOGNITION OF ASSESSMENTS IN RATES. The rates
26 and premiums charged for insurance policies to which this chapter
27 applies shall include amounts sufficient to offset the rate of assess-
28 ment established in AS 21.80.060(a)(3) and [RECOUP A SUM EQUAL TO THE
29 AMOUNTS] paid to the association by the member insurer [LESS ANY

1 AMOUNTS RETURNED TO THE MEMBER INSURER BY THE ASSOCIATION] and these
2 rates shall not be considered excessive because they contain an amount
3 reasonably calculated to offset [RECOUP] assessments paid by the
4 member insurer. The amount charged on a policy shall be shown sepa-
5 rate from the premium for coverage on the policy.

6 * Sec. 12. AS 21.80.180(1) is amended to read:

7 (1) "account" means any one of the four [THREE] accounts
8 created by AS 21.80.040;

9 * Sec. 13. AS 21.90.900 is amended by adding new paragraphs to read:

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

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

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

17 (25) "insolvent" or "insolvency" means that an insurer's
18 policyholder surplus is less than or equal to zero.

19 * Sec. 14. AS 21.80.060(b)(6), 21.80.070(d), and 21.80.170 are re-
20 pealed.

21 * Sec. 15. AS 21.79.150, enacted in sec. 3 of this Act, has the effect
22 of changing Rule 62(a), Rules of Civil Procedure, by providing for an
23 automatic 60-day stay of action in a liquidation, rehabilitation, or con-
24 servation proceeding.

25 * Sec. 16. AS 21.87.340 is amended by adding a new paragraph to read:

26 (18) AS 21.79.

27 * Sec. 17. This Act takes effect January 1, 1990.