

Offered: 4/24/90
Referred: Rules

go0129sH

Original sponsor(s): Rules/Governor

1 IN THE SENATE BY THE JUDICIARY COMMITTEE
2 CS FOR SENATE BILL NO. 259 (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 insurance guaranty funds and to
7 definitions of "impaired or impairment" and "insol-
8 vent or insolvency" in laws relating to insurance;
9 amending Rules 24(a) and 62(a), Alaska Rules of Civil
10 Procedure; and providing for an effective date."

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

12 * Section 1. AS 21.21.250 is amended by adding a new subsection to
13 read:

14 (c) A domestic insurer may invest in notes or other evidence of
15 indebtedness of the Alaska Life and Disability Insurance Guaranty
16 Association established under AS 21.79.040, and the director may
17 consider those notes and other evidence of indebtedness, that are not
18 in default, as admitted assets of the insurer.

19 * Sec. 2. AS 21.36 is amended by adding a new section to read:

20 Sec. 21.36.035. PROHIBITED ADVERTISEMENTS AND REPRESENTATIONS.

21 (a) A person may not place before the public an advertisement, an-
22 nouncement, or statement that uses the existence of the Alaska Life
23 and Disability Insurance Guaranty Association established under
24 AS 21.79.040 to sell, solicit, or induce the public to purchase any
25 form of insurance governed by AS 21.79.

26 (b) A person having a beneficial interest in any form of insur-
27 ance governed by AS 21.79 may not represent to a lender or another
28 person that the insurance or form of insurance has value as collateral
29 for a loan because the insurance is covered by the Alaska Life and

1 Disability Insurance Guaranty Association. This subsection does not
2 apply to the Alaska Life and Disability Insurance Guaranty Association
3 itself, or to an entity that does not sell or solicit insurance.

4 * Sec. 3. AS 21 is amended by adding a new chapter to read:

5 CHAPTER 79. ALASKA LIFE AND DISABILITY INSURANCE

6 GUARANTY ASSOCIATION ACT.

7 Sec. 21.79.010. PURPOSE. The purpose of this chapter is to
8 provide a mechanism to pay a covered claim under a life insurance
9 policy, disability insurance policy, annuity contract, or supplemental
10 contract; to protect a policyholder; and to avoid financial loss to a
11 claimant or policyholder because of the impairment or insolvency of a
12 member insurer issuing the policy or contract.

13 Sec. 21.79.020. SCOPE. (a) This chapter applies to a policy
14 and contract specified in (b) of this section and to a person who

15 (1) except for a nonresident certificate holder under a
16 group policy or contract, is the beneficiary, assignee, or payee of a
17 person described in (2) of this subsection; and

18 (2) is the owner of, or a certificate holder under, the
19 policy or contract, or, in the case of an unallocated annuity con-
20 tract, is the contract holder, and who

21 (A) is a resident, or

22 (B) is not a resident, if the following conditions are
23 satisfied:

24 (i) the insurer that issued the policy or con-
25 tract is domiciled in this state;

26 (ii) the insurer never held a license or certifi-
27 cate of authority in the state in which the person resides;

28 (iii) the state in which the person resides has an
29 association similar to the association created by this

1 chapter; and

2 (iv) the person is not eligible for coverage of
3 the association of the state in which the person resides.

4 (b) This chapter applies to a person specified in (a) of this
5 section and to a direct, nongroup life, disability, annuity, and
6 supplemental policy or contract, to a certificate under a direct group
7 life, disability, annuity, or supplemental policy or contract, and to
8 an unallocated annuity contract issued by a member insurer, except as
9 otherwise limited by this chapter.

10 (c) This chapter does not apply to

11 (1) that part of a policy or contract that is not guaran-
12 teed by the insurer;

13 (2) that part of the risk borne by the policy or contract
14 holder;

15 (3) a policy or contract of reinsurance, unless an assump-
16 tion certificate has been issued;

17 (4) that part of a policy or contract on which the rate of
18 interest

19 (A) averaged over the period of four years before the
20 date on which the association becomes obligated with respect to
21 the policy or contract, exceeds a rate of interest determined by
22 subtracting two percentage points from the published monthly
23 average for that same four-year period or for a lesser period if
24 the policy or contract was issued less than four years before the
25 association became obligated; and

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

1 (5) a plan or program of an employer, association, or
2 similar entity to provide life, disability, or an annuity benefit to
3 an employee or member, to the extent that the plan or program is self-
4 funded or uninsured, including a benefit payable by the employer,
5 association, or similar entity under

6 (A) a multiple employer welfare arrangement as defined
7 in 26 U.S.C. 414 (Employee Retirement Income Security Act of
8 1974);

9 (B) a minimum premium group insurance plan;

10 (C) a stop-loss group insurance plan; or

11 (D) an administrative services only contract;

12 (6) that part of a policy or contract that provides a divi-
13 dend or experience rating credit, or provides that a fee or allowance
14 be paid to a person, including the policy or contract holder, in
15 connection with the service to or administration of the policy or
16 contract; and

17 (7) a policy or contract issued in this state by a member
18 insurer at a time when it was not licensed or did not have a certifi-
19 cate of authority to issue the policy or contract in this state.

20 (d) In this section, "published monthly average" means the
21 monthly average of corporate bond yields as published by Moody's
22 Investor Service, Inc., or its successor, or, if Moody's corporate
23 bond yield average-monthly average corporates is not published, a
24 substantially similar average established by regulation adopted by the
25 director.

26 Sec. 21.79.025. LIABILITY LIMITS. The benefits for which the
27 association may become liable may not exceed the lesser of

28 (1) the contractual obligations for which the insurer is
29 liable or would have been liable if it were not an impaired or

1 insolvent insurer; or

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

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

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

9 (C) \$100,000 in the present value of annuity benefits,
10 including net cash surrender and net cash withdrawal values;

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

14 Sec. 21.79.030. CONSTRUCTION. This chapter shall be liberally
15 construed to achieve the purposes set out in AS 21.79.010.

16 Sec. 21.79.040. ASSOCIATION ESTABLISHED. (a) There is estab-
17 lished as a nonprofit legal entity the Alaska Life and Disability
18 Insurance Guaranty Association. An insurer that issues an insurance
19 policy described in AS 21.79.020(b) shall be a member of the asso-
20 ciation as a condition of the insurer's authority to transact insur-
21 ance in this state. The association shall perform its functions under
22 a plan of operation established and approved under AS 21.79.080 and
23 shall exercise its powers through the Board of Governors established
24 under AS 21.79.050. For purposes of administration and assessment,
25 the association shall maintain the following accounts:

26 (1) the disability insurance account; and

27 (2) the life insurance and annuity account, including the
28 following subaccounts:

29 (A) life insurance account;

1 (B) annuity account;

2 (C) unallocated annuity account that shall include
3 contracts qualified under 26 U.S.C. 403(b) (Internal Revenue
4 Code).

5 (b) The association is under the supervision of the director and
6 is subject to the insurance laws of the state. Except as provided in
7 AS 21.79.110(b), meetings or records of the association may be open to
8 the public upon majority vote of the Board of Governors of the asso-
9 ciation.

10 Sec. 21.79.050. BOARD OF GOVERNORS. (a) The Board of Governors
11 of the association consists of not less than five nor more than nine
12 representatives of member insurers. Terms of office for board members
13 shall be established in the plan of operation submitted under AS 21.-
14 79.080. Member insurers shall select the board members, subject to
15 the approval of the director. A vacancy on the board shall be filled
16 for the unexpired term by a majority vote of the remaining board
17 members, subject to the approval of the director.

18 (b) Before the director approves the selection of a board member
19 or appoints a board member, the director shall consider whether all
20 member insurers are fairly represented on the board.

21 (c) A board member is not entitled to compensation by the asso-
22 ciation. However, a board member may be reimbursed from the assets of
23 the association for expenses incurred while performing duties as a
24 member of the board.

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

28 (1) guarantee, assume, reinsure, or provide for the guaran-
29 tee, assumption, or reinsurance of the policies or contracts of the

1 impaired insurer;

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

6 (3) loan money to the impaired insurer.

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

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

11 (2) provide a substitute benefit in lieu of the contractual
12 obligation of the impaired insurer solely for a

13 (A) disability claim;

14 (B) periodic annuity benefit payment;

15 (C) death benefit;

16 (D) supplemental benefit; and

17 (E) cash withdrawal for a policy or contract owner who
18 petitions under a claim of emergency or hardship under a standard
19 proposed by the association and approved by the director.

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

22 (1) the law of the impaired insurer's state of domicile
23 provides that until all payments of or on account of a contractual
24 obligation of the impaired insurer by a guaranty association, along
25 with all expenses and interest on all payments and expenses, have been
26 repaid to the guaranty association or a repayment plan by the impaired
27 insurer has been approved by a guaranty association,

28 (A) a delinquency proceeding may not be dismissed;

29 (B) neither the impaired insurer nor its assets may be

1 returned to the control of its shareholders or private manage-
2 ment; and

3 (C) solicitation or acceptance of new business or
4 restoration of a suspended or revoked license may not be permit-
5 ted; and

6 (2) if the impaired insurer is a

7 (A) domestic insurer, the insurer has been placed
8 under an order of rehabilitation by a superior court in this
9 state; or

10 (B) foreign or alien insurer,

11 (i) the insurer has been prohibited from solicit-
12 ing or accepting new business in this state;

13 (ii) the insurer's certificate of authority has
14 been suspended or revoked in this state; and

15 (iii) a petition for rehabilitation or liquidation
16 has been filed in a court of competent jurisdiction in the
17 insurer's state of domicile by the insurance commissioner of
18 that state.

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

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

24 (2) assure payment to residents of the contractual obliga-
25 tions of the insolvent insurer;

26 (3) provide money, pledges, notes, guarantees, or other
27 means necessary to discharge the insurer's duties under this subsec-
28 tion; or

29 (4) with respect only to life and disability insurance

1 policies, provide benefits and coverages required under (e) of this
2 section.

3 (e) When proceeding under (b)(2) or (d)(4) of this section, the
4 association shall, with respect to a life or disability insurance
5 policy,

6 (1) assure payment of benefits, other than terms of conver-
7 sion and renewability, for a premium identical to the premium that
8 would have been payable under a policy of the insolvent insurer for
9 claims incurred with respect to

10 (A) a group policy, not later than the earlier of the
11 next renewal date under the policy or contract or 45 days, but in
12 no event less than 30 days, after the date on which the associa-
13 tion becomes obligated with respect to the policy;

14 (B) an individual policy, not later than the earlier
15 of the next renewal date, if any, under the policy or one year,
16 but in no event less than 30 days, from the date on which the
17 association becomes obligated with respect to the policy;

18 (2) make a diligent effort to provide a known insured or a
19 group policyholder, with respect to a group policy, 30 days notice of
20 the termination of the benefits provided;

21 (3) with respect to an individual policy, make available to
22 each known insured, or owner if other than the insured, and with
23 respect to an individual formerly insured under a group policy who is
24 not eligible for replacement group coverage, substitute coverage on an
25 individual basis under the provisions of (f) of this section, if the
26 insured had a right under law or the terminated policy to convert
27 coverage to individual coverage, to continue an individual policy in
28 force until a specified age, or for a specific time during which the
29 insurer did not have the unilateral right to make changes in any

1 provision of the policy or had a right only to make changes in premium
2 by class.

3 (f) With respect to life and disability insurance policies, the
4 association

5 (1) in providing the substitute coverage under (e)(3) of
6 this section, shall either offer to reissue the terminated coverage or
7 to issue an alternate policy;

8 (2) shall offer alternative or reissued policies without
9 requiring evidence of insurability, and may not provide for any wait-
10 ing period or exclusion that would not have applied under the termi-
11 nated policy; and

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

13 (g) An alternative life or disability policy must,

14 (1) if adopted by the association, be subject to the ap-
15 proval of the director; the association may adopt alternative policies
16 of various types for future issuance without regard to a particular
17 impairment or insolvency;

18 (2) contain at least the minimum statutory provisions
19 required in this state and provide benefits that may not be unrea-
20 sonable in relation to the premium charged; the association shall set
21 the premium under a table of rates that it shall adopt; the premium
22 must reflect the amount of insurance to be provided and the age and
23 class of risk of each insured, but may not reflect changes in the
24 health of the insured after the original policy was last underwritten;

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

28 (h) If the association elects to reissue terminated coverage at
29 a premium rate different from that charged under the terminated

1 policy, the premium shall be set by the association according to the
2 amount of insurance provided, the age and class of risk, and is sub-
3 ject to the approval of the director or by a court of competent juris-
4 diction.

5 (i) The association's obligations with respect to coverage under
6 a policy of an impaired or insolvent insurer or under any reissue or
7 alternative policy cease on the date the coverage or policy is re-
8 placed by another similar policy by the policyholder, the insured, or
9 the association.

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

14 (k) Nonpayment of a premium within 31 days after the date re-
15 quired under the terms of a guaranteed, assumed, alternative or reis-
16 sued policy or contract or substitute coverage terminates the obliga-
17 tions of the association under the policy or coverage except with
18 respect to the claims incurred or the net cash surrender value that
19 may be due under the provisions of this chapter.

20 (l) A premium due for coverage after entry of an order of liq-
21 uidation of an insolvent insurer belongs to and is payable at the
22 direction of the association, and the association is liable for un-
23 earned premiums due to a policy or contract owner arising after the
24 entry of the order.

25 (m) The protection provided by this chapter does not apply if
26 guaranty protection is provided to residents of this state by the laws
27 of another state or jurisdiction that is the domicile of the impaired
28 or insolvent insurer.

29 (n) In carrying out its duties under (b), (c), and (d) of this

1 section, the association may impose a permanent policy or contract
2 lien under a guarantee, assumption, or reinsurance agreement, if the
3 policy or contract lien is approved by a court, and the court finds
4 that

5 (1) the amount that may be assessed under this chapter is
6 less than the amount needed to assure full and prompt performance of
7 the insolvent insurer's contractual obligations; or

8 (2) the economic or financial condition that affects member
9 insurers is sufficiently adverse that the imposition of a policy or
10 contract lien is in the public interest.

11 (o) Before taking action under (b) - (e) of this section, the
12 association may request the superior court to impose an injunction
13 against the payment of a cash value and policy loan, or the exercise
14 of another right to withdraw funds held in connection with a policy or
15 contract, in addition to a contractual provision for deferral of a
16 cash or policy loan value.

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

21 (q) If requested by the director, the association may assist and
22 advise the director concerning rehabilitation, payment of claims,
23 continuance of coverage, or the performance of other contractual
24 obligations of an impaired or insolvent insurer.

25 (r) The association is entitled to appear in a court proceeding
26 in the state involving an impaired or insolvent insurer. The standing
27 conferred by this subsection extends to all matters germane to the
28 powers and duties of the association, including proposals to reinsure
29 or guarantee a covered policy of the impaired or insolvent insurer and

1 the determination of a covered policy and a contractual obligation.

2 (s) A person who receives benefits under this chapter is con-
3 sidered to have assigned the rights under the covered policy to the
4 association to the extent of the benefits received under this chapter.
5 The association may require an assignment to the association of those
6 rights by the payees, policy or contract owner, beneficiary, insured,
7 or annuitant before a person receives the rights or benefits conferred
8 by this chapter. The association is subrogated to these rights
9 against the assets of an insolvent insurer. The priority of the
10 association's subrogation right to the assets of the insolvent insurer
11 is the same as the priority of the person entitled to benefits under
12 this chapter.

13 (t) The association may

14 (1) enter into contracts that are necessary or proper to
15 carry out the provisions of this chapter;

16 (2) sue or be sued, and take legal action necessary or
17 proper for recovery of an unpaid assessment under AS 21.79.070;

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

19 (4) employ or retain those persons necessary to handle the
20 financial transactions of the association and other functions under
21 this chapter;

22 (5) negotiate and contract with a liquidator, rehabil-
23 itator, conservator, or ancillary receiver to carry out the powers and
24 duties of the association;

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

1 (7) take legal action to prevent the payment of improper
2 claims;

3 (8) join an organization of one or more other state asso-
4 ciations with similar purposes; and

5 (9) perform all other acts necessary or proper to implement
6 this chapter.

7 Sec. 21.79.070. ASSESSMENTS. (a) For the purpose of providing
8 funds necessary to carry out the powers and duties of the association,
9 the Board of Governors shall assess the member insurers, separately
10 for each account, at a time and for an amount that the board finds
11 necessary. Assessments are due not less than 30 days after prior
12 written notice to the member insurers and accrue interest at 10 per-
13 cent a year from the date payment is due.

14 (b) There shall be two assessments as follows.

15 (1) class A assessments shall be made for the purpose of
16 meeting administrative and legal costs and other expenses and examina-
17 tions conducted under the authority of AS 21.79.060; class A assess-
18 ments may be made whether or not related to a particular impaired or
19 insolvent insurer;

20 (2) class B assessments are post assessment charges and
21 shall be made only as necessary to carry out the powers and duties of
22 the association with regard to an impaired or an insolvent insurer.

23 (c) The amount of a class A assessment shall be determined by
24 the board and may be made on a pro rata or nonpro rata basis. If a
25 pro rata assessment is made, the board may provide that it be credited
26 against future class B assessments. A nonpro rata assessment may not
27 exceed \$250 per member insurer in a calendar year. The amount of a
28 class B assessment shall be allocated for assessment purposes among
29 the accounts under an allocation formula that may be based on the

1 premiums or reserves of the impaired or insolvent insurer or by an-
2 other standard determined by the board as being fair and reasonable
3 under the circumstances.

4 (d) Class B assessments shall be based on the premiums received
5 on business in this state by each assessed member insurer or for
6 policies or contracts covered by each account in proportion to the
7 premiums received on business in this state by all assessed member
8 insurers during the three calendar years preceding the year in which
9 the insolvency or impairment occurred.

10 (e) The association may abate or defer, in whole or in part, the
11 assessment of a member insurer if a payment of the assessment would
12 endanger the ability of the member insurer to fulfill its contractual
13 obligations. The amount by which an assessment against a member
14 insurer is abated or deferred may be assessed against the other member
15 insurers in a manner consistent with the basis for assessments set
16 forth in (c) of this section.

17 (f) The total of all assessments on a member insurer for the
18 life and annuity account and for each subaccount may not in any one
19 calendar year exceed two percent. The total of all assessments on a
20 member insurer for the disability account may not in any one calendar
21 year exceed two percent of the insurer's average premiums received in
22 this state on a policy or contract covered by the account during the
23 three calendar years preceding the year in which the insurer became an
24 impaired or insolvent insurer. If the maximum assessment, together
25 with the other assets of the association in an account, does not
26 provide in any one year in either account an amount sufficient to
27 carry out the responsibilities of the association, the necessary
28 additional funds shall be assessed as soon as permitted by this
29 chapter.

1 (g) The board may provide in the plan of operation a method of
2 allocating funds among claims, whether relating to one or more im-
3 paired or insolvent insurers, when the maximum assessment will be
4 insufficient to cover anticipated claims.

5 (h) If a one percent assessment for a subaccount of the life and
6 annuity account in any one year does not provide an amount sufficient
7 to carry out the responsibilities of the association, the board shall,
8 as provided under (d) of this section, assess all subaccounts of the
9 life and annuity account for the necessary additional amount, subject
10 to the assessment limit provided in (f) of this section.

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 written approval of the plan 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 by
18 July 1, 1991, or if at a later time the association fails to submit
19 suitable amendments to the plan, the director shall, after notice and
20 hearing, adopt regulations to implement this chapter. These regula-
21 tions remain in effect until amended or repealed by the director or
22 superseded by a plan submitted by the association that is approved by
23 the director.

24 (c) A member insurer 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 the members selected;

8 (6) establish additional procedures for assessments under
9 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 the powers and duties of
13 the association, other than those under AS 21.79.060(t)(3) and 21.79.-
14 070, 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 a payment made for the association and for performing a
18 function of the association. A delegation under this subsection takes
19 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 this state of a member insurer that fails to pay an
28 assessment when due or fails to comply with the plan of operation;

29 (2) levy a penalty on a member insurer that fails to comply

1 with the plan of operation; or

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

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

11 (d) The liquidator, rehabilitator, or conservator of an impaired
12 insurer may notify all interested persons of the effect of this chap-
13 ter.

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

19 (1) revocation of a license;

20 (2) suspension of a license; or

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

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

1 of the action taken or the report received from another insurance
2 regulator.

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

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

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

15 (f) The board shall

16 (1) make reports and recommendations to the director relat-
17 ing to the solvency, liquidation, rehabilitation, or conservation of a
18 member insurer or the solvency of insurers who apply to transact
19 insurance business in the state; the director and the board shall keep
20 the reports and recommendations confidential;

21 (2) notify the director of any information that indicates
22 that a member insurer may be impaired or insolvent.

23 (g) The board may request the director to examine a member
24 insurer that the board believes may be an impaired or insolvent in-
25 surer. Within 30 days after receipt of the request, the director
26 shall begin the examination. The examination may be conducted as a
27 NAIC examination or may be conducted by persons the director desig-
28 nates. The cost of examination shall be paid by the association, and
29 the examination report shall be treated in the same manner as other

1 examination reports under AS 21.06. The completed examination report
2 may not be released to the board before it is released to the public,
3 but this does not preclude the director from complying with (c) of
4 this section. The director shall notify the board when the examina-
5 tion is completed. The request for an examination shall be kept on
6 file by the director and may not be released to the public before the
7 release of the examination report to the public.

8 (h) The board may make recommendations to the director for
9 detecting and preventing insurer insolvencies.

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

17 Sec. 21.79.110. MISCELLANEOUS PROVISIONS. (a) This chapter
18 does not reduce the liability for unpaid assessments of an insured of
19 an impaired or insolvent insurer operating under an insurance policy
20 with assessment liability.

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

24 (1) after the termination of a liquidation, rehabilitation,
25 or conservation proceeding that involves the impaired or insolvent
26 insurer;

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

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

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

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

29 (e) The receiver appointed under an order for liquidation or

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

11 (1) a controlling affiliate of the insurer at the time the
12 distribution was paid is liable for a distribution received; a con-
13 trolling affiliate at the time the distribution was declared is liable
14 for a distribution that would have been received if the distribution
15 had been paid at that time; if two or more persons are liable with
16 respect to the same distribution, they are jointly and severally
17 liable;

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

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

26 Sec. 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.
27 The association may be examined by the director. The board shall
28 submit to the director, not later than May 1 of each year, a certified
29 financial report for the preceding calendar year in a form approved by

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

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

7 Sec. 21.79.140. CIVIL IMMUNITY. The association and its agents
8 and employees, members of the Board of Governors, and the director and
9 the director's representatives are not civilly liable for action taken
10 by them to perform duties under this chapter.

11 Sec. 21.79.150. STAY OF PROCEEDING ENFORCING JUDGMENT. Pro-
12 ceedings that involve the enforcement of a judgment of liquidation,
13 rehabilitation, or conservation against an impaired or insolvent
14 insurer may not be taken until at least 60 days after the entry of the
15 judgment.

16 Sec. 21.79.900. DEFINITIONS. In this chapter,

17 (1) "account" means an account created under AS 21.79.040;

18 (2) "association" means the Alaska Life and Disability
19 Insurance Guaranty Association;

20 (3) "board" means the Board of Governors of the Alaska Life
21 and Disability Insurance Guaranty Association;

22 (4) "contractual obligation" means an obligation under a
23 policy, contract, or certificate under a group policy or contract, or
24 a portion of one;

25 (5) "covered policy" means a policy or contract described
26 in AS 21.79.020(a) and (b);

27 (6) "member insurer" means an insurer licensed to transact
28 insurance in the state that issues a policy described in AS 21.79.-
29 020(a) and (b), or a subscriber contract providing benefits described

1 in AS 21.87.120(a)(2) - (4) or 21.87.130(a)(2) and (3), and includes
2 an insurer whose license or certificate of authority in this state may
3 have been suspended, revoked, not renewed, or voluntarily withdrawn;
4 "member insurer" but does not include

- 5 (A) a health maintenance organization;
- 6 (B) a fraternal benefit society;
- 7 (C) a mandatory state pooling plan;
- 8 (D) a mutual assessment company or an entity that
9 operates on an assessment basis;
- 10 (E) an insurance exchange; or
- 11 (F) a hospital or medical service organization;

12 (7) "NAIC" means the National Association of Insurance
13 Commissioners;

14 (8) "premium" means the amount received on a covered policy
15 or contract less a premium, consideration, and deposit returned, and
16 less a dividend and experience credit; "premium" does not include an
17 amount charged for an assessment or an amount received for a policy or
18 contract or for the portions of a policy or contract for which cover-
19 age is not provided under AS 21.79.020(b) and (c);

20 (9) "resident" means a person who resides in this state at
21 the time a member insurer is determined to be an impaired or insolvent
22 insurer and to which a contractual obligation is owed; a person may be
23 a resident of only one state, which in the case of a person other than
24 a natural person shall be the principal place of business;

25 (10) "supplemental contract" means an agreement entered into
26 for the distribution of policy or contract benefits;

27 (11) "unallocated annuity contract" means an annuity contract
28 or group annuity certificate that is not issued to and owned by an
29 individual, except to the extent of annuity benefits guaranteed to an

1 individual by an insurer under the contract or certificate.

2 Sec. 21.79.990. SHORT TITLE. This chapter may be cited as the
3 Alaska Life and Disability Insurance Guaranty Association Act.

4 * Sec. 4. AS 21.80.020 is amended to read:

5 Sec. 21.80.020. APPLICABILITY. This chapter applies to all
6 kinds of direct insurance written by an admitted insurer [,] except
7 life, title, surety, disability, credit, and mortgage guaranty [, AND
8 OCEAN MARINE] insurance.

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

10 (a) The board of directors of the association consists of not
11 fewer than five nor more than nine persons serving terms as estab-
12 lished in the plan of operation. The members of the board shall be
13 selected by member insurers subject to the approval of the director.
14 Vacancies of the board shall be filled for the remaining period of the
15 term in the same manner as initial appointments. If a member is not
16 selected to fill a vacancy on the board of directors within 90 days of
17 the vacancy, the director may appoint a member for the remaining
18 period of the term.

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

20 (a) The association [SHALL]

21 (1) is [BE] obligated to the extent of the covered claims
22 existing before the determination of insolvency and arising within 30
23 days after the determination of insolvency by a court of competent
24 jurisdiction if the insolvent insurer or receiver ceases to pay any or
25 all claims while preparing and adopting a plan of liquidation or
26 having entered into a plan of liquidation approved by the court under
27 AS 21.78, or before the policy expiration date if less than 30 days
28 after the determination, or before the insured replaces the policy or
29 causes its cancellation[,] if the insured does so within 30 days of

1 the determination, but this obligation includes only that amount of
2 each covered claim that [WHICH] is in excess of \$100 and is less than
3 \$500,000 [\$300,000], except that the association shall pay the full
4 amount of any covered claim arising out of a workers' compensation
5 policy; in no event is the association obligated to a policyholder or
6 claimant in an amount in excess of the obligation of the insolvent
7 insurer under the policy from which the claim arises;

8 (2) is [BE] considered the insurer to the extent of its
9 obligation on the covered claims and to that extent has all rights,
10 duties, and obligations of the insolvent insurer as if the insurer had
11 not become insolvent;

12 (3) shall allocate claims paid and expenses incurred among
13 the three accounts separately, and assess member insurers separately
14 for each account amounts necessary to pay the obligation of the asso-
15 ciation under (a)(1) of this section subsequent to an insolvency, the
16 expenses of handling covered claims subsequent to an insolvency, the
17 cost of examinations under AS 21.80.110₁, and other expenses authorized
18 by this chapter; the assessments of each member insurer must [SHALL]
19 be in the proportion that the net direct written premiums of the
20 member insurer for the preceding calendar year on the kinds of insur-
21 ance in the account bears to the net direct written premiums of all
22 member insurers for the preceding calendar year on the kinds of insur-
23 ance in the account; each member insurer shall be notified of the
24 assessment not later than 30 days before it is due; a member insurer
25 may not be assessed in any year on any account an amount greater than
26 two per cent of the member insurer's net direct written premiums for
27 the preceding calendar year on the kinds of insurance in the account;
28 if the maximum assessment, together with the other assets of the asso-
29 ciation in any account, does not provide in any one year in any ac-

1 count an amount sufficient to make all necessary payments from that
2 account, the funds available shall be prorated and the unpaid portion
3 shall be paid as soon thereafter as funds become available; the asso-
4 ciation may exempt or defer, in whole or in part, an [THE] assessment
5 of any member insurer, if the assessment would endanger the ability of
6 the member insurer to fulfill the insurer's contractual obligations or
7 cause the member insurer's financial statement to reflect amounts of
8 capital or surplus less than the minimum amounts required for a cer-
9 tificate of authority by any jurisdiction in which the member insurer
10 is authorized to transact insurance; each member insurer may set off
11 against an assessment, authorized payments made on covered claims and
12 expenses incurred in the payment of these claims by the member insurer
13 if they are chargeable to the account for which the assessment is
14 made;

15 (4) shall investigate claims brought against the associa-
16 tion and adjust, compromise, settle, and pay covered claims to the
17 extent of the association's obligation and deny all other claims and
18 may review settlements, releases, and judgments to which the insolvent
19 insurer or its insureds were parties to determine the extent to which
20 settlements, releases, and judgments may be properly contested;

21 (5) shall notify persons [AS THE DIRECTOR DIRECTS] under
22 AS 21.80.080(b)(1);

23 (6) shall handle claims through its employees or through
24 one or more insurers or other persons designated as servicing facili-
25 ties; a servicing facility shall operate and maintain its principal
26 office in this state unless the use of a servicing facility located
27 outside of the state would result in operating cost savings of at
28 least 10 percent and would not result in material delay in claim
29 payments; designation of a servicing facility is subject to the ap-

1 proval of the director, but designation may be declined by a member
2 insurer;

3 (7) shall reimburse each servicing facility for obligations
4 of the association paid by the facility and for expenses incurred by
5 the facility while handling claims on behalf of the association and
6 shall pay the other expenses of the association authorized by this
7 chapter.

8 * Sec. 7. AS 21.80.070(a) is amended to read:

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

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

22 (b) The director may
23 (1) require that the association notify the insureds of the
24 insolvent insurer and any other interested parties of the determina-
25 tion of insolvency and of their rights under this chapter; this noti-
26 fication shall be by mail at their last known address, when available,
27 but if sufficient information for notification by mail is not avail-
28 able, notice by publication in a newspaper of general circulation is
29 sufficient;

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

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

11 (4) upon a finding by the superior court that the board of
12 directors has failed to comply with a requirement of this chapter or
13 the plan of operation, assume the powers of the board of directors
14 under AS 21.80.060.

15 * Sec. 9. AS 21.80.120 is amended to read:

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

21 * Sec. 10. AS 21.80.140 is amended to read:

22 Sec. 21.80.140. RECOGNITION OF ASSESSMENTS IN RATES. The rates
23 and premiums charged for insurance policies to which this chapter
24 applies may [SHALL] include amounts sufficient to offset the assess-
25 ment made under this chapter and [RECOUP A SUM EQUAL TO THE AMOUNTS]
26 paid to the association by the member insurer less [ANY] amounts
27 returned to the member insurer by the association and these rates may
28 [SHALL] not be considered excessive because they contain an amount
29 reasonably calculated to offset [RECOUP] assessments paid by the

1 member insurer. The amount charged on a policy shall be shown sepa-
2 rate from the premium for coverage on the policy. A rating organi-
3 zation may make a provision in its rate filing to recover an assess-
4 ment under this chapter for the organization's member and subscriber
5 insurers. The assessment charge is not considered a premium and is
6 not subject to the premium tax imposed under AS 21.09.210.

7 * Sec. 11. AS 21.90.900 is amended by adding new paragraphs to read:

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

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

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

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

17 * Sec. 12. AS 21.80.070(d), and 21.80.170 are repealed.

18 * Sec. 13. AS 21.79.150, enacted in sec. 3 of this Act, has the effect
19 of changing Rule 62(a), Alaska Rules of Civil Procedure, by providing for
20 an automatic 60-day stay of action in a liquidation, rehabilitation, or
21 conservation proceeding.

22 * Sec. 14. AS 21.79.060(r), enacted in sec. 3 of this Act, has the
23 effect of amending Rule 24(a), Alaska Rules of Civil Procedure, by giving
24 the Alaska Life and Disability Insurance Guaranty Association the right to
25 intervene in certain civil actions.

26 * Sec. 15. INITIAL ORGANIZATION OF ASSOCIATION. To organize the Alaska
27 Life and Disability Insurance Guaranty Association established under
28 AS 21.79.040, as enacted by sec. 3 of this Act, and to select its first
29 Board of Governors, the director of the division of insurance shall give

Revised: 4/23/90
Effective: 1/26/91
Subject: Insurance

1 notice to all member insurers of the time and place of the organizational
2 meeting. A member insurer is entitled to one vote in person or by proxy at
3 the organization meeting. If the members of the board are not selected
4 within 60 days after the date that notice of the organizational meeting is
5 given, the director may appoint the members.

6 * Sec. 16. This Act takes effect January 1, 1991.