

HOUSE BILL NO. 157

IN THE LEGISLATURE OF THE STATE OF ALASKA

THIRTIETH LEGISLATURE - FIRST SESSION

BY THE HOUSE LABOR AND COMMERCE COMMITTEE BY REQUEST

Introduced: 3/6/17

Referred:

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to the Alaska Life and Health Insurance Guaranty Association; and**
2 **providing for an effective date."**

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

4 *** Section 1.** AS 21.79.020(a) is amended to read:

5 (a) This chapter applies to a policy and contract specified in (b) of this section
6 and to a person who

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

10 (2) except in the case of an unallocated annuity contract or a structured
11 settlement annuity, is the owner of, or a certificate holder under, the policy or contract,
12 and who

13 (A) is a resident; or

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

(i) the insurer that issued the policy or contract is domiciled in this state;

(ii) the state in which the person resides has an association similar to the association created by this chapter; and

(iii) the person is not eligible for coverage by an association in any other state due to the fact that the insurer was not licensed at the time specified in the guaranty association [AS REQUIRED BY] law of [IN] that state.

* **Sec. 2.** AS 21.79.020(b) is amended to read:

(b) This chapter applies to a person specified in (a) of this section and to a direct, nongroup life, health, annuity, and supplemental policy or contract, to a certificate under a direct group life, health, annuity, or supplemental policy or contract, to a subscriber's contract issued by a hospital or medical service corporation under AS 21.87, and to an unallocated annuity contract issued by a member insurer, except as otherwise limited by this chapter. In this subsection, "annuity policy or contract" or "certificate under a direct group life, health, annuity, or supplemental policy or contract" includes a guaranteed investment contract, a deposit administration contract, an unallocated funding agreement, an allocated funding agreement, a structured settlement annuity, an annuity issued to or in connection with a government lottery, and an immediate or deferred annuity contract.

* **Sec. 3.** AS 21.79.020(c) is amended to read:

(c) This chapter does not apply to

(1) that part of a policy or contract that is not guaranteed by the insurer;

(2) that part of the risk borne by the policy or contract owner [HOLDER];

(3) a policy or contract of reinsurance, unless an assumption certificate has been issued;

(4) that part of a policy or contract to the extent that the rate of interest on which it is based, or the interest rate, crediting rate, or similar factor determined by

1 use of an index or other external reference stated in the policy or contract employed in
 2 calculating returns or changes in value,

3 (A) averaged over the period of four years before the date on
 4 which the member insurer becomes an impaired or insolvent insurer under this
 5 chapter, whichever occurs first, exceeds the rate of interest determined by
 6 subtracting two percentage points from the published monthly average for that
 7 same four-year period or for a lesser period if the policy or contract was issued
 8 less than four years before the member insurer becomes an impaired or
 9 insolvent insurer under this chapter, whichever occurs first; and

10 (B) on and after the date on which the member insurer becomes
 11 an impaired or insolvent insurer under this chapter, whichever occurs first,
 12 exceeds the rate of interest determined by subtracting three percentage points
 13 from the most recent published monthly average;

14 (5) a portion of a policy or contract issued to a plan or program of
 15 an employer, association, or similar entity to provide life, health, or an annuity benefit
 16 to an employee, [OR] member, or other person, to the extent that the plan or program
 17 is self-funded or uninsured, including a benefit payable by the employer, association,
 18 or similar entity under

19 (A) a multiple employer welfare arrangement as defined in 29
 20 U.S.C. 1002 (Employee Retirement Income Security Act of 1974);

21 (B) a minimum premium group insurance plan;

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

23 (D) an administrative services only contract;

24 (6) that part of a policy or contract that provides a dividend or
 25 experience rating credit or voting rights, or provides that a fee or allowance be paid to
 26 a person, including the policy or contract owner [HOLDER], in connection with the
 27 service to or administration of the policy or contract;

28 (7) a policy or contract issued in this state by a member insurer at a
 29 time when it was not licensed or did not have a certificate of authority to issue the
 30 policy or contract in this state;

31 (8) a person who is a payee or beneficiary of a contract owner

1 [HOLDER] who is a resident of this state if the payee or beneficiary is provided
2 coverage by the association of another state;

3 (9) a person covered under (d) [(e)] of this section if any coverage is
4 provided by the association of another state to that person;

5 (10) an unallocated annuity contract issued to or in connection with a
6 **benefit** plan protected under the United States Pension Benefit Guaranty Corporation,
7 regardless of whether the United States Pension Benefit Guaranty Corporation has
8 become liable to make any payments with respect to the benefit plan;

9 (11) that part of an unallocated annuity contract that is not issued to or
10 in connection with a specific employee, union, or association of natural persons
11 benefit plan or a government lottery;

12 (12) that part of a policy or contract to the extent that assessments
13 required by AS 21.79.070 with respect to the policy or contract are preempted by law;

14 (13) an obligation that does not arise under the express written terms of
15 the policy or contract issued by the insurer to the contract owner or policy owner,
16 including, without limitation,

17 (A) a claim based on marketing materials;

18 (B) a claim based on a side letter or other document that was
19 issued by the insurer without meeting applicable policy form filing or approval
20 requirements;

21 (C) a misrepresentation of or regarding policy benefits;

22 (D) an extra contractual claim; or

23 (E) a claim for penalties or consequential or incidental
24 damages;

25 (14) a contractual agreement that establishes the member insurer's
26 obligations to provide a book value accounting guaranty for defined contribution
27 benefit plan participants by reference to a portfolio of assets that is owned by the
28 benefit plan or its trustee, which, in each case, is not an affiliate of the member
29 insurer; [OR]

30 (15) that part of a policy or contract to the extent the part of the policy
31 or contract provides for interest or other changes in value to be determined by the use

of an index or other external reference stated in the policy or contract, but that have not been credited to the policy or contract, or as to which the policy or contract owner's rights are subject to forfeiture, as of the date the member insurer becomes an impaired or insolvent insurer under this chapter, whichever is earlier; if a policy's or contract's interest or changes in value are credited less frequently than annually, then, for purposes of determining the values that have been credited and are not subject to forfeiture under this paragraph, the interest or change in value determined by using the procedures defined in the policy or contract shall be credited as if the contractual date of crediting interest or changing values was the date of impairment or insolvency, whichever is earlier, and will not be subject to forfeiture;

(16) a policy or contract providing a hospital, medical, prescription drug, or other health care benefit in accordance with 42 U.S.C. 1395w-21 - 1395w-154 or federal regulations adopted under those sections;

(17) a person who acquires rights to receive payments through a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred on, before, or after 26 U.S.C. 5891(c)(3)(A) became effective; or

(18) structured settlement annuity benefits to which a payee or beneficiary has transferred the payee's or beneficiary's rights in a structured settlement factoring transaction as defined in 26 U.S.C. 5891(c)(3)(A), regardless of whether the transaction occurred on, before, or after 26 U.S.C. 5891(c)(3)(A) became effective.

* Sec. 4. AS 21.79.020(d) is amended to read:

(d) This chapter, except for (a) of this section, applies to an unallocated annuity contract [SPECIFIED UNDER (b) OF THIS SECTION,] and shall provide coverage to a person who is the owner of

(1) the unallocated annuity contract if the contract is issued to or in connection with a specific benefit plan whose plan sponsor has its principal place of business in this state; and

(2) an unallocated annuity contract issued to or in connection with a government lottery if the owner is a resident.

1 * **Sec. 5.** AS 21.79.020(e) is amended to read:

2 (e) This chapter, except for (a) of this section, applies to a structured
3 settlement annuity [SPECIFIED UNDER (b) OF THIS SECTION,] and shall provide
4 coverage to a person who is a payee under a structured settlement annuity, or the
5 beneficiary of a payee if the payee is deceased, if the payee is

6 (1) a resident, regardless of where the contract owner resides; or

7 (2) not a resident, but only if both of the following conditions exist
8 [EXISTS]:

9 (A) the contract owner of the structured settlement annuity is

10 (i) a resident; or

11 (ii) not a resident, but the insurer that issued the
12 structured settlement annuity is domiciled in this state, and the state in
13 which the contract owner resides has an association similar to the
14 association created by this chapter; and

15 (B) the payee, or the payee's beneficiary, and the contract
16 owner are not eligible for coverage by the association of the state in which the
17 payee or contract owner resides.

18 * **Sec. 6.** AS 21.79.025(a) is amended to read:

19 (a) The benefits for which the association may become liable may not exceed
20 the lesser of

21 (1) the contractual obligations for which the insurer is liable or would
22 have been liable if it were not an impaired or insolvent insurer;

23 (2) with respect to any one life, regardless of the number of policies or
24 contracts,

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

28 (B) in health insurance benefits,

29 (i) \$100,000 for coverage not defined as disability
30 insurance, long-term care insurance, or basic hospital, medical, and
31 surgical insurance or major medical insurance, including any net cash

1 surrender and net cash withdrawal values;

2 (ii) \$300,000 for disability insurance as defined in
3 AS 21.12.052 and **\$300,000 for** long-term care insurance as defined in
4 AS 21.53.200;

5 (iii) \$500,000 for basic hospital, medical, and surgical
6 insurance or major medical insurance;

7 (C) \$250,000 in the present value of annuity benefits, including
8 net cash surrender and net cash withdrawal values;

9 (3) with respect to **either** [ANY] one contract **owner provided**
10 **coverage under AS 21.79.020(d)(2)** [HOLDER] or **one** plan sponsor whose plan
11 owns directly or in trust one or more unallocated annuity contracts not included in (4)
12 of this subsection, \$5,000,000 in unallocated annuity contract benefits, irrespective of
13 the number of contracts held by that contract **owner** [HOLDER] or plan sponsor
14 except that, in the case of one or more unallocated annuity contracts that are covered
15 under this chapter and that are owned by a trust or other entity for the benefit of two or
16 more plan sponsors, coverage shall be provided by the association if the largest
17 interest in the trust or entity owning the contract is held by a plan sponsor whose
18 principal place of business is in this state; however, the association is not liable to
19 cover more than \$5,000,000 in benefits, **regardless of the number of policies and**
20 **contracts held by the owner** [WITH RESPECT TO AN UNALLOCATED
21 ANNUITY CONTRACT NOT INCLUDED IN (4) OF THIS SUBSECTION];

22 (4) with respect to an individual participating in a governmental
23 retirement benefit plan established under 26 U.S.C. 401, 26 U.S.C. 403(b), or 26
24 U.S.C. 457 and covered by an unallocated annuity contract, or to a beneficiary of the
25 individual if the individual is deceased, in the aggregate, **\$250,000** [\$100,000] in
26 present-value annuity benefits, including net cash surrender and net cash withdrawal
27 values; or

28 (5) with respect to each payee of a structured settlement annuity, or
29 beneficiary of the payee if the payee is deceased, **\$250,000** [\$100,000] in present-
30 value annuity benefits in the aggregate, including net cash surrender and net cash
31 withdrawal values, if any.

1 * **Sec. 7.** AS 21.79.025(d) is amended to read:

2 (d) The association may not be required to cover more than

3 (1) an aggregate of \$300,000 in benefits with respect to any one life
4 under (a)(2), (4), and (5) of this section, except that, with respect to benefits for basic
5 hospital, medical, and surgical insurance or major medical insurance under (a)(2)(B)
6 of this section, the aggregate liability of the association may not exceed \$500,000 for
7 any one individual; or

8 (2) \$5,000,000 in benefits with respect to one owner **of** [OR] multiple
9 nongroup policies of life insurance, whether the policy owner is an individual, firm,
10 corporation, or other person, and whether the persons insured are officers, managers,
11 employees, or other persons, regardless of the number of policies and contracts held
12 by the owner.

13 * **Sec. 8.** AS 21.79.060(a) is amended to read:

14 (a) If a member insurer becomes impaired, the association may, with the
15 approval of the director and subject to any conditions imposed by the association that
16 do not impair the contractual obligations of the impaired insurer,

17 (1) guarantee, assume, reinsure, or provide for the guarantee,
18 assumption, or reinsurance of the policies or contracts of the impaired insurer; **and**
19 [OR]

20 (2) provide money, pledges, **loans,** notes, guarantees, or other means
21 that are necessary to act under (1) of this subsection and to assure payment of the
22 contractual obligations of the impaired insurer until those obligations are guaranteed,
23 reinsured, or assumed.

24 * **Sec. 9.** AS 21.79.060(d) is amended to read:

25 (d) If a member insurer becomes insolvent, the association shall, in its
26 discretion and with the approval of the director,

27 (1) guarantee, assume, reinsure, or provide for the guarantee,
28 assumption, or reinsurance of the covered policies **or contracts** of the insolvent
29 insurer, **or otherwise assure payment of the contractual obligations of the**
30 **insolvent insurer; and provide money, pledges, loans, notes, guarantees, or other**
31 **means necessary to discharge the association's duties under this section; or**

1 (2) provide benefits and coverage in accordance with the following
 2 provisions:

3 (A) with respect to life and health insurance policies and
 4 annuities, assure payment of benefits, other than terms of conversion and
 5 renewability, for a premium identical to the premium that would have
 6 been payable under a policy or contract of the insolvent insurer for claims
 7 incurred with respect to

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

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

18 (B) with respect to an individual or group policy or
 19 contract, make a diligent effort to provide a known insured, an annuitant,
 20 or a group policy owner or group contract owner 30 days' notice of the
 21 termination of the benefits provided;

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

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

3 (D) in providing the substitute coverage under (C) of this
 4 paragraph, the association

5 (i) shall offer either to reissue the terminated
 6 coverage or to issue an alternate policy;

7 (ii) shall offer an alternative or reissued policy
 8 without requiring evidence of insurability and may not provide for
 9 a waiting period or exclusion that would not have applied under
 10 the terminated policy; and

11 (iii) may reinsure an alternative or reissued policy;

12 (E) an alternative policy must

13 (i) if adopted by the association, be subject to the
 14 approval of the director and the receivership court; the association
 15 may adopt alternative policies of various types for future issuance
 16 without regard to a particular impairment or insolvency;

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

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

28 (F) if the association elects to reissue terminated coverage
 29 at a premium rate different from that charged under the terminated
 30 policy, the premium shall be set by the association according to the
 31 amount of insurance provided and the age and class of risk and is subject

1 to the approval of the director and the receivership court;

2 (G) the association's obligations with respect to coverage
 3 under a policy of an impaired or insolvent insurer or under a reissued or
 4 alternative policy cease on the date the coverage or policy is replaced by
 5 another similar policy by the policy owner, the insured, or the association;

6 (H) when proceeding under this subsection with respect to a
 7 policy or contract carrying guaranteed minimum interest rates, the
 8 association shall assure the payment or crediting of a rate of interest
 9 consistent with AS 21.79.020(c)(4) [HELD BY RESIDENTS;

10 (2) ASSURE PAYMENT TO RESIDENTS OF THE
 11 CONTRACTUAL OBLIGATIONS OF THE INSOLVENT INSURER;

12 (3) PROVIDE MONEY, PLEDGES, NOTES, GUARANTEES, OR
 13 OTHER MEANS NECESSARY TO DISCHARGE THE ASSOCIATION'S DUTIES
 14 UNDER THIS SUBSECTION; OR

15 (4) WITH RESPECT ONLY TO LIFE AND HEALTH INSURANCE
 16 POLICIES AND ANNUITIES, PROVIDE BENEFITS AND COVERAGES
 17 REQUIRED UNDER (e) OF THIS SECTION].

18 * **Sec. 10.** AS 21.79.060(l) is amended to read:

19 (l) A premium due for coverage after entry of an order of liquidation of an
 20 insolvent insurer belongs to and is payable at the direction of the association. Upon
 21 request of a liquidator of an insolvent insurer, the association shall provide a
 22 report to the liquidator regarding the premium collected by the association. The
 23 [, AND THE] association is liable for unearned premiums due to a policy or contract
 24 owner arising after the entry of the order.

25 * **Sec. 11.** AS 21.79.060(n) is amended to read:

26 (n) In carrying out its duties under [(a), (c), AND] (d) of this section, the
 27 association may impose a permanent policy or contract lien under a guarantee,
 28 assumption, or reinsurance agreement if the policy or contract lien is approved by a
 29 court and the association finds that

30 (1) the amount that may be assessed under this chapter is less than the
 31 amount needed to assure full and prompt performance of the association's duties

1 **under this chapter** [INSOLVENT INSURER'S CONTRACTUAL OBLIGATIONS];
 2 or

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

6 * **Sec. 12.** AS 21.79.060(o) is amended to read:

7 (o) **In carrying out its duties** [BEFORE TAKING ACTION] under **(d)** [(a) -
 8 (e)] of this section, the association may request the superior court to impose an
 9 injunction against the payment of a cash value and policy loan, or the exercise of
 10 another right to withdraw funds held in connection with a policy or contract, in
 11 addition to a contractual provision for deferral of a cash or policy loan value. In
 12 addition, if the receivership court imposes an injunction on payment of cash values or
 13 policy loans or on any other right to withdraw funds of an impaired or insolvent
 14 insurer held in conjunction with a policy or contract, the association may defer
 15 payment of cash values, policy loans, or other rights for the period of the injunction,
 16 except for claims covered by the association to be paid as required by a hardship
 17 procedure established by the liquidator or rehabilitator and approved by the
 18 receivership court.

19 * **Sec. 13.** AS 21.79.060(p) is amended to read:

20 (p) If the association fails to take action under **(d)** [(a) - (e)] of this section
 21 within a reasonable period of time after a member insurer becomes insolvent, the
 22 director shall assume the powers of the association under **(d)** [(a) - (e)] of this section.

23 * **Sec. 14.** AS 21.79.060(t) is amended to read:

24 (t) In addition to the rights and powers otherwise established in this chapter,
 25 the association may

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

28 (2) sue or be sued, and take legal action necessary or proper for
 29 recovery of an unpaid assessment under AS 21.79.070 or settlement of a claim or
 30 potential claim;

31 (3) borrow money to carry out the purposes of this chapter; notes or

1 other evidence of indebtedness of the association not in default are legal investments
2 for domestic insurers and may be carried as admitted assets;

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

5 (5) negotiate and contract with a liquidator, rehabilitator, conservator,
6 or ancillary receiver to carry out the powers and duties of the association;

7 (6) exercise, for the purposes of this chapter and to the extent approved
8 by the director, the powers of a domestic life or health insurer; however, the
9 association may not issue insurance policies or annuity contracts other than those
10 issued to perform its obligations under this chapter [THE CONTRACTUAL
11 OBLIGATIONS OF AN IMPAIRED OR INSOLVENT INSURER];

12 (7) take legal action to prevent or recover the payment of improper
13 claims;

14 (8) join an organization of one or more other state associations with
15 similar purposes;

16 (9) determine, using reasonable business judgment, the means by
17 which the association is to provide the benefits of this chapter in an economical and
18 efficient manner;

19 (10) request information from a person seeking coverage from the
20 association in order to determine the obligations of the association under this chapter;
21 a person receiving a request under this paragraph shall promptly comply with the
22 request;

23 (11) request information from a member insurer in order to aid in the
24 exercise of a power under this section; a member insurer receiving a request under this
25 paragraph shall promptly comply with the request; and

26 (12) perform all other acts necessary or proper to implement this
27 chapter.

28 * **Sec. 15.** AS 21.79.060 is amended by adding a new subsection to read:

29 (aa) The rights and obligations of the association, reinsurers of an insolvent
30 insurer, and the receiver of an insolvent insurer are governed by the following
31 provisions:

(1) not later than 180 days after the date of the order of liquidation, the association may elect to succeed to the rights and obligations of the ceding member insurer that relate to policies or annuities covered, in whole or in part, by the association, in each case under any one or more reinsurance contracts entered into by the insolvent insurer and its reinsurers and selected by the association; an assumption is effective as of the date of the order of liquidation; the election shall be effected by the association or the National Organization of Life and Health Insurance Guaranty Associations on the association's behalf by written notice, return receipt requested, to the affected reinsurers; to facilitate the earliest practicable decision about whether to assume any of the contracts of reinsurance and to protect the financial position of the estate, as soon as possible after commencement of formal delinquency proceedings, the receiver and each reinsurer of the ceding member insurer shall make available, upon request, to the association or the National Organization of Life and Health Insurance Guaranty Associations on the association's behalf

(A) copies of in-force contracts of reinsurance and all related files and records relevant to the determination of whether those contracts should be assumed; and

(B) notices of any defaults under the reinsurance contracts or any known event or condition that, with the passage of time, could become a default under the reinsurance contracts;

(2) as to reinsurance contracts assumed by the association under this subsection,

(A) the association is responsible for all unpaid premiums due under the reinsurance contracts for periods before, on, and after the date of the order of liquidation and is responsible for the performance of all other obligations to be performed on and after the date of the order of liquidation in each case that relates to policies or annuities covered, in whole or in part, by the association; the association may charge policies or annuities covered in part by the association, through reasonable allocation methods, the costs for reinsurance in excess of the obligations of the association and shall provide notice and an accounting of those charges to the liquidator;

1 (B) the association is entitled to any amounts payable by the
 2 reinsurer under the reinsurance contracts with respect to losses or events that
 3 occur in periods on and after the date of the order of liquidation and that relate
 4 to policies or annuities covered, in whole or in part, by the association, if, upon
 5 receiving those amounts, the association is obliged to pay to the beneficiary,
 6 under the policy or annuity for which the amounts were paid, a portion of the
 7 amount equal to the lesser of the

8 (i) amount received by the association; and

9 (ii) amount by which the amount received by the
 10 association exceeds the amount equal to the benefits paid by the
 11 association under the policy or annuity, less the amount retained by the
 12 insurer applicable to the loss or event;

13 (C) not later than 30 days after the association's election, the
 14 association and each reinsurer under contracts assumed by the association shall
 15 calculate the net balance due to or from the association under each reinsurance
 16 contract as of the election date with respect to policies or annuities covered, in
 17 whole or in part, by the association; in making the calculation, the association
 18 and reinsurer shall give full credit to all items paid by either the insurer or its
 19 receiver or the reinsurer before the election date; the reinsurer shall pay the
 20 receiver any amounts due for losses or events before the date of the order of
 21 liquidation, subject to any set-off for premiums unpaid for periods before the
 22 date, and the association or reinsurer shall pay any remaining balance due the
 23 other, in each case, not later than five days after the completion of the
 24 calculation; a dispute over the amount due to the association or reinsurer shall
 25 be resolved by arbitration under the terms of the affected reinsurance contract
 26 or, if the contract does not contain an arbitration clause, as otherwise provided
 27 by law; if the receiver has received an amount due to the association under (B)
 28 of this paragraph, the receiver shall remit the amount to the association as
 29 promptly as practicable;

30 (D) if the association or receiver on the association's behalf, not
 31 later than 60 days after the election date, pays the unpaid premiums due for

1 periods both before and after the election date that relate to policies or
 2 annuities covered, in whole or in part, by the association, the reinsurer may not
 3 terminate the reinsurance contracts for failure to pay premium insofar as the
 4 reinsurance contracts relate to policies or annuities covered, in whole or in
 5 part, by the association, and may not set off an unpaid amount due under
 6 another contract or an unpaid amount due from a party other than the
 7 association against amounts due to the association;

8 (3) during the period from the date of the order of liquidation until the
 9 election date, or, if the election date does not occur, until 180 days after the date of the
 10 order of liquidation,

11 (A) neither the association nor the reinsurer shall have any
 12 rights or obligations under reinsurance contracts that the association has the
 13 right to assume, whether for periods before, on, or after the date of the order of
 14 liquidation; and

15 (B) the reinsurer, the receiver, and the association shall, to the
 16 extent practicable, provide to each other data and records reasonably requested,
 17 if, once the association has elected to assume a reinsurance contract, the
 18 parties' rights and obligations are governed by this subsection;

19 (4) if the association does not elect to assume a reinsurance contract by
 20 the election date, the association does not have rights or obligations, in each case for
 21 periods before, on, and after the date of the order of liquidation, with respect to the
 22 reinsurance contract;

23 (5) when policies or annuities or covered obligations with respect to
 24 policies or annuities are transferred to an assuming insurer, the association may also
 25 transfer reinsurance on the policies or annuities, in the case of contracts assumed by
 26 the association, subject to the following:

27 (A) unless the reinsurer and the assuming insurer agree
 28 otherwise, the reinsurance contract transferred may not cover any new policies
 29 or insurance or annuities in addition to those transferred;

30 (B) the obligations described in (1) of this subsection do not
 31 apply with respect to matters arising on and after the effective date of the

1 transfer; and

2 (C) notice shall be given in writing, return receipt requested, by
3 the transferring party to the affected reinsurer not less than 30 days before the
4 effective date of the transfer;

5 (6) the provisions of this subsection supersede the provisions of any
6 state law or of any affected reinsurance contract that provides for or requires any
7 payment of reinsurance proceeds, on account of losses or events that occur in periods
8 on and after the date of the order of liquidation, to the receiver of the insolvent insurer
9 or another person; the receiver shall remain entitled to any amounts payable by the
10 reinsurer under the reinsurance contracts with respect to losses or events that occur in
11 periods before the date of the liquidation, subject to applicable set-off provisions;

12 (7) except as otherwise provided in this section, nothing in this
13 subsection

14 (A) alters or modifies the terms and conditions of a reinsurance
15 contract;

16 (B) abrogates or limits the right of a reinsurer to claim that the
17 reinsurer is entitled to rescind a reinsurance contract;

18 (C) gives a policyholder or beneficiary an independent cause of
19 action against a reinsurer that is not otherwise set out in the reinsurance
20 contract;

21 (D) limits or affects the association's rights as a creditor of the
22 estate against the assets of the estate; and

23 (E) applies to a reinsurance agreement covering property or
24 casualty risks.

25 * **Sec. 16.** AS 21.79.070(a) is amended to read:

26 (a) For the purpose of providing funds necessary to carry out the powers and
27 duties of the association, the Board of Governors shall **by resolution** assess the
28 member insurers, separately for each account, at a time and for an amount that the
29 board finds necessary. Assessments are **authorized when a resolution is passed and**
30 **are** due not less than 30 days after prior written notice to the member insurers and
31 accrue interest at 10 percent a year from the date payment is due. **Authorized**

assessments become called when notice is mailed by the association to member insurers.

* **Sec. 17.** AS 21.79.070(c) is amended to read:

(c) The amount of a class A assessment shall be determined by the board and may be made on a pro rata or non pro rata basis. If a pro rata assessment is made, the board may provide that it be credited against future class B assessments. A non pro rata assessment may not exceed **\$500 for each** [\$250 PER] member insurer in a calendar year. The amount of a class B assessment shall be allocated for assessment purposes among the accounts under an allocation formula that may be based on the premiums or reserves of the impaired or insolvent insurer or by another standard determined by the board in its sole discretion as being fair and reasonable under the circumstances.

* **Sec. 18.** AS 21.79.080(c) is amended to read:

(c) A member insurer shall comply with the plan of operation. The plan of operation must

- (1) establish procedures for handling assets of the association;
- (2) establish the amount and method of reimbursing members of the board under AS 21.79.050(c);
- (3) establish regular places and times for meetings of the board in the state; the board may conduct meetings telephonically;
- (4) establish procedures for keeping records of all financial transactions of the association, its agents, and the board;
- (5) establish terms of office for members of the board, and establish procedures for the selection of the members of the board and for the director's approval of the members selected;
- (6) establish additional procedures for assessments under AS 21.79.070; [AND]
- (7) **establish procedures for removing a member of the board for cause, including procedures for removing a member of the board who becomes an impaired or insolvent insurer;**
- (8) **establish policy and procedures for addressing conflicts of**

1 interest; and

2 (9) contain additional provisions necessary or proper for the
3 association to exercise its powers and duties.

4 * **Sec. 19.** AS 21.79.090(c) is amended to read:

5 (c) **A final** [AN] action of the board or the association may be appealed to the
6 director by a member insurer if the appeal is taken **not later than 60** [WITHIN 30]
7 days after the date the notice of the action is mailed. Final action or order of the
8 director may be reviewed by the superior court.

9 * **Sec. 20.** AS 21.79.090(d) is amended to read:

10 (d) The liquidator, rehabilitator, or conservator of an impaired **or insolvent**
11 insurer may notify all interested persons of the effect of this chapter.

12 * **Sec. 21.** AS 21.79.110(b) is amended to read:

13 (b) The association shall keep records of meetings relating to its activities.
14 Records of meetings may only be made public under AS 21.79.040(b)

15 (1) after the termination of a liquidation, rehabilitation, or conservation
16 proceeding that involves the impaired or insolvent insurer; **or**

17 (2) [AFTER THE INSURER IS NO LONGER IMPAIRED OR
18 INSOLVENT; OR

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

20 * **Sec. 22.** AS 21.79.140 is amended to read:

21 **Sec. 21.79.140. Civil immunity.** The association and its agents and
22 employees, members of the Board of Governors, member insurers, and agents and
23 employees of member insurers, and the director and the director's representatives are
24 not civilly liable, **and a cause of action of any nature may not arise,** for an action or
25 omission in performing duties under this chapter. **The immunity extends to the**
26 **participation in an organization of one or more other state associations of similar**
27 **purposes and to that organization and its agents or employees** [IN THIS
28 SECTION, "DUTIES" INCLUDES PARTICIPATION IN AN ORGANIZATION OF
29 ONE OR MORE STATE ASSOCIATIONS OF LIFE OR HEALTH INSURERS].

30 * **Sec. 23.** AS 21.79.150 is amended to read:

31 **Sec. 21.79.150. Stay of proceedings; default judgment.** Proceedings

involving an insolvent insurer shall be stayed at least **180** [60] days after the date of a final order of liquidation, rehabilitation, or conservation in order to allow the association to exercise a power or duty authorized under this chapter. If a default judgment is entered against an insolvent insurer, the association may apply to have the judgment set aside or may defend against the action on its merits.

* **Sec. 24.** AS 21.79.900(5) is amended to read:

(5) "called" means that a notice has been **mailed** [ISSUED] by the association to member insurers requiring that an authorized assessment be paid within the time set out in the notice;

* **Sec. 25.** AS 21.79.900(6) is amended to read:

(6) "contractual obligation" means an obligation under a policy, contract, or certificate under a group policy or contract, or a portion of one **for which coverage is provided under AS 21.79.020(a), (b), (d), or (e);**

* **Sec. 26.** AS 21.79.900(7) is amended to read:

(7) "covered policy" means a policy or contract **or a portion of a policy or contract for which coverage is provided under** [DESCRIBED IN] AS 21.79.020(a), [AND] (b), **(d), or (e);**

* **Sec. 27.** AS 21.79.900(10) is amended to read:

(10) "member insurer" means an insurer licensed to transact insurance in the state, **or a hospital or medical service corporation licensed under AS 21.87,** for which coverage is provided in AS 21.79.020 [, OR A SUBSCRIBER CONTRACT PROVIDING BENEFITS DESCRIBED IN AS 21.87.120(a)(2) - (4) OR 21.87.130(a)(2) AND (3),] and includes an insurer, **or a hospital or medical service corporation licensed under AS 21.87,** whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn; "member insurer" does not include

(A) a health maintenance organization licensed under AS 21.86;

(B) a fraternal benefit society licensed under AS 21.84;

(C) a mandatory state pooling plan;

(D) a mutual assessment company or an entity that operates on

an assessment basis;

(E) an insurance exchange licensed under AS 21.75;

(F) [A HOSPITAL OR MEDICAL SERVICE ORGANIZATION LICENSED UNDER AS 21.87;

(G)] an organization that has a license or certificate limited to the issuance of charitable gift annuities; or

(G) [(H)] an entity similar to one described under **(A) - (F)** [(A) - (G)] of this paragraph;

* **Sec. 28.** AS 21.79.900(13) is amended to read:

(13) "plan sponsor" means, in the case of a benefit plan established or maintained by

(A) a single employer, the employer;

(B) an employee organization, the employee organization; or

(C) two or more employers or jointly by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other **similar** group of representatives of the parties who establish or maintain the benefit plan;

* **Sec. 29.** AS 21.79.900(14) is amended to read:

(14) "premium" means the **amounts or considerations, by whichever name called,** [AMOUNT] received on a covered policy or contract less a premium, consideration, and deposit returned, and less a dividend and experience credit; "premium" does not include **amounts or considerations** [AN AMOUNT] charged for an assessment or an amount received for a policy or contract or for the portions of a policy or contract for which coverage is not provided under AS 21.79.020(b) and (c), **except that assessable premium may not be reduced on account of AS 21.79.020(c)(4) relating to interest limitations and AS 21.79.025(a)(2) - (5), (b), and (d) relating to limitations with respect to one individual, one participant, and one contract owner; "premium" does not include**

(A) premiums in excess of \$5,000,000 on an unallocated annuity contract not issued under a governmental retirement benefit plan or its trustee established under 26 U.S.C. 401, 26 U.S.C. 403(b), or 26

1 U.S.C. 457; or

2 (B) with respect to multiple nongroup policies of life
 3 insurance owned by one owner, whether the policy holder is an individual,
 4 firm, corporation, or other person, and whether the persons insured are
 5 officers, managers, employees, or other persons, premiums in excess of
 6 \$5,000,000 with respect to those policies or contracts, regardless of the
 7 number of policies or contracts held by the owner;

8 * **Sec. 30.** AS 21.79.900(16) is amended to read:

9 (16) "resident" means a person to whom a contractual obligation is
 10 owed under this chapter and who resides in this state on the date of entry of a court
 11 order that determines a member insurer to be an impaired or insolvent insurer [,
 12 WHICHEVER OCCURS FIRST]; a person may be a resident of only one state,
 13 which, in the case of a person other than a natural person, shall be the principal place
 14 of business;

15 * **Sec. 31.** AS 21.79.900(19) is amended to read:

16 (19) "supplemental contract" means a written [AN] agreement entered
 17 into for the distribution of proceeds under life, health, or annuity policy or contract
 18 benefits;

19 * **Sec. 32.** AS 21.79.900 is amended by adding new paragraphs to read:

20 (21) "benefit plan" means a specific employee, union, or association of
 21 natural persons benefit plan;

22 (22) "election date" means the date of the association's election under
 23 AS 21.79.060(aa);

24 (23) "extra contractual claim" includes a claim related to bad faith in
 25 payment of a claim, punitive or exemplary damages, and attorney fees and costs;

26 (24) "published monthly average" means the monthly average of
 27 corporate bond yields, as published by Moody's Investors Service, Inc., or its
 28 successor or, if Moody's average of corporate bond yields is not published, a
 29 substantially similar average established by regulation adopted by the director.

30 * **Sec. 33.** AS 21.87.340 is amended to read:

31 **Sec. 21.87.340. Other provisions applicable.** In addition to the provisions

1 contained or referred to previously in this chapter, the following chapters and
 2 provisions of this title also apply with respect to service corporations to the extent
 3 applicable and not in conflict with the express provisions of this chapter and the
 4 reasonable implications of the express provisions, and, for the purposes of the
 5 application, the corporations shall be considered to be mutual "insurers":

- 6 (1) AS 21.03;
- 7 (2) AS 21.06;
- 8 (3) AS 21.07;
- 9 (4) AS 21.09, except AS 21.09.090;
- 10 (5) AS 21.18.010;
- 11 (6) AS 21.18.030;
- 12 (7) AS 21.18.040;
- 13 (8) AS 21.18.080 - 21.18.086;
- 14 (9) AS 21.36;
- 15 (10) AS 21.42.110, 21.42.345 - 21.42.395;
- 16 (11) AS 21.51.120 and 21.51.400;
- 17 (12) AS 21.51.405;
- 18 (13) AS 21.53;
- 19 (14) AS 21.54;
- 20 (15) AS 21.56;
- 21 (16) AS 21.69.400;
- 22 (17) AS 21.69.520;
- 23 (18) AS 21.69.600, 21.69.620, and 21.69.630;
- 24 (19) AS 21.78;
- 25 (20) **AS 21.79;**
- 26 **(21)** AS 21.96.060;
- 27 **(22)** [(21)] AS 21.97.

28 * **Sec. 34.** AS 21.79.020(f), 21.79.060(c), 21.79.060(e), 21.79.060(f), 21.79.060(g),
 29 21.79.060(h), 21.79.060(i), 21.79.060(j), 21.79.060(u), 21.79.060(v), 21.79.060(w),
 30 21.79.060(x), and 21.79.110(e) are repealed.

31 * **Sec. 35.** The uncoded law of the State of Alaska is amended by adding a new section to

1 read:

2 TRANSITION: REGULATIONS. The director of the division of insurance may adopt
3 regulations necessary to implement the changes made by this Act. The regulations take effect
4 under AS 44.62 (Administrative Procedure Act), but not before the effective date of the
5 relevant provisions of this Act.

6 * **Sec. 36.** Section 35 of this Act takes effect immediately under AS 01.10.070(c).

7 * **Sec. 37.** Except as provided in sec. 36 of this Act, this Act takes effect July 1, 2017.