

1 IN THE HOUSE

BY MESSRS. TAYLOR, RADER AND ROADY

2 HOUSE BILL NO. 103

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FIRST LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to Title Insurance Com-
7 panies; providing for supervision and regu-
8 lation thereof; amending Subsection (m) of
9 Section 34-3-5 ACLA 1949, and Section
10 42-1-4, ACLA 1949, as amended by Ch. 132
11 SLA 1953; and providing for an effective
12 date."

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

14 Section 1. PAID IN CAPITAL REQUIRED. GUARANTY FUND. Every
15 domestic or foreign corporation organized either solely or among
16 other things for the purpose of insuring titles to real property
17 in this state and of insuring against loss by reason of defective
18 titles thereto, or incumbrances thereon, shall be subject to and
19 shall comply with all the requirements of the laws of this state
20 made applicable to insurance companies generally and the rules and
21 regulations of the Commissioner, excepting as hereinafter provided
22 and insofar as said laws, rules, or regulations may be inconsis-
23 tent with the other provisions in this chapter contained. Before
24 it shall be entitled to a certificate of authority to transact a
25 title insurance business in this state it shall have a paid-up
26 unimpaired cash capital equal to not less than \$100,000 in lawful
27 money of the United States, \$50,000 of which shall be deposited
28 with the Treasurer of the State of Alaska as a guaranty fund for
29 the protection of the insured under policies of title insurance

1 issued by such company.

2 Sec. 2. DEPOSITS IN GUARANTY FUND. Within 30 days after
3 the filing of each annual statement the corporation shall deposit
4 with the State Treasurer a sum equal to 10 per cent of the
5 premiums received by it during the preceding year covering property
6 in this state, as shown by such annual statement, until such
7 accumulated deposits, added to the sums originally deposited with
8 the State Treasurer, as provided herein, total \$100,000, but in
9 no event shall the corporation be required to deposit more than
10 \$10,000 in any one year.

11 Sec. 3. SECURITIES AUTHORIZED AS DEPOSITS. The deposits
12 required to be kept with the State Treasurer as a guaranty fund
13 may be made either in lawful money of the United States or in
14 one or more of the following classes of securities:

15 (1) Interest bearing obligations of the United States
16 or of those for the payment of the principal and interest on
17 which the faith of the United States is pledged.

18 (2) Bonds of any state in the United States.

19 (3) Bonds of any municipality in the United States
20 having a population of more than 50,000, or bonds of any munici-
21 pality, municipal corporation or civil subdivision in this state
22 having a population of more than 2,000, the market value of which
23 bonds, at all times while so deposited, shall be not less than
24 90 per cent of par value.

25 (4) A deposit not in excess of \$10,000 in any one
26 savings bank organized and existing under the laws of this state
27 in a savings deposit account free of offsetting debts and claims
28 insured in full by the Federal Deposit Insurance Corporation and
29 entered in the name of the "Treasurer of the State of Alaska in

1 trust for the holders of the obligations of the _____
2 (depositing company) pursuant to Ch. _____ SLA 1959 (This Act)".

3 (5) A deposit not in excess of \$10,000 in any one
4 issuing institution, in investment certificates or share accounts
5 of savings and loan associations organized and existing under the
6 laws of this state, or of the United States, and holding member-
7 ship in the Federal Home Loan Bank System. The certificates and
8 share accounts shall be free of offsetting debts and claims and
9 shall be issued in the name of the State Treasurer in the form
10 indicated in subsection 4 of this section.

11 (6) With the written approval of the Commissioner
12 bonds or notes secured by trust deed or first mortgage upon
13 improved real property within this state not otherwise encumbered,
14 and having a value of at least twice the amount loaned thereon or
15 otherwise insured by an agency of the United States, which shall
16 be accompanied by a policy of title insurance of a company quali-
17 fied to insure title in this state insuring that the mortgage or
18 trust deed so deposited is a first lien on the real property
19 covered thereby.

20 Sec. 4. SPECIAL GUARANTY FUND - CONDITIONS. The securities
21 to be deposited as provided in this chapter shall be held by the
22 state treasurer as a special guaranty fund securing the faithful
23 performance on the part of any such company of all its under-
24 takings and liabilities upon its guaranteed certificates of title,
25 policies of title insurance, or other guarantees of title to
26 property and to the extent of any outstanding liabilities thereon;
27 but shall not be subject to any other outstanding liabilities of
28 such company; furthermore, while such securities are held by the
29 state treasurer they shall be held subject to the following

1 conditions:

2 (1) The state treasurer shall deliver to the company
3 depositing such guaranty fund a receipt in full for all securities
4 so deposited with him. The company may from time to time with-
5 draw securities or any part thereof on depositing with said state
6 treasurer cash or other authorized securities, so as at all times
7 to maintain the value of said guaranty fund deposit at not less
8 than the amount required by this Act.

9 (2) All interest or dividends accruing on said
10 securities deposited with the state treasurer under the authority
11 of this Act shall belong to and at all times be available to the
12 company making said deposit, and the said state treasurer shall
13 permit said company, so long as it shall continue solvent, to
14 collect the interest or dividends on said securities so deposited.
15 The state treasurer shall be the agent of both parties to receive
16 receipt for and pay over said interest or dividends when the
17 same are paid to him by reason of the custody of said deposit,
18 and he is hereby authorized to make such endorsements on said
19 securities as the occasion and the due and orderly course of
20 business may require. The rights of said company to demand of
21 and receive from the State treasurer said interest or dividends,
22 shall be subject, however, to the provisions of the following
23 paragraph:

24 (3) If, pursuant to liability on guaranteed certificate
25 of title, or policy of title insurance or other guaranty of title
26 to property, a judgment shall be entered in a court of general
27 jurisdiction in this state against a company which has made a
28 deposit of securities with the state treasurer subject to the
29 provisions of this Act and such judgment shall have become final

1 either by failure to appeal, dismissal of appeal, or by affirmance
2 on appeal, or otherwise, and such judgment shall not be paid and
3 satisfied in full within sixty days after the finality of said
4 judgment has become fixed, then in every such case said judgment
5 may be enforced against said securities so deposited with the
6 state treasurer upon petition of the judgment creditor in the same
7 cause wherein judgment was obtained, setting forth the facts
8 aforesaid, whereupon it shall be the duty of the court wherein
9 said judgment is entered to direct the issuance of a special
10 execution directed to the proper peace officer, enforcing such
11 executions, in the City of Juneau, Alaska, which execution shall
12 be as near as may be in the usual form and shall require on the
13 part of said officer the sale of said securities or so much there-
14 of as may be necessary to the satisfaction of said judgment. When
15 application is made for the issuance of said special execution
16 herein provided for, and the court allows the same, the order in
17 which said special execution is authorized shall direct that
18 service of a copy of the said judgment and the said petition shall
19 be made within five days thereafter upon the state treasurer. All
20 proceedings relating to the enforcement of said writ of execution
21 against said securities shall conform as near as may be to the
22 practice in ordinary cases except as herein otherwise specially
23 provided. Proceedings under said execution shall be a sufficient
24 authority, where notices aforesaid have been served on said state
25 treasurer, for the delivery by said state treasurer to the officer
26 of the securities to be sold upon said execution.

27 (4) Except as herein provided, the state treasurer
28 shall hold intact the securities deposited with him and shall
29 retain the same until such time as all liabilities under any

1 guaranteed certificate of title or policy of title insurance, or
2 other guaranty of title covering property in this state, issued by
3 the company having deposited such securities, shall have legally
4 terminated, or until such time as all liabilities of said company
5 under such guaranteed certificates of title or policies of title
6 insurance or other guarantees of title shall have been assumed by
7 some other title insurance company authorized to transact business
8 in this state. It shall be the duty of the commissioner to
9 advise the state treasurer of the termination of all liability of
10 such title insurance company, after the commissioner shall have
11 completed an examination into the affairs of such company and
12 determined that all liability against the guaranty fund has been
13 legally terminated or satisfactorily assumed by some other title
14 insurance company licensed to do a title insurance business in
15 this state. Upon the advice of the commissioner, the state
16 treasurer shall be authorized and it shall be his duty to forth-
17 with return the securities to the said company and concurrently
18 therewith the commissioner shall revoke the certificate of author-
19 ity granted such company to do any title insurance business in
20 the state.

21 (5) Provided, however, that if the aforesaid guaranty
22 fund is at any time impaired by reason of the payment of any
23 judgment against the company depositing such funds for any reason
24 whatsoever and remains so impaired for a period of thirty days
25 after written notice to the company, the commissioner is hereby
26 authorized and it shall be his duty to immediately revoke the
27 certificate of authority granted said company, and to publish a
28 notice of such revocation in a daily paper of general circulation,
29 published in the city wherein said company has its principal

1 offices at least once a week for six successive weeks, the expense
2 of such publication to be chargeable against the said guaranty
3 fund of said Company.

4 Sec. 5. TITLE INSURANCE UNEARNED PREMIUM RESERVE FUND.

5 Every title insurance company, either foreign or domestic, oper-
6 ating in this state under the provisions of this chapter, shall
7 annually set apart, establish, segregate and maintain at the end
8 of each year into an account to be known as Title Insurance
9 Unearned Premium Reserve Fund, a sum equal to three per cent of
10 its gross premiums on title insurance policies issued during the
11 year then ending covering property in this state. Such reserve
12 fund shall be in addition to the deposit with the State Treasurer.
13 There shall be no other reserve requirements. Such reserve must
14 be maintained separately and apart from the capital of the company,
15 and shall be invested in such securities as are authorized for
16 investment by domestic insurance companies under the laws of this
17 state. Funds accumulated under this provision shall never be
18 used for the payment of any obligation other than those incurred
19 in connection with title insurance, and, in the event of the
20 insolvency of a company, the fund hereby provided shall be used to
21 pay losses and to purchase reinsurance to protect title insurance
22 policy holders even though there be no accrued title insurance
23 claims. Said reserve fund shall be deemed, considered and shall
24 constitute unearned portions of the original premiums and shall be
25 charged as a reserve liability of such company in determining its
26 financial condition.

27 Such reserve funds shall be maintained in the treasury of
28 such insurer as additional security to holders of title insurance
29 policies issued by such insurer. When, on account of losses or

1 otherwise, the amount of said reserve fund of any such insurer
2 shall be less than the amount required by this Act no further
3 insurance policies shall be issued by such insurer until the
4 deficiency below the amount so required is restored. The net
5 income and profits derived from such fund shall be transferred to
6 the general assets of the company. The company shall also at all
7 times keep a separate record of the cash and securities of such
8 reserve fund, giving complete identification of the assets belong-
9 ing to such fund and showing full particulars as to withdrawals
10 and additions. After the expiration of 120 months from the date
11 of the first annual deposit into the unearned premium reserve
12 fund made by any corporation now or hereafter qualified that
13 portion of said reserve fund established more than 120 months
14 prior shall be released and shall no longer constitute a part of
15 said reserve fund and may be used for any corporate purpose.

16 Sec. 6. TITLE PLANT. In addition to the capital guaranty
17 deposit, and reserve requirements herein set forth, every title
18 insurance company, either foreign or domestic, operating in this
19 state shall own and maintain in each of the cities in which its
20 offices in the state may be located, a title plant, consisting
21 of a general name index, adequate maps and currently posted tract
22 or geographic indexes for the areas within which it transacts the
23 major portion of its title insurance business. Such title plants
24 shall be deemed an asset, valued at the actual cost thereof, in
25 all statements and proceedings required by law for the ascertain-
26 ment and determination of the condition of such corporation, or
27 at such less value as may be estimated by such corporation in any
28 such statement or proceeding.

29 Sec. 7. DIVIDENDS. Such corporation may not pay dividends

1 except from net profits remaining on hand after retaining
2 unimpaired:

3 (1) The subscribed capital stock.

4 (2) The amount required to be set aside as Unearned
5 Premium Reserve Fund.

6 (3) A sum sufficient to pay current liabilities for
7 operating expenses and taxes, and losses established or in process
8 of settlement, without impairment of the Unearned Premium Reserve
9 Fund.

10 Sec. 8. FILING SCHEDULE OF RATES AND POLICY FORMS. Every
11 title insurance corporation shall file with the State Insurance
12 Commissioner its schedule of rates and its policy forms. No such
13 company shall in connection with the writing or issuance of any
14 policy of title insurance deviate from such rate schedule or
15 policy forms as filed, either by making any reduction or increase
16 in rates or altering its policy form unless it had previously
17 filed such new rate or policy form, or by discriminating in favor
18 of or against its insured. No commissions, rebates or discounts
19 shall be paid, allowed or permitted to any person having an
20 interest in or lien upon real property which is the subject of
21 title insurance involved, or to any person acting for or on behalf
22 of such person.

23 Sec. 9. FILING ANNUAL STATEMENT, FILING FEE. Every corpora-
24 tion shall, on or before March 1 of each year, furnish the
25 Insurance Commissioner a sworn statement of assets and liabilities
26 and of all title premiums received by it during the preceding
27 calendar year, setting forth among other things that three per
28 cent of all gross premiums on title insurance policies issued by
29 it during such year covering property in this state have been set

1 aside and held by it in an account known as "Title Insurance
2 Unearned Premium Reserve Fund" as provided in this Act. Such
3 statement shall also show in such form as may be prescribed by the
4 commissioner all unpaid losses and claims upon title insurance
5 policies of which the corporation has received due notice in
6 writing from or on behalf of the insured. With the filing of such
7 statement the corporation shall pay a filing fee of \$15, to be
8 placed in the general fund.

9 Sec. 10. APPLICATION FOR CERTIFICATE OF AUTHORITY FEE.

10 (1) Every such company, before engaging in a title
11 insurance business in this state, shall apply to the commissioner
12 of insurance for a certificate of authority to transact such
13 business. The company shall submit with the application a state-
14 ment duly sworn to by the proper officers of the company showing
15 its assets and liabilities and that it has complied with the
16 capital requirements and initial guarantee fund deposit prescribed
17 by this Act.

18 (2) It shall also submit with the application evidence
19 satisfactory to the commissioner that it has completed an adequate
20 and workable title plant for the area in which it shall be licensed
21 to do business in conformity with the requirement of this Act.

22 (3) With the filing of the application the corporation
23 shall pay a fee of \$50 to be deposited in the general fund and in
24 addition thereto shall pay all traveling expenses of the commis-
25 sioner and per diem of \$20 a day not to exceed a total of three
26 days per plant, incurred in examining the applicant's title plant
27 or plants.

28 Sec. 11. ISSUANCE OF CERTIFICATE OF AUTHORITY BY COMMISSIONER.

29 If the commissioner shall be satisfied that the applicant has

1 fully complied with the foregoing and the other provisions of
2 this Act he shall issue a certificate of authority. Any company
3 which has heretofore qualified in this state as a trust company
4 with title insurance powers under the banking act and is in good
5 standing under existing law shall be entitled to a certificate
6 of authority upon its filing the application and furnishing the
7 information required in the preceding section.

8 Sec. 12. ANNUAL TAX ON TITLE INSURANCE PREMIUMS. Annually
9 each title insurance company shall pay on or before March 31, a
10 tax of one per cent of the amount of its net title insurance
11 premiums received during the preceding calendar year covering
12 property in this state, as shown by its annual statement to the
13 commissioner.

14 Sec. 13. EXAMINATION BY COMMISSIONER.

15 (1) The Commissioner is authorized to examine the
16 books, accounts, assets and title plants of a company authorized
17 to write title insurance hereunder to satisfy himself that there
18 has been no impairment of capital and that such company has
19 complied with the provisions of this Act.

20 (2) If the Commissioner finds that there is an impair-
21 ment of capital or that the company is not complying with the
22 provisions of this Act, he shall give notice to such company to
23 correct its capital structure so as to remove the impairment or
24 to comply with the provisions of this Act. If within thirty days
25 such company has failed to comply with such notice or has refused
26 to permit an examination, the Commissioner may revoke the certifi-
27 cate of authority issued to such company authorizing it to do
28 business in this state until such time as the company shall have
29 fully complied with the orders of the commissioner and the

1 provisions of this Act.

2 Sec. 14. EXPENSES OF EXAMINATION. The commissioner shall
3 collect from the company the reasonable expenses of the commis-
4 sioner and the compensation and reasonable expenses of the person
5 or persons appointed to examine the company, and failure or
6 refusal to pay such expenses and compensation shall constitute
7 cause for revocation of the certificate of authority issued to such
8 company.

9 Sec. 15. FINE OR INJUNCTION FOR DOING BUSINESS DURING
10 SUSPENSION OF CERTIFICATE: REINSTATEMENT.

11 (1) Any corporation continuing to do title insurance
12 business after revocation of its certificate of authority to do
13 business and while in default under this chapter shall be liable
14 in addition to any other civil or criminal liability to a fine
15 of \$50 for each day of such default. Such fine may be recovered
16 by an action to be instituted by the Attorney General in the name
17 of the state. The corporation may be enjoined from doing such
18 business until payment of the fine is fully made and notice there-
19 of given to the commissioner.

20 (2) Upon payment of such fine to the State and full
21 compliance in all other respects with the laws of this state, the
22 certificate of authority shall be reinstated and such corporation
23 shall be permitted to resume its business.

24 Sec. 16. APPLICATION OF ACT. This Act relates only to the
25 business of insuring or guaranteeing titles to real property.

26 Sec. 17. PENALTIES. Any officer, director, agent or
27 employee of any such company who, before obtaining a certificate
28 of authority from the Commissioner or after a revocation thereof
29 by the Commissioner and while in default under this Act shall

1 issue any policy of title insurance or certificate of title on
2 property in this state, or who shall engage in title insurance
3 business in this state, shall be guilty of a misdemeanor and shall
4 be subject to a fine of not to exceed \$2,500, or imprisonment not
5 to exceed one year or both.

6 Sec. 18. DEFINITION OF COMMISSIONER. Whenever in this Act
7 the word "Commissioner" is used it shall refer to the Commissioner
8 of Insurance of the State of Alaska or his successor.

9 Sec. 19. Sec. 42-1-4 ACLA 1949 as amended by Ch. 132 SLA
10 1953 is hereby amended to read as follows:

11 Sec. 42-1-4. CLASSES AND KINDS OF INSURANCE. The
12 various kinds of insurance are classified, and unless the
13 context requires otherwise, each includes insurance as
14 follows:

15 (a) Fire Insurance. Upon buildings and other
16 property against loss or damage by fire, lightning, wind
17 storms, cyclones, tornadoes, hail or earthquakes, water from
18 the breakage or leakage of sprinklers, pumps or other
19 apparatus erected for extinguishing fires, and water pipes;
20 and against loss or damage arising from the prevention or
21 suspension of rent or use and occupation of any building,
22 plant or manufacturing establishment, due to the hazard or
23 peril against which the insurance is carried;

24 (b) Marine Insurance. Being ocean and inland
25 risks, and transportation, but not including any other
26 casualty insurance as hereinafter provided.

27 (c) Life insurance. Being all forms of life,
28 endowments, and annuities, but not including health, accident
29 or sickness insurance or any other casualty insurance as

1 hereinafter provided.

2 (d) Accident and liability insurance. Accident
3 insurance, and either sickness or health insurance, being
4 insurances against injury, disablement or death resulting
5 from travel or general accident, and against disablement
6 resulting from sickness; and every insurance appertaining
7 thereto; liability insurance being all insurance against
8 loss or damage, resulting from accident to, or injury, fatal
9 or non-fatal, suffered by, an employee or other person and
10 for which the insurer is liable;

11 (e) Fidelity and surety insurance. Being the
12 guaranteeing of persons holding places of public and private
13 trust; guaranteeing the performance of contracts other than
14 insurance policies; or guaranteeing and executing all bonds,
15 undertakings and contracts of suretyship.

16 (f) Motor vehicle insurance. Being insurance on
17 motor vehicles operated by power generated within or without
18 such vehicles, except those operating on water or on rails,
19 against any or all loss, expense and liability, including an
20 obligation of the insurer to pay medical, hospital, surgical
21 and disability benefits to injured persons and funeral and
22 death benefits to dependents, beneficiaries or personal rep-
23 resentatives of persons who are killed, irrespective of legal
24 liability of the insured, resulting from the ownership,
25 maintenance or use of a motor vehicle.

26 (g) Title insurance. Being insurance against loss
27 from defective titles to real property.

28 (h) [G] MISCELLANEOUS INSURANCE. Being insur-
29 ance on any risk not included within or under either of the

1 foregoing classes, and which is a proper subject for insurance,
2 not prohibited by law or contrary to sound public policy.

3 Sec. 20. Subsection (m) of Section 34-3-5, ACLA 1949, is
4 hereby amended to read as follows:

5 (m) (Examination and guaranty of real estate titles.)

6 To examine titles to real estate, to procure and furnish
7 information in relation thereto, and to guarantee or insure
8 the title to real estate to persons interested in such real
9 estate or in mortgages thereon, against loss, by reason of
10 defective title or other encumbrances of or upon such real
11 estate, Provided, that any ~~NO~~ company organized under this
12 Act shall be subject to the ANY insurance law of the State
13 TERRITORY of Alaska, insofar as it pertains to its title
14 insurance activities and operations, except that securities
15 deposited by such company pursuant to Section 34-3-4 ACLA
16 1949 shall be credited to and included in the total of the
17 guaranty fund of such company required by such insurance law,
18 unless demand for the full statutory amounts, under both the
19 title insurance and the trust company laws, is made by the
20 Banking Board and the Commissioner, and provided further,
21 that no trust company engaged in the business of banking in
22 the State ~~TERRITORY~~ of Alaska, whether such trust company
23 shall have been organized under the laws of the State ~~TERRI-~~
24 TORY of Alaska, or otherwise, shall be permitted to do any
25 of the Acts mentioned in this sub-section;

26 Sec. 21. EFFECTIVE DATE. This Act shall take effect
27 immediately upon its passage and approval or upon its becoming
28 law without such approval.
29