

1 IN THE HOUSE

BY HOUSE JUDICIARY COMMITTEE

2 COMMITTEE SUBSTITUTE FOR 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 Companies;  
7 providing for supervision and regulation  
8 thereof; amending Subsection (m) of Section  
9 34-3-5 ACLA 1949, and Section 42-1-4, ACLA  
10 1949, as amended by Ch. 132, SLA 1953; and  
11 providing for an effective date."

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

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

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

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

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

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

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

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

1 company) pursuant to Ch. \_\_\_\_\_ SLA 1959 (This Act)".

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

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

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

29 (1) The state treasurer shall deliver to the company

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

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

21 (3) If, pursuant to liability on guaranteed certificate  
22 of title, or policy of title insurance or other guaranty of title  
23 to property, a judgment shall be entered in a court of general  
24 jurisdiction in this state against a company which has made a  
25 deposit of securities with the state treasurer subject to the  
26 provisions of this Act and such judgment shall have become final  
27 either by failure to appeal, dismissal of appeal, or by affirmance  
28 on appeal, or otherwise, and such judgment shall not be paid and  
29 satisfied in full within sixty days after the finality of said

1 judgment has become fixed, then in every such case said judgment  
2 may be enforced against said securities so deposited with the  
3 state treasurer upon petition of the judgment creditor in the same  
4 cause wherein judgment was obtained, setting forth the facts  
5 aforesaid, whereupon it shall be the duty of the court wherein  
6 said judgment is entered to direct the issuance of a special  
7 execution directed to the proper peace officer, enforcing such  
8 executions, in the City of Juneau, Alaska, which execution shall  
9 be as near as may be in the usual form and shall require on the  
10 part of said officer the sale of said securities or so much there-  
11 of as may be necessary to the satisfaction of said judgment. When  
12 application is made for the issuance of said special execution  
13 herein provided for, and the court allows the same, the order in  
14 which said special execution is authorized shall direct that  
15 service of a copy of the said judgment and the said petition shall  
16 be made within five days thereafter upon the state treasurer. All  
17 proceedings relating to the enforcement of said writ of execution  
18 against said securities shall conform as near as may be to the  
19 practice in ordinary cases except as herein otherwise specially  
20 provided. Proceedings under said execution shall be a sufficient  
21 authority, where notices aforesaid have been served on said state  
22 treasurer, for the delivery by said state treasurer to the officer  
23 of the securities to be sold upon said execution.

24 (4) Except as herein provided, the state treasurer  
25 shall hold intact the securities deposited with him and shall  
26 retain the same until such time as all liabilities under any  
27 guaranteed certificate of title or policy of title insurance, or  
28 other guaranty of title covering property in this state, issued by  
29 the company having deposited such securities, shall have legally

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

18 (5) Provided, however, that if the aforesaid guaranty  
19 fund is at any time impaired by reason of the payment of any  
20 judgment against the company depositing such funds or for any  
21 reason whatsoever and remains so impaired for a period of thirty  
22 days after written notice to the company, the commissioner is  
23 hereby authorized and it shall be his duty to immediately revoke  
24 the certificate of authority granted said company, and to publish  
25 a notice of such revocation in a daily paper of general circula-  
26 tion published in the city wherein said company has its principal  
27 offices at least once a week for six successive weeks, the expense  
28 of such publication to be chargeable against the said guaranty  
29 fund of said Company.

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

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

24           Such reserve funds shall be maintained in the treasury of  
25 such insurer as additional security to holders of title insurance  
26 policies issued by such insurer. When, on account of losses or  
27 otherwise, the amount of said reserve fund of any such insurer  
28 shall be less than the amount required by this Act no further  
29 insurance policies shall be issued by such insurer until the

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

13 Sec. 6. DIVIDENDS. Such corporation may not pay dividends  
14 except from net profits remaining on hand after retaining  
15 unimpaired:

16 (1) The subscribed capital stock.

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

19 (3) A sum sufficient to pay current liabilities for  
20 operating expenses and taxes, and losses established or in process  
21 of settlement, without impairment of the Unearned Premium Reserve  
22 Fund.

23 Sec. 7. FILING SCHEDULE OF RATES AND POLICY FORMS. Every  
24 title insurance corporation shall file with the State Insurance  
25 Commissioner its schedule of rates and its policy forms. Rates  
26 shall be subject to regulation pursuant to the general insurance  
27 laws of the state. No such company shall in connection with the  
28 writing or issuance of any policy of title insurance deviate from  
29 such rate schedule or policy forms as filed, either by making any

1 reduction or increase in rates or altering its policy form unless  
2 it had previously filed such new rate or policy form, or by dis-  
3 criminating in favor of or against its insured. No rebates or  
4 discounts shall be paid, allowed or permitted to any person.

5       Sec. 8. FILING ANNUAL STATEMENT; FILING FEE. Every corpora-  
6 tion shall, on or before March 1 of each year, furnish the  
7 Insurance Commissioner a sworn statement of assets and liabilities,  
8 and of all title premiums received by it during the preceding  
9 calendar year, setting forth among other things that three per  
10 cent of all gross premiums on title insurance policies issued by  
11 it during such year covering property in this state have been set  
12 aside and held by it in an account known as "Title Insurance  
13 Unearned Premium Reserve Fund" as provided in this Act. Such  
14 statement shall also show in such form as may be prescribed by the  
15 commissioner all unpaid losses and claims upon title insurance  
16 policies of which the corporation has received due notice in  
17 writing from or on behalf of the insured. With the filing of such  
18 statement the corporation shall pay a filing fee of \$15, to be  
19 placed in the general fund.

20       Sec. 9. APPLICATION FOR CERTIFICATE OF AUTHORITY; FEE.

21       (1) Every such company, before engaging in a title  
22 insurance business in this state, shall apply to the commissioner  
23 of insurance for a certificate of authority to transact such  
24 business. The company shall submit with the application a state-  
25 ment duly sworn to by the proper officers of the company showing  
26 its assets and liabilities and that it has complied with the  
27 capital requirements and initial guarantee fund deposit prescribed  
28 by this Act.

29       (2) With the filing of the application the corporation

1 shall pay a fee of \$50 to be deposited in the general fund and in  
2 addition thereto shall pay all traveling expenses of the commis-  
3 sioner and per diem of \$20 a day not to exceed a total of three  
4 days per plant, incurred in examining the applicant's title plant  
5 or plants.

6 Sec. 10. ISSUANCE OF CERTIFICATE OF AUTHORITY BY COMMISSIONER.

7 If the commissioner shall be satisfied that the applicant has  
8 fully complied with the foregoing and the other provisions of  
9 this Act he shall issue a certificate of authority. Any company  
10 which has heretofore qualified in this state as a trust company  
11 with title insurance powers under the banking act and is in good  
12 standing under existing law shall be entitled to a certificate  
13 of authority upon its filing the application and furnishing the  
14 information required in the preceding section.

15 Sec. 11. ANNUAL TAX ON TITLE INSURANCE PREMIUMS. Annually

16 each title insurance company shall pay on or before March 31, a  
17 tax of one per cent of the amount of gross title insurance premiums  
18 received by it including as premiums income received from guaran-  
19 teed certificates of title and other guarantees of title during  
20 the preceding calendar year covering property in this state, as  
21 shown by its annual statement to the commissioner.

22 Sec. 12. EXAMINATION BY COMMISSIONER.

23 (1) The Commissioner is authorized to examine the books,  
24 accounts, assets and title plants of a company authorized to write  
25 title insurance hereunder to satisfy himself that there has been  
26 no impairment of capital and that such company has complied with  
27 the provisions of this Act.

28 (2) If the Commissioner finds that there is an impair-  
29 ment of capital or that the company is not complying with the

1 provisions of this Act, he shall give notice to such company to  
2 correct its capital structure so as to remove the impairment or  
3 to comply with the provisions of this Act. If within thirty days  
4 such company has failed to comply with such notice or has refused  
5 to permit an examination, the Commissioner may revoke the certifi-  
6 cate of authority issued to such company authorizing it to do  
7 business in this state until such time as the company shall have  
8 fully complied with the orders of the commissioner and the pro-  
9 visions of this Act.

10 Sec. 13. EXPENSES OF EXAMINATION. The commissioner shall  
11 collect from the company the reasonable expenses of the commis-  
12 sioner and the compensation and reasonable expenses of the person  
13 or persons appointed to examine the company, and failure or  
14 refusal to pay such expenses and compensation shall constitute  
15 cause for revocation of the certificate of authority issued to  
16 such company.

17 Sec. 14. FINE OR INJUNCTION FOR DOING BUSINESS DURING  
18 SUSPENSION OF CERTIFICATE; REINSTATEMENT.

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

28 (2) Upon payment of such fine to the State and full  
29 compliance in all other respects with the laws of this state, the

1 certificate of authority shall be reinstated and such corporation  
2 shall be permitted to resume its business.

3 Sec. 15. APPLICATION OF ACT. This Act relates only to the  
4 business of insuring or guaranteeing titles to real property.

5 Sec. 16. PENALTIES. Any officer, director, agent or employee  
6 of any such company who, before obtaining a certificate of author-  
7 ity from the Commissioner or after a revocation thereof by the  
8 Commissioner and while in default under this Act shall issue any  
9 policy of title insurance or certificate of title on property in  
10 this state, or who shall engage in title insurance business in  
11 this state, shall be guilty of a misdemeanor and shall be subject  
12 to a fine of not to exceed \$2,500, or imprisonment not to exceed  
13 one year or both.

14 Sec. 17. DEFINITION OF COMMISSIONER. Whenever in this Act  
15 the word "Commissioner" is used it shall refer to the Commissioner  
16 of Insurance of the State of Alaska or his successor.

17 Sec. 18. Sec. 42-1-4 ACLA 1949 as amended by Ch. 132 SLA  
18 1953 is hereby amended to read as follows:

19 Sec. 42-1-4. CLASSES AND KINDS OF INSURANCE. The  
20 various kinds of insurance are classified, and unless the  
21 context requires otherwise, each includes insurance as  
22 follows:

23 (a) Fire Insurance. Upon buildings and other  
24 property against loss or damage by fire, lightning, wind  
25 storms, cyclones, tornadoes, hail or earthquakes, water from  
26 the breakage or leakage of sprinklers, pumps or other  
27 apparatus erected for extinguishing fires, and water pipes;  
28 and against loss or damage arising from the prevention or  
29 suspension of rent or use and occupation of any building,

1 plant or manufacturing establishment, due to the hazard or  
2 peril against which the insurance is carried;

3 (b) Marine Insurance. Being ocean and inland  
4 risks, and transportation, but not including any other  
5 casualty insurance as hereinafter provided.

6 (c) Life insurance. Being all forms of life,  
7 endowments, and annuities, but not including health, accident  
8 or sickness insurance or any other casualty insurance as  
9 hereinafter provided.

10 (d) Accident and liability insurance. Accident  
11 insurance, and either sickness or health insurance, being  
12 insurances against injury, disablement or death resulting  
13 from travel or general accident, and against disablement  
14 resulting from sickness; and every insurance appertaining  
15 thereto; liability insurance being all insurance against  
16 loss or damage, resulting from accident to, or injury, fatal  
17 or non-fatal, suffered by, an employee or other person and  
18 for which the insurer is liable;

19 (e) Fidelity and surety insurance. Being the  
20 guaranteeing of persons holding places of public and private  
21 trust; guaranteeing the performance of contracts other than  
22 insurance policies; or guaranteeing and executing all bonds,  
23 undertakings and contracts of suretyship.

24 (f) Motor vehicle insurance. Being insurance on  
25 motor vehicles operated by power generated within or upon  
26 such vehicles, except those operating on water or on rails,  
27 against any or all loss, expense and liability, including an  
28 obligation of the insurer to pay medical, hospital, surgical  
29 and disability benefits to injured persons and funeral and

1 death benefits to dependents, beneficiaries or personal rep-  
2 resentatives of persons who are killed, irrespective of legal  
3 liability of the insured, resulting from the ownership,  
4 maintenance or use of a motor vehicle.

5 (g) Title insurance. Being insurance against loss  
6 from defective titles to real property, including leases.

7 (h) ~~(G)~~ MISCELLANEOUS INSURANCE. Being insur-  
8 ance on any risk not included within or under either of the  
9 foregoing classes, and which is a proper subject for insurance,  
10 not prohibited by law or contrary to sound public policy.

11 Sec. 19. Subsection (m) of Section 34-3-5, ACLA 1949, is  
12 hereby amended to read as follows:

13 (m) (Examination and guaranty of real estate titles.)  
14 To examine titles to real estate, to procure and furnish  
15 information in relation thereto, and to guarantee or insure  
16 the title to real estate to persons interested in such real  
17 estate or in mortgages thereon, against loss, by reason of  
18 defective title or other encumbrances of or upon such real  
19 estate, provided, that any ~~NO~~ company organized under this  
20 Act shall be subject to the ~~ANY~~ insurance law of the State  
21 ~~TERRITORY~~ of Alaska, insofar as it pertains to its title  
22 insurance activities and operations, except that securities  
23 deposited by such company pursuant to Section 34-3-4 ACLA  
24 1949 shall be credited to and included in the total of the  
25 guaranty fund of such company required by such insurance law,  
26 unless demand for the full statutory amounts, under both the  
27 title insurance and the trust company laws, is made by the  
28 Banking Board and the Commissioner, and provided further,  
29 that no trust company engaged in the business of banking in

1 the State ~~/TERRITORY/~~ of Alaska, whether such trust company  
2 shall have been organized under the laws of the State ~~/TERRI-~~  
3 ~~TORY/~~ of Alaska, or otherwise, shall be permitted to do any  
4 of the Acts mentioned in this sub-section;

5 Sec. 20. EFFECTIVE DATE. This Act shall take effect imme-  
6 diately upon its passage and approval or upon its becoming law  
7 without such approval.

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