

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; prescribing penalties; amending Sub-
9 section (m) of Section 34-3-5 ACLA 1949, and
10 Section 42-1-4, ACLA 1949, as amended by Ch.
11 132, 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 inconsistent
23 with the other provisions in this chapter contained. Before it shall
24 be entitled to a certificate of authority to transact a title insur-
25 ance business in this state it shall have a paid-up unimpaired cash
26 capital equal to not less than \$100,000 in lawful money of the United
27 States, \$50,000 of which shall be deposited with the Treasurer of
28 the State of Alaska as a guaranty fund for the protection of the in-
29 sured under policies of title insurance issued by such company.

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.

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As amended

Engrossed as amended in the Senate

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

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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 Commissioner of Commerce and the Insurance Commissioner, and
29 provided further, that no trust company engaged in the business

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1 of banking in the State ~~TERRITORY~~ of Alaska, whether such
2 trust company shall have been organized under the laws
3 of the State ~~TERRITORY~~ of Alaska, or otherwise, shall be
4 permitted to do any 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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