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April 6, 1970

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The Honorable Tom A. Fink, Vice Chairman
House Judiciary Committee
Alaska State Legislature
Juneau

Re: House Bill No. 782

Dear Tom:

Pursuant to my telephone call to you this past Friday, I wish to confirm that I did get the expected materials and have had them duplicated and accordingly enclose one copy each of the following:

1. Confidential Committee Print No. 1 of Senator Magnuson's bill S. 2236 creating a Federal Insurance Guaranty Corporation. This represents the most recent printer version of the bill. However, there was a meeting last week in Washington, D. C., to consider still further amendments, but we do not have any copies. The indication is that the amendments will further reduce the Federal bureaucracy required and further strengthen state regulation.

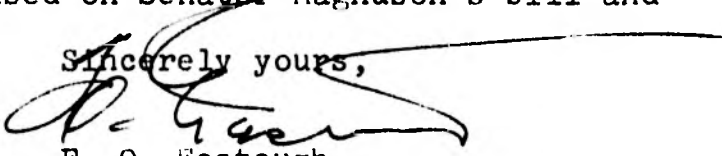
2. The Nixon Administration's bill S. 3542 establishing a Federal insurance guaranty program under the Federal Insurance Administrator in the Department of Housing and Urban Development.

3. A statement by Senator Norris Cotton, Republican of New Hampshire, when he introduced S. 3542 at the request of the Department of Housing and Urban Development.

4. A Committee statement comparing the Committee re-draft of S. 2236 (Confidential Committee Print No. 1) with the Administration bill S. 3542.

I realize the Committee is probably inclined to go along with Director Fritz's recommendation, but I am equally sure that the NAIC policy is based on Senator Magnuson's bill and not on S. 3542.

Sincerely yours,


F. O. Eastaugh

FOE:bh
Encs.

cc: Hon. Barry W. Jackson

FEDERAL INSURANCE GUARANTY: A Comparison Between the Magnuson Proposal (S. 2236 revised) and the Administration Proposal (S. 3542)

Form

The Magnuson proposal establishes a Federal Insurance Guaranty Corporation that is independent of existing governmental machinery.

The Administration bill creates a Federal Insurance Guaranty Program under the Federal Insurance Administrator in the Department of Housing and Urban Development.

Management

The Magnuson proposal vests the management of the Corporation in an Administrator appointed by the President with the advice and consent of the Senate for a term of six years. The Administrator is assisted by an Advisory Committee consisting of consumer representatives, insurance industry spokesmen, and state insurance commissioners. In addition to advising the Administrator, the Committee is given actual power to approve or reject proposed national standards for insurance regulation and liquidation. The Committee must also concur in any decision by the Administrator to revoke guaranty status.

The management of the Program is vested in the Secretary of HUD and the Federal Insurance Administrator who is appointed by the Secretary. An Advisory Committee chaired by the President's Adviser on Consumer Interests is created and given only advisory power.

Financing

The Magnuson proposal provides for the independent financing of the Corporation through the issuance of capital stock and yearly national assessment on companies whose policies are guaranteed under the Act. The Corporation is also authorized to borrow from the Treasury to cover any immediate obligations. Funds generated through national assessments or special state post-insolvency assessments are used

to repay the loans and interest. There are certain important ceilings imposed by the Magnuson proposal:

1. Yearly national assessments are limited to one twenty-fifth of 1 per centum of the net direct premiums written. (Currently about \$10 million per year or 4 cents per \$100 of premium.)
2. The Corporation can spend no more than \$7.5 million per year for administrative expenses.
3. National assessments cease when the guaranty fund exceeds one-eighth of 1 per centum of the net direct premiums written (currently about \$30 million.)
4. State assessments cannot exceed 1 per centum of the net direct premiums written in any one year.
5. There is an outstanding treasury loan ceiling of \$100 million.

The Administration's Federal Insurance Guaranty Program is financed through appropriations that are maintained in a separate fund and through monies received from post-insolvency state assessments and treasury loans. The only ceiling imposed is the 5% ceiling on administrative expense add-on to any post-insolvency assessment. Because interest on treasury loans is designated as an administrative expense, the ability to borrow from the treasury could be hampered by the unavailability of appropriations to cover all administrative expenses including interest on loans. In other words, the 5% ceiling, as a practical matter, may prevent the Program director from actually borrowing money to meet the guaranty obligations of the Corporation.

PROTECTION OF CONSUMERS

Prevention of Insolvencies

(1) Improvement of State regulation:

The Magnuson proposal attempts to improve state regulation by providing for the

setting of voluntary national standards for regulation, rehabilitation, and liquidation. In so doing, the Corporation is required to pay attention to the Wisconsin Liquidation and Rehabilitation Act which the National Association of Insurance Commissioners has adopted as a model state act. No standards become effective until the Advisory Committee, by majority vote, approves them.

By creating two guaranty statuses, the Magnuson proposal attempts to create incentives for the states to meet the national voluntary standards. A state living up to the national standards is insulated from any and all unwanted Federal intervention. The Corporation performs the guaranty function only upon presentation by the State of the unadjudicated claims. Because insurance companies domiciled in States meeting the national standards are not subject to Federal examination and are granted permanent guaranty status, the Magnuson proposal provides incentives for the domiciliary insurance companies to work with the State supervisory authority and the State legislature in order to meet national standards. An ostensible incentive for improving State insurance regulation is also provided by the possible post-insolvency assessment liability of companies (and therefore their policyholders) doing business in a State where an insolvency occurs.

The Administration relies upon the post-insolvency assessment approach as its only vehicle for improving state regulation. The efficacy of this approach was questioned in hearings on S. 2236 (pages 287 and 298). Would the threat of assessment cause the insurance industry of the State to bring pressure upon the State supervisory authority to do a better job of regulating? Does the ability of the insurance industry to pass most of the assessment cost on to the public reduce the likelihood of strong industry pressure for improved regulation? Would the ten or fifteen cent price increase per policy so incense the public that they would insist that the State supervisory authority do a better job of preventing insolvencies?

If the State post-insolvency assessment approach does provide incentive for improved State regulation, does it provide such strong incentives that no other incentives need be provided?

(2) Monitoring of interstate activities, providing of useful information, and availability of a body of experts --

The Magnuson proposal, by providing for an independent Corporation which is independently financed, insures that the Federal Corporation will assist the State commissioners by providing them with information related to the interstate operations of insurers. It could also provide accurate information about security values and generally serve as an information gathering agency for State regulatory authorities.

The Magnuson proposal would certainly provide State commissioners a much needed expertise.

The National Association of Insurance Commissioners has recognized the need for such services in their Report of the Special Committee on Automobile Insurance Problems at pages 196 and 197:

(3) Technical Staff Assistance to the States. A third function of the Corporation would be to provide State insurance departments with professional expertise and assistance both before and during an insolvency proceeding. The Corporation would possess knowledgeable consultants from which the individual commissioner could solicit aid if and when desired.

The State insurance departments would retain their jurisdiction; insolvency proceedings would be handled in the usual way. However, an insurance company insolvency can be a complicated transaction. It is frequently difficult to find, on a local basis, accountants or lawyers with special expertise in this area. Insolvencies create extra work demands on State insurance departments which they are not always equipped to meet, and liquidation costs are sometimes higher because those handling them are dealing with them for the first time. This also applies to ancillary proceedings. But, with the Corporation available to pull the interstate pieces together for the local insolvency proceedings, greater efficiency and lower costs could result.

. . . The existence of a competent, well staffed and well financed group of experts in the Corporation, to supplement the insurance department staffs, could be most helpful in efforts to speedily administer criminal and civil justice." (emphasis added.)

The Administration's Program depends upon appropriations for staffing and other administrative activities. The imposition of a 5% add-on to any post insolvency assessment to cover administrative costs (including interest on treasury loans) suggests that the Administration contemplates a rather limited role for the Program staff.

(3) Loans to participating insurers --

Section 8(c) of the Magnuson proposal authorizes the Corporation to advance loans to participating insurers in order to get them back on their feet and prevent their liquidation. This loan authority has enabled the FDIC and FSLIC to keep many banks from becoming insolvent.

The Administration's bill has no comparable provision.

(4) Federal examination of companies domiciled in states not meeting federal standards --

To further aid in the prevention of insolvencies, the Magnuson proposal authorizes the Corporation to examine, when necessary, companies domiciled in states not meeting the voluntary national standards. Such examinations are to be conducted by Federal examiners in cooperation with the State supervisory authority. No federal examination is authorized in those states meeting the national standards.

The Administration proposal has no such provision.

(5) Revocation of guaranty status --

The Magnuson proposal allows the Corporation to revoke the guaranty status of participating insurers in order to put them out of business. The revocation of any insurer domiciled in a State meeting the voluntary national standards can only take

place if the State supervisory authority asks the Corporation to revoke an insurer's guaranty status or concurs in such a motion made by the Corporation. The Corporation may revoke the guaranty status of an insurer domiciled in a State not meeting the national standards, but such revocation cannot take place without the concurrence of a majority of the Advisory Committee. A company who continues to do business without guaranty status when it is required to have guaranty status is subject to a fine of not more than \$1,000 per day.

The Administration bill has no comparable provision.

Payment of Guaranty

(1) Scope of protection --

The Magnuson proposal requires the Corporation to assume all the insurance company's guaranteed policy obligations, including the obligation to provide legal defense. The Corporation steps into the shoes of the insurer without interfering with the State and performs as if it were the company pursuant to the suggestion of the NAIC Report, supra. The only limitations on the scope of the protection are those imposed by the policy contract provisions themselves.

The Administration's proposal protects the consumer to the extent the State liquidator determines he should be protected. The Program pays the liquidated claims that the State liquidator files with the Secretary of HUD. In those states having post-insolvency assessment plans, the Secretary will not pay the first \$100 of any valid claim. In other words, citizens of states having post-insolvency assessment plans are afforded less protection than those in states without such plans.

(2) When is the consumer protected?

Under the Magnuson proposal the consumer is protected as soon as the insurance company is placed in liquidation (for whatever reason) and ceases to meet its policy

obligations. Claimants against companies who are domiciled in States meeting national standards file their claims with the State liquidator who immediately turns them over to the corporation which is required to investigate, examine, adjust, compromise, or settle them as quickly as possible. The Corporation becomes the receiver of companies domiciled in States not meeting the national standards when they are placed in liquidation and cease to meet their policy obligations. It pays valid claims against the company as soon as possible. Under the Magnuson proposal no consumer should go without payment of valid claims for any significant length of time -- certainly no longer than several months from the time the Corporation receives the claim and much less time if the claim is for return of unearned premium.

Under the Administration's proposal the time of payment is very uncertain. If a State had the Wisconsin Rehabilitation and Liquidation Act and an experienced liquidator, the Administration approach might work as speedily as the Magnuson approach if the borrowing authority under the Administration bill were workable. But only Wisconsin has such a law, even though the National Association of Insurance Commissioners adopted the Wisconsin law as the model rehabilitation and liquidation law in 1968. The previous model legislation was the New York Uniform Liquidation Act adopted in 1939. To date only twenty-eight states have adopted the 1939 model act.

Under the Administration bill the following must occur before any claimant is paid:

- (1) Insurer placed in liquidation.
- (2) Insurer adjudicated insolvent.
- (3) Private contractual remedies of claimant pursued.
- (4) Claim submitted to State liquidator.

- (5) Claim investigated, adjusted, compromised or settled by State liquidator with court approval where necessary, or by the insurance industry in the State if the State has a post-insolvency assessment plan.
- (6) Claim submitted to the Secretary for payment.
- (7) Payment, either before or after periodic assessment, to the State liquidator.
- (8) State liquidator pays the claimant.

An adjudication for insolvency alone can take as much as five years.

Of course time factors vary from State to State. But as the NAIC has stated: "It is frequently difficult to find, on a local basis, accountants or lawyers with special expertise in this area." (see supra.) The Administration's proposal does not seem to guarantee "the expeditious compensation of consumers for insured losses arising under policies of property, liability, or surety policies issued in interstate commerce by insurers which become insolvent," even though "expeditious compensation" is a stated purpose of the Administration's bill.

Agreement on principles reflected in the two proposals

1. Federal legislation is needed to guarantee that every citizen, every policyholder, and every claimant is properly and fully compensated for his insured losses. (Hearings at 274)
2. The Federal legislation should provide incentives for improving State regulation. (Hearings at 287)
3. The Federal legislation should not disturb the basic framework of State regulation. (Hearings at 276; see also id. at 190, 200, and 201.)
4. If a State has acted already or decides to act in the future the Federal

legislation should not conflict with it but only reinforce and bolster it up. (Hearings at 280)

Possible Disagreement

1. Magnuson's proposal: Voluntary national standards for regulation, rehabilitation, and liquidation do not disturb the basic framework of State regulation.

(Hearings at 200-01.)

Administration's view:

2. Federal standards might very well constitute Federal regulation. (Hearings at 276)

S. 3542--INTRODUCTION OF THE FEDERAL INSURANCE GUARANTY ACT

Mr. COTTON. Mr. President, at the request of the department involved, I now introduce the administration's proposed Federal Insurance Guaranty Act and ask unanimous consent that it be referred to our Committee on Commerce.

I make this request in view of the fact that on May 23, 1969, a similar measure, S. 2236, was introduced by the distinguished Senator from Washington (Senator Magnuson) for himself and others, which was referred to our Committee on Banking and Currency which subsequently discharged the bill for referral to our Committee on Commerce.

Since that time our Committee on Commerce has held several days of hearings on the bill S. 2236, the last being on February 10 of this year at which time administration witnesses testified in response to the committee's request indicating that it, the administration, would submit its own legislative proposal as an alternative to the bill S. 2236.

Mr. President, this alternative legislative proposal is the one which I now introduce and, as previously noted, request unanimous consent for its referral to our Committee on Commerce.

In making this introduction, I am mindful of the fact that there is considerable concern both within and without Congress with respect to such legislative proposals and the probable impact of such upon the McCarran-Ferguson Insurance Regulation Act which provides in part a congressional declaration that "the continued regulation and taxation by the several States of the business of insurance is in the public interest."

It is my understanding, Mr. President, that the bill which I now introduced is in consonance with this congressional declaration of policy and will do minimum violence to it. Quite frankly, if it were to do otherwise and upset this long-standing Federal/State relationship, then I would be constrained to oppose its enactment. I have been advised, however, that this alternative legislative proposal will serve to meet the particular problem at hand without any such adverse impact, and I would hope that subject to the granting of my unanimous-consent referral to our Committee on Commerce, such legislative proposal will be accorded every consideration along with the bill S. 2236 now pending before that committee.

91ST CONGRESS
2D SESSION

S. 3542

IN THE SENATE OF THE UNITED STATES

MARCH 4, 1970

Mr. CORROD introduced the following bill; which was read twice and referred to the Committee on Commerce

A BILL

To authorize the Secretary of Housing and Urban Development to establish a Federal insurance guaranty program under the Federal Insurance Administrator to protect the American public against losses resulting from the insolvency of insurers, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Federal Insurance Guar-
4 anty Act".

5

PURPOSE

6 SEC. 2. The purpose of this Act is to provide a national
7 program within the framework of State regulation of the in-
8 surance industry, for the expeditious compensation of con-

1 sumers for insured losses arising under policies of property,
2 liability, or surety insurance issued in interstate commerce
3 by insurers which became insolvent, where the funds readily
4 available from all other sources are insufficient to satisfy the
5 insurer's valid outstanding claims in full.

6

DEFINITIONS

7

SEC. 3. (a) When used in this Act, unless the context
8 otherwise requires, the term—

9

(1) "approval of a claim" or "approved claim"
10 means any unpaid claim—

11

(i) including claims for refunds of unearned
12 premiums, but excluding amounts due any reinsurer,
13 insurer, insurance pool, or underwriting association,
14 as subrogation recoveries or otherwise,

15

(ii) arising under and within the coverage and
16 limits of insurance policies issued by any insurer
17 adjudged, subsequent to the effective date of this
18 Act, to be insolvent under the laws of its domiciliary
19 State, and

20

(iii) which has been finally determined ad-
21 ministratively or judicially under applicable State
22 law to be valid in a fixed amount;

23

(2) "certification of an approved claim" or "certi-
24 fied approved claim" means an approved claim (in
25 whole or in part) which the State insurance authority

1 of the domiciliary State of an insolvent insurer certifies
2 to the Secretary (i) is unpaid, and (ii) is not payable
3 under any other policy or contract of insurance or re-
4 insurance, or under any State insolvency or guaranty
5 fund, pool, association, or assessment;

6 (3) "domiciliary State" means:

7 (i) the State of incorporation or organization
8 of an insurer organized or incorporated in the
9 United States, or

10 (ii) the State of entry of an alien insurer;

11 (4) "Federal Insurance Administrator" means the
12 Federal Insurance Administrator within the Department
13 of Housing and Urban Development, authorized by sec-
14 tion 1105 of the Housing and Urban Development Act
15 of 1968 (42 U.S.C. 3533a);

16 (5) "insolvency" or "insolvent," as applied to an
17 insurer, shall be construed in accordance with the ap-
18 plicable laws of its domiciliary State;

19 (6) "insurance" means all kinds of direct insurance
20 except life, title, disability; and mortgage guaranty in-
21 surance;

22 (7) "insurance policy" or "policy" means any con-
23 tract or policy of insurance, including any valid endorse-
24 ment thereto, delivered or issued for delivery in any
25 State;

1 (8) "insurer" means any person licensed to engage
2 in the business of insurance under the laws of any State,
3 which issues policies of insurance in interstate com-
4 merce or reinsures its policies (in whole or in part) in
5 interstate commerce;

6 (9) "interstate commerce" means trade or com-
7 merce between or among several States or within the
8 District of Columbia;

9 (10) "net direct premiums written" means gross
10 direct premiums written on insurance policies, less return
11 premiums thereon and dividends paid or credited to
12 policyholders on such direct business, and excluding pre-
13 miums on contracts between insurers or reinsurers;

14 (11) "person" means any individual or group of
15 individuals, corporation, partnership, association, or any
16 other organized group of any of the foregoing, and
17 includes State and local governments and agencies
18 thereof;

19 (12) "Secretary" means the Secretary of Housing
20 and Urban Development;

21 (13) "State" or "United States" means the sev-
22 eral States, the District of Columbia, the territories and
23 possessions, the Commonwealth of Puerto Rico, and
24 the Trust Territories of the Pacific Islands; and

25 (14) "State insurance authority" means the per-

1 son having legal responsibility for regulating the busi-
2 ness of insurance within a State.

3 (b) The Secretary is authority to define, by rules and
4 regulations, any technical or trade term, insofar as such
5 definition is not inconsistent with the provisions of this Act.

6 GENERAL AUTHORITY

7 SEC. 4. The Secretary is authorized to establish under the
8 Federal Insurance Administrator, and to carry out under his
9 direct supervision, a national insurance guaranty program in
10 accordance with the provisions of this Act to protect the
11 consumer public from uncompensated losses arising under
12 insurance policies issued by insurers subsequently adjudged
13 to be insolvent under the laws of their domiciliary State.

14 LISTS OF INSURERS

15 SEC. 5. Each State insurance authority shall file with the
16 Secretary within sixty days after the effective date of this
17 Act, and on or before August 31 of each calendar year there-
18 after, a list of all insurers licensed to do business in the State,
19 showing the amounts of net direct premiums written by lines
20 of insurance to which this Act applies in the State by each
21 insurer during the preceding calendar year.

22 INFORMATION ON INSOLVENCY PROCEEDINGS

23 SEC. 6. (a) Within ten days after finding any domestic,
24 foreign, or alien insurer insolvent, the State insurance author-
25 ity making such finding shall so notify the Secretary.

1 (b) Within ten days after the institution of any pro-
2 ceeding to rehabilitate or liquidate an insurer or which might
3 result in the rehabilitation or liquidation of an insurer, the
4 State insurance authority of the State where such proceeding
5 is instituted shall so notify the Secretary, and shall keep the
6 Secretary currently and fully informed of the progress and
7 outcome of each such proceeding.

8 NOTIFICATION OF POSSIBLE CLAIMS

9 SEC. 7. (a) Whenever an insurer is adjudged insolvent
10 and placed in receivership or liquidation by a court of com-
11 petent jurisdiction, the State insurance authority in its domi-
12 ciliary State shall promptly determine and notify the Sec-
13 retary if it appears that all the valid outstanding claims
14 against such insurer cannot be fully and expeditiously paid
15 from its assets and such funds as may be available from other
16 insurers or reinsurers and from insolvency or guaranty funds
17 or associations established under State laws. For the pur-
18 poses of this Act, it shall be presumed that such claims, aris-
19 ing in any State in which an applicable insolvency or guar-
20 anty fund or association established under State law does not
21 exist, cannot be fully and expeditiously paid, but such pre-
22 sumption shall be subject to an explicit contrary determina-
23 tion and certification by the domiciliary State insurance au-
24 thority.

25 (b) Whenever the Secretary receives the foregoing no-

1 tice from the domiciliary State insurance authority that an
2 insurer has been adjudged insolvent and that any outstanding
3 claim may not be fully and expeditiously paid, the Secretary
4 shall promptly notify all other insurers licensed within the
5 domiciliary State of the insolvent insurer of the possibility
6 that he may be required to make guaranty payments under
7 the authority of this Act shall that the insurers so notified
8 may be required to pay assessments to provide the necessary
9 funds.

10 CERTIFICATION AND PAYMENTS OF CLAIMS

11 SEC. 8. (a) As soon as he has determined that any
12 approved claims cannot be fully and expeditiously satisfied
13 without recourse to the Secretary, the domiciliary State in-
14 surance authority shall certify to the Secretary, in accordance
15 with such regulations as the Secretary may prescribe, such
16 approved claims for payment by the Secretary.

17 (b) Upon receipt from the domiciliary State insurance
18 authority of a list, or of periodic lists, of certified approved
19 claims, the Secretary shall, as promptly as practicable, pay
20 to the appropriate receiver or liquidator in such State suffi-
21 cient moneys to satisfy in full such certified approved claims:
22 *Provided*, That with respect to any State where an insol-
23 vency or guaranty fund or association has been established
24 pursuant to State law, only that portion of each approved
25 claim shall be paid by the Secretary which is in excess of

1 \$100 and is less than \$300,000, and is not payable under
2 such State law.

3 INSURER ASSESSMENTS

4 SEC. 9. (a) Whenever he is required to make guaranty
5 payments under the authority of this Act to satisfy the certi-
6 fied approved claims of an insolvent insurer, the Secretary
7 shall obtain funds for or reimbursement of such payments
8 by periodically (but not more often than monthly) assessing
9 each other insurer licensed to do business in the domiciliary
10 State of the insolvent insurer for a proportionate share of
11 (1) the total amount of the guaranty payments required,
12 plus (2) up to an additional 5 per centum of such amount to
13 defray his estimated administrative and operating expenses.
14 Such proportionate share for each insurer shall be based
15 upon its relative share of the total net direct premiums writ-
16 ten within that State by all insurers in the calendar year prior
17 to the year in which the insolvent insurer was determined to
18 be insolvent: *Provided*, That in the event the total assess-
19 ments under any applicable State law and by the Secretary
20 upon any insurer in any State in any calendar year (includ-
21 ing any assessment balance from a prior year) exceed 2 per
22 centum of its net direct premiums written in such State in the
23 applicable prior year, the excess over 2 per centum, plus
24 interest as provided herein, may be paid to the Secretary
25 in the immediately succeeding year or years thereafter.

1 (b) Payments by insurers of such assessments shall be
2 due and payable within thirty days of receipt of notice from
3 the Secretary of the amounts owed. After such thirty-day
4 period, interest shall begin to accrue on any unpaid amounts
5 at a rate determined by the Secretary: *Provided*, That such
6 rate shall not be less than the sum of (1) a rate determined
7 annually by the Secretary of the Treasury taking into consid-
8 eration the current average market yield on outstanding mar-
9 ketable obligations of the United States with remaining
10 periods to maturity of less than one year, and (2) a fee of 1
11 per centum per annum.

12 (c) Within forty-five days after date of notice of assess-
13 ment, but only after making such payment or the portion
14 thereof due in the current year, any insurer may file a writ-
15 ten notice of objection to the Secretary's determination and
16 shall be entitled to a hearing in accordance with the provi-
17 sions of this Act to determine whether all or a portion of such
18 assessment should be refunded.

19 SUBROGATION

20 SEC. 10. (a) The Secretary shall be subrogated to any
21 approved claim which any claimant has against the estate
22 of the insolvent insurer in the amount paid by the Secre-
23 tary to satisfy such approved claim.

24 (b) The Secretary shall credit equitably to the assessed
25 insurers of the domiciliary State of an insolvent insurer,

1 and periodically repay to such insurers, subject to appro-
2 priate offsets and less any additional expenses incurred in
3 connection with such collections, any amounts which he may
4 recover through his subrogation to claims against the estate
5 of such insolvent insurer.

6 PENALTIES

7 SEC. 11. Section 709 of title 18, United States Code, is
8 amended by inserting after the eighth paragraph thereof the
9 following new paragraph:

10 "Whoever, except with the specific written authoriza-
11 tion of the Secretary of Housing and Urban Development or
12 of the Federal Insurance Administrator, uses the words 'Fed-
13 eral Insurance Guaranty', 'Federal Insurance Administra-
14 tion', 'FIA', or any combination or variation of those words
15 or letters alone or with other words or letters as a business
16 name or part of a business name, or publishes, advertises, or
17 represents by any device or symbol or other means reason-
18 ably calculated to convey the impression that he or it has a
19 connection with or authorization from, or in any way repre-
20 sents or acts as agent for, or is insured or protected against
21 loss or insolvency by, the Department of Housing and Ur-
22 ban Development or the Federal Insurance Administration,
23 for the purpose of inducing or influencing any person to pur-
24 chase or with respect to the purchase or retention of insur-
25 ance; or".

HEARINGS

1
2 SEC. 12. (a) All hearings in which an insurer is a
3 principal party shall be held before a hearing examiner ap-
4 pointed by the Secretary in the Federal judicial district for
5 the State in which such insurer is domiciled unless the insurer
6 afforded the hearing consents to another place, and shall be
7 conducted in accordance with the provisions of chapter 5 of
8 title 5, United States Code. All hearings shall be public, un-
9 less the party afforded the hearing and the State insurance
10 authority jointly request a private hearing to protect the
11 public interest. After such hearing, and within ninety days
12 after the Secretary has notified the insurer that the case has
13 been submitted to him for final decision, the Secretary shall
14 render his decision (which shall include findings of fact upon
15 which his decision is predicated) and shall issue and cause to
16 be served upon each party to the proceeding an order or
17 orders consistent with the provisions of this section. Judicial
18 review of any such order shall be exclusively as provided in
19 subsection (b). Unless a petition for review is timely filed in
20 a court of appeals of the United States, as hereinafter pro-
21 vided in subsection (b), and thereafter until the record in
22 the proceeding has been filed as so provided, the Secretary
23 may at any time, upon such notice and in such manner as he
24 shall deem proper, modify, terminate, or set aside any such
25 order with permission of the court.

1 (b) Any party to the proceeding may obtain a review
2 of any order served pursuant to this subsection (other than
3 an order issued with the consent of the insurer), by filing in
4 the court of appeals of the United States for the circuit in
5 which the insurer is domiciled, or in the United States Court
6 of Appeals for the District of Columbia Circuit, within thirty
7 days after the date of service of such order, a written peti-
8 tion praying that the order of the Secretary be modified,
9 terminated, or set aside. A copy of such petition shall be
10 forthwith transmitted by the clerk of the court to the Sec-
11 retary, and thereupon the Secretary shall file in the court the
12 record in the proceeding, as provided in section 2112, title
13 28, United States Code. Upon the filing of such petition,
14 such court shall have jurisdiction, which upon the filing of
15 the record shall, except as provided in the last sentence of
16 subsection (a), be exclusive to affirm, modify, terminate, or
17 set aside, in whole or in part, the order of the Secretary.
18 Review of such proceedings shall be had as provided in
19 chapter 7 of title 5, United States Code. The judgment and
20 decree of the court shall be final, except that the same shall
21 be subject to review by the Supreme Court upon certiorari
22 as provided in section 1254, title 28, United States Code.

23 (c) The Secretary may, in his discretion, petition the
24 court of appeals of the United States for the circuit in which
25 the insurer is domiciled, or in the United States Court of

1 Appeals for the District of Columbia Circuit, for the enforce-
2 ment of any final order issued by the Secretary under this
3 section, and such court shall have jurisdiction and power to
4 order and require compliance therewith.

5 ADVISORY COMMITTEE

6 SEC. 13. (a) There is hereby established a Federal
7 Insurance Guaranty Advisory Committee composed of not
8 less than seven, nor more than eleven, members to be
9 appointed by the Secretary from among representatives of
10 the Federal and State governments, including State insur-
11 ance authorities, the insurance industry, and consumers. The
12 Special Assistant to the President for Consumer Affairs shall
13 be a member of such Committee and shall serve as Chairman.
14 The Committee shall elect a Vice Chairman of the
15 Committee.

16 (b) Each member of the Committee, other than the
17 Chairman, shall serve for a term of two years or until his
18 successor has been appointed, except that no person who is
19 appointed while a full-time employee of a State or the Fed-
20 eral Government shall serve in such position after he ceases
21 to be so employed unless he is reappointed. Any member
22 appointed to fill a vacancy occurring prior to the expiration
23 of the term for which his predecessor was appointed shall be
24 appointed for the remainder of that term.

25 (c) The Chairman shall preside at all meetings, and

1 the Vice Chairman shall preside in the absence or disability
2 of the Chairman. The Committee shall meet at the call of
3 the Chairman, or at the request of the Secretary, but not
4 less often than four times a year.

5 (d) The Committee shall advise and make recommen-
6 dations to the Secretary with respect to obtaining the co-
7 operation of insurers, industry groups, and Federal and State
8 agencies in the insurance guaranty program; improving the
9 effectiveness of the insurance guaranty program; and on
10 such general policy matters as may be appropriate.

11 (e) The members of the Committee shall not, by reason
12 of such membership, be deemed to be employees of the
13 United States, and such members, except those who are
14 regular full-time employees of the Government, shall receive
15 for their services as members per diem equivalent to the rate
16 for grade GS-18 of the General Schedule under section 5332,
17 title 5, United States Code, when engaged in the perform-
18 ance of their duties, and each member of the Committee shall
19 be allowed travel expenses, including per diem in lieu of
20 subsistence, as authorized by section 5703, title 5, United
21 States Code, for persons in the Government service employed
22 intermittently.

23 TREASURY LOANS

24 SEC. 14. (a) As authorized in appropriation Acts; and
25 such authorizations may be without fiscal year limitation;

1 the Secretary may borrow from the Secretary of the Treas-
2 ury, and the Secretary of the Treasury is authorized and
3 directed to lend to the Secretary, such funds as in the judg-
4 ment of the Secretary are required for the purposes of this
5 Act. Such loans shall bear interest at a rate determined by
6 the Secretary of the Treasury taking into consideration the
7 current average market yield on outstanding marketable obli-
8 gations of the United States with remaining periods to ma-
9 turity comparable to the average maturities of such loans.
10 For such purpose the Secretary of the Treasury is authorized
11 to use as a public debt transaction the proceeds of the sale
12 of any securities hereafter issued under the Second Liberty
13 Bond Act, as amended, and the purposes for which securities
14 may be issued under the Second Liberty Bond Act, as
15 amended, are extended to include such loans. Any such loan
16 shall be used by the Secretary solely in carrying out his
17 functions with respect to insurance. All loans and repayments
18 under this section shall be treated as public debt transactions
19 of the United States.

20 (b) Interest charged to the Secretary shall be an admin-
21 istrative expense of the Secretary and interest payments re-
22 ceived by the Secretary shall be regarded as income to be
23 used by the Secretary for operating and administrative ex-
24 penses.

1 Secretary, notwithstanding the provisions of any other law,
2 may—

3 (a) sue or be sued;

4 (b) without regard to sections 3648 and 3709 of
5 the Revised Statutes, as amended (31 U.S.C. 529 and
6 41 U.S.C. 5), and section 322 of the Act of June 30,
7 1932 (47 Stat. 412, as amended (40 U.S.C. 278a)),
8 enter into and perform contracts, leases, cooperative
9 agreements, or other transactions, on such terms as he
10 may deem appropriate, with any agency or instrumen-
11 tality of the United States, or with any State or agency
12 or political subdivision thereof, or with any person, firm,
13 association, or corporation and consent to modification
14 thereof, and make advance or progress payments in con-
15 nection therewith;

16 (c) without regard to sections 3648 and 3709
17 of the Revised Statutes, as amended (31 U.S.C. 529
18 and 41 U.S.C. 5), and section 322 of the Act of June 30,
19 1932 (47 Stat. 412, as amended (40 U.S.C. 278a)),
20 by purchase, lease, or donation acquire such real and
21 personal property and any interest therein, make ad-
22 vance or progress payments in connection therewith, and
23 hold, use, maintain, insure against loss, sell, lease, or
24 otherwise dispose of such real and personal property as

1 the Secretary deems necessary to carry out the purposes
2 of this Act;

3 (d) issue such rules and regulations as he deems
4 necessary to carry out the purposes of this Act;

5 (e) enter into such contracts, agreements, treaties,
6 or other arrangements without regard to section 3679
7 (a) of the Revised Statutes of the United States (31
8 U.S.C. 655 (a)) as he may deem necessary to carry
9 out the purposes of the Act; and

10 (f) exercise all powers specifically granted by the
11 provisions of this Act and such incidental powers as
12 may be necessary to carry out the purposes of this Act.

91ST CONGRESS
2D SESSION

S. 3542

A BILL

To authorize the Secretary of Housing and Urban Development to establish a Federal insurance guaranty program under the Federal Insurance Administrator to protect the American public against losses resulting from the insolvency of insurers, and for other purposes.

By Mr. COTTON

MARCH 4, 1970

Read twice and referred to the Committee on
Commerce

[CONFIDENTIAL COMMITTEE PRINT NO. 11]

MARCH 10, 1970

Calendar No.

91st CONGRESS
2d SESSION

S. 2236

[Report No. 91-]

IN THE SENATE OF THE UNITED STATES

MAY 23, 1969

Mr. MAGNUSON (for himself, Mr. DODD, Mr. HART, Mr. HOLLINGS, Mr. INOUE, Mr. MOSS, and Mr. PASTORE) introduced the following bill; which was read twice and referred to the Committee on Banking and Currency

MAY 27, 1969

The Committee on Banking and Currency discharged, and referred to the Committee on Commerce

A BILL

To create a Federal Insurance Guaranty Corporation to protect the American public against certain insurance company insolvencies.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 *That this Act may be cited as the "Federal Insurance Guar-*
- 4 *anty Corporation Act".*

J. 41-781

DEFINITIONS

1

2 SEC. 2. As used in this Act—

3 (1) The term "insurer" means any enterprise engaged
4 in the business of issuing property, casualty, or surety in-
5 surance policies in interstate commerce or engaged in the
6 business of issuing property, casualty, or surety policies which
7 are reinsured (in whole or in part) in interstate commerce.

8 (2) The term "local insurer" means any enterprise
9 engaged in the business of issuing property, casualty, or
10 surety insurance policies solely within one State.

11 (3) The term "participating insurer" means any enter-
12 prise whose property, casualty, or surety insurance policies
13 are guaranteed under this Act.

14 (4) The term "policy" means (a) any contract of
15 property, casualty, or surety insurance, including any en-
16 dorsements thereto and without regard to the nature or form
17 of the contract or endorsements, insuring against legal liability
18 and/or loss contingencies, other than those provided for by
19 life, accident and health, or title insurance; (b) any agree-
20 ment written by the insurer or reinsurer in favor of a self-
21 insurer; or (c) any agreement written by an insurer or re-
22 insurer in favor of another insurer assuming 100 per centum
23 of all obligations of the ceding insurer.

24 (5) The term "policy required to be guaranteed" means
25 any property, casualty, or surety policy issued or delivered

1 in the United States by any insurer (or its agent) to any
2 person (including any individual, partnership, association,
3 or corporation).

4 (6) The term "net direct premiums written" means di-
5 rect gross premiums written on property, casualty, and
6 surety insurance policies required to be guaranteed under
7 this Act less return premiums thereon and dividends paid
8 to policyholders on such direct business.

9 (7) The term "policyholder claim" means (a) a claim
10 of a policyholder or insured or his assignee within the
11 coverage of a policy, arising out of an occurrence wherein
12 such policyholder or insured suffered damage or is subject
13 to liability for damages within the coverage of the policy,
14 or (b) a claim by a policyholder or insured or his assignee
15 for return premium arising out of the termination of the
16 policy by reason of insolvency.

17 (8) The term "Administrator" means the Administra-
18 tor of the Federal Insurance Guaranty Corporation.

19 (9) The term "Fund" means the Federal Insurance
20 Guaranty Fund as described in section 9 (b).

21 (10) The term "interstate commerce" means trade or
22 commerce among the several States, or between the District
23 of Columbia or any possession of the United States and any
24 State or other possession, or within the District of Columbia.

25 (11) The term "State" means any State, any possession

1 of the United States, the District of Columbia, and the Com-
2 monwealth of Puerto Rico.

3 (12) The term "State supervisory authority" means the
4 agency or individual of the State of domicile of the insurer
5 having responsibility for regulating the business of insurance
6 within that State: *Provided*, That in the case of an insurer
7 organized under the laws of a foreign country that has no
8 domicile in the United States the "State supervisory author-
9 ity" means the agency or individual of the State in which
10 policies required to be guaranteed are primarily issued or
11 delivered.

12 CREATION OF CORPORATION

13 SEC. 3. There is hereby created a Federal Insurance
14 Guaranty Corporation (hereinafter referred to as the "Cor-
15 poration") which shall guarantee, as hereinafter provided,
16 the contractual performance of participating insurers and
17 which, in connection therewith, shall have the powers here-
18 inafter granted.

19 MANAGEMENT OF CORPORATION

20 SEC. 4. (a) ADMINISTRATOR.—The management of the
21 Corporation shall be vested in an Administrator appointed by
22 the President, by and with the advice and consent of the
23 Senate. The Administrator shall hold office for a term of six
24 years, except that any person chosen to fill a vacancy shall
25 be appointed only for the unexpired term of the person whom

1 he shall succeed: *Provided, however,* That upon the expira-
2 tion of his term of office the Administrator shall continue to
3 serve until his successor shall have been appointed and shall
4 have qualified. The Administrator shall be ineligible during
5 the time he is in office and for two years thereafter to hold
6 any office, position, or employment in any participating in-
7 surer; and he shall not be an officer or director of any par-
8 ticipating insurer or hold stock in any participating insurer;
9 and before entering upon his duties as Administrator he shall
10 certify under oath that he has complied with this requirement
11 and file such certification with the Secretary of the Cor-
12 poration.

13 (b) (1) There is hereby established an Advisory Com-
14 mittee consisting of eleven members appointed by the Ad-
15 ministrator. Of the members of the Committee, one shall be
16 the Special Assistant to the President on Consumer Affairs,
17 four shall be selected from among representatives of the pri-
18 vate insurance industry (including one representative of the
19 reinsurance industry), four shall be representatives of State
20 insurance authorities, and two shall be consumer representa-
21 tives of the general public.

22 (2) The Administrator shall designate a Chairman and
23 a Vice Chairman of the Committee.

24 (3) Each member shall serve for a term of two years
25 or until his successor has been appointed, except that no per-

1 son who is appointed while a full-time employee of a State
2 or the Federal Government shall serve in such position after
3 he ceases to be so employed, unless he is reappointed.

4 (4) Any member appointed to fill a vacancy occurring
5 prior to the expiration of the term for which his predecessor
6 was appointed shall be appointed for the remainder of that
7 term.

8 (5) The Chairman shall preside at all meetings, and the
9 Vice Chairman shall preside in the absence or disability of
10 the Chairman. In the absence of both the Chairman and
11 Vice Chairman, the Administrator may appoint any member
12 to act as Chairman pro tempore. The Committee shall meet
13 at such times and places as it or the Administrator may fix
14 and determine, but shall hold at least four regularly scheduled
15 meetings a year. Special meetings may be held at the call
16 of the Chairman or any three members of the Committee,
17 or at the call of the Administrator. A majority of the mem-
18 bers shall constitute a quorum for the transaction of business.

19 (6) The Committee shall review general policies of
20 the Corporation and advise the Administrator with respect
21 thereto, assist in obtaining the cooperation of insurers, in-
22 dustry groups, and Federal and State agencies, consult with
23 and make recommendations to the Administrator with
24 respect to carrying out the purposes of this Act, and perform
25 such other functions as the Administrator may, from time to

1 time, assign. The written reports and recommendations of the
2 Committee shall be made available by the Administrator to
3 the public.

4 (7) The members of the Committee shall not, by reason
5 of such membership, be deemed to be employees of the
6 United States, and such members, except the one who is a
7 regular full-time employee of the Government, shall receive
8 for their services, as members, the per diem equivalent to
9 the rate for grade GS-18 of the General Schedule under
10 section 5332 of title 5, United States Code, when engaged
11 in the performance of their duties, and each member of the
12 Committee shall be allowed travel expenses, including per
13 diem in lieu of subsistence, as authorized by section 5703 of
14 such title for persons in the Government service employed
15 intermittently.

16 INCORPORATION; POWERS

17 SEC. 5. (a) Upon the date of enactment of this Act, the
18 Corporation shall become a body corporate and shall be an
19 instrumentality of the United States, and as such shall have
20 power—

- 21 (1) to adopt, alter, and use a corporate seal;
22 (2) to have succession until dissolved by an Act of
23 Congress;
24 (3) to make contracts, and execute all instruments
25 necessary and appropriate in the exercise of its powers;

1 (4) to sue and be sued, complain and defend, in
2 any court of law or equity, State or Federal. All suits of
3 a civil nature at common law or in equity to which the
4 Corporation shall be a party shall be deemed to arise
5 under the laws of the United States, and the United
6 States district courts shall have original jurisdiction
7 thereof without regard to the amount of controversy;
8 and the Corporation may, without bond or security, re-
9 move any such action, suit, or proceeding from a State
10 court to the United States district court for the district
11 or division embracing the place where the same is pend-
12 ing by following any procedure for removal now or here-
13 after in effect. No attachment or execution shall be issued
14 against the Corporation or its property before final judg-
15 ment in any suit, action, or proceeding in any State,
16 county, municipal, or United States court. The Adminis-
17 trator shall designate an agent upon whom service of
18 process may be made in any State, territory, or jurisdic-
19 tion in which any participating insurer does business;
20 (5) to appoint through its Administrator such offi-
21 cers, employees, attorneys, agents, adjusters, examiners,
22 and other persons as may be necessary for the perform-
23 ance of its duties, to define their duties, fix their com-
24 pensation, require bonds of them and fix the penalty
25 thereof, and to dismiss at pleasure such officers or em-

1 ployees. Nothing in this chapter or any other Act shall
2 be construed to prevent the appointment and compen-
3 sation as an officer or employee of the Corporation of any
4 officer or employee of the United States in any board,
5 commission, independent establishment, or executive de-
6 partment thereof;

7 (6) to prescribe through its Administrator bylaws
8 not inconsistent with law, regulating the manner in
9 which its general business may be conducted and the
10 privileges granted to it by law may be exercised and
11 enjoyed;

12 (7) to exercise by its Administrator, or duly
13 authorized officers or agents, all powers specifically
14 granted by the provisions of this Act, and such inci-
15 dental powers as shall be necessary to carry out the
16 powers so granted;

17 (8) to make examinations of and to require in-
18 formation and reports from any insurer or local insurer
19 making application for guaranty status in accord with
20 subsection (f) of section 6 of this Act; and

21 (9) to prescribe by its Administrator such rules and
22 regulations as it may deem necessary to carry out the
23 provisions of this title.

24 (b) No individual, association, partnership, or corpo-

1 ration, other than the Corporation, shall hereafter use the
2 words "Federal Insurance Guaranty Corporation" or any
3 combination of such words, as the name or part thereof
4 under which he or it shall do business. Any violation of
5 this subsection shall be punishable by a fine of not ex-
6 ceeding \$1,000 for each day during which such violation is
7 committed.

8 ADMINISTRATION

9 SEC. 6. (a) The Administrator shall administer the af-
10 fairs of the Corporation fairly and impartially and without
11 discrimination. The Administrator shall determine and pre-
12 scribe the manner in which its obligations shall be incurred
13 and its expenses allowed and paid within the limitations
14 imposed by this Act. The Corporation shall be entitled to
15 the use of the United States mails in the same manner as
16 the executive departments of the Government and, with the
17 consent of the head of any department or agency of the
18 Federal Government, or of any State government, may avail
19 itself of the use of information, services, and facilities thereof
20 in carrying out the provisions of this Act.

21 (b) GUARANTY STATUSES.—Any insurer or local in-
22 surer issuing policies guaranteed under this Act shall be
23 placed in one of two guaranty statuses characterized as either
24 "temporary guaranty status" or "permanent status." Any
25 participating insurer shall inform the purchaser prior to pur-

1 chase of its guaranty status and shall prominently display its
2 guaranty status on each and every guaranteed policy it issues
3 in accordance with regulations promulgated by the Cor-
4 poration.

5 (c) APPLICATION FOR GUARANTY STATUS.—Each in-
6 surer shall, and each local insurer may, make application to
7 the Corporation for guaranty status under this Act. Such ap-
8 plication shall be in such form and contain such information
9 as the Corporation shall by regulation prescribe.

10 (d) APPROVAL OF APPLICATION AND ASSIGNMENT OF
11 GUARANTY STATUS.—

12 (1) Any insurer or local insurer making application
13 to the Corporation in the prescribed manner shall be
14 granted temporary guaranty status if that application is
15 certified by the State supervisory authority of the appli-
16 cant. Such certification shall state that the applicant is
17 conducting its business in a sound and solvent manner
18 and, in determining whether such certification shall be
19 made, the State supervisory authority shall give con-
20 sideration, along with such other factors as it may deem
21 necessary and appropriate, to the applicant's capital and
22 surplus, reasonableness of operational expenses, premium
23 writings are related to surplus, adequacy of loss and ex-
24 pense reserves, reinsurance, investment portfolio, and
25 managerial qualifications.

1 (2) Any insurer or local insurer making application
2 to the Corporation in the prescribed manner shall be
3 granted permanent guaranty status if that application
4 is certified by the State supervisory authority in the
5 domiciliary State of the applicant and if that State super-
6 visory authority has met certain national insurance regu-
7 lation standards established by the Corporation in accord-
8 ance with the provisions of this Act: *Provided*, That
9 any such State supervisory authority can request that
10 any insurer be retained on temporary status.

11 (c) Establishment of standards.—The Corporation shall
12 establish by regulation, after opportunity for hearing, stand-
13 ards for insurance regulation that must be met by a State su-
14 pervisory authority before an insurer can be granted perma-
15 nent guaranty status in the Corporation. No such standards
16 shall become effective until approved by a majority of the
17 Advisory Committee: *Provided*, That in promulgating stand-
18 ards for State insurance regulation the Corporation shall in-
19 corporate as part of its national standards, insofar as appro-
20 priate, the standards for regulation, rehabilitation, and liqui-
21 dation embodied in chapter 89, Wisconsin Session Laws of
22 1967.

23 (f) Corporation examination of participating insurers
24 assigned temporary status.—

25 (1) The Corporation, through appointed examiners,

1 shall have the power to examine any insurer or local in-
2 surer whose policies are temporarily guaranteed under
3 this Act, whenever in the judgment of the Corporation
4 such examination is necessary. In making necessary ex-
5 aminations of such participating insurers, the Corpora-
6 tion shall have the power to make examinations as if it
7 were a State supervisory authority complying with na-
8 tional standards.

9 (2) All examiners appointed by the Corporation
10 shall cooperate as far as practicable with the appropriate
11 State supervisory authorities in conducting any necessary
12 examinations under this Act. Copies of reports of exam-
13 inations by examiners appointed by this subsection shall
14 be furnished by the Corporation to the appropriate State
15 supervisory authorities which shall be afforded the op-
16 portunity to comment thereon.

17 (g) Reports to the Corporation.—Each participating
18 insurer shall make to the Corporation reports of condition
19 which shall be in such form, at such time, and shall contain
20 such information as the Administrator may require. The Ad-
21 ministrator may require reports of condition to be published in
22 such manner, not inconsistent with any applicable law, as it
23 may direct. Every participating insurer which fails to make
24 or publish any such report within ten days of its due date
25 shall be subject to a penalty of not more than \$1,000 for

1 each day of such failure, which penalty shall be recoverable
2 by the Corporation for its use.

3 (h) Revocation of guaranty status.—

4 (i) Any participating insurer who has attained per-
5 manent guaranty status may have its guaranty status
6 revoked if its State supervisory authority so recommends
7 or if the State supervisory authority concurs in a motion
8 of revocation made by the Corporation. The Corporation
9 shall give any participating insurer who has attained per-
10 manent guaranty status thirty days written notice of in-
11 tention to terminate its guaranty status and opportunity
12 to correct the deficiencies of its operation which are
13 stated in that notice as grounds for termination. Any
14 participating insurer, prior to termination, shall upon
15 request be granted an opportunity for a hearing which
16 shall be conducted in accord with the provisions here-
17 inafter provided.

18 (2) Any participating insurer who has been granted
19 only temporary guaranty status may have its guaranty
20 status revoked whenever the Administrator, with the con-
21 currence of a majority of the Advisory Committee, shall
22 find that such participating insurer or its directors or of-
23 ficers have engaged or are engaging in unsafe or un-
24 sound practices in conducting the business of the insurer,
25 the insurer is in an unsafe or unsound condition to con-

1 tinue operations as a participating insurer, or the insurer
2 has violated any provisions of this Act or any rule, regu-
3 lation, or order issued pursuant to this Act. Prior to revo-
4 cation the Administrator shall give the insurer and the
5 State supervisory authority a statement with respect to
6 such practices or violations for the purpose of securing
7 the correction thereof. Unless correction shall be made
8 within one hundred and twenty days from receipt of such
9 statement, or such shorter period as may be fixed by the
10 Corporation (but in any event not less than twenty
11 days) in any case where the Administrator in his discre-
12 tion has determined that the insurance risk of the Cor-
13 poration is unduly jeopardized, or unless within such
14 time the Corporation shall have received acceptable as-
15 surances that such correction will be made within a time
16 and in a manner satisfactory to the Corporation, or in
17 the event such assurances are submitted to and accepted
18 by the Corporation but are not carried out in accordance
19 with their terms, the Administrator, if he shall determine
20 to proceed further, shall give to the insurer not less than
21 thirty days' written notice of intention to terminate its
22 guaranteed status. Such notice shall contain a statement
23 of the facts constituting the alleged violation or unsafe
24 or unsound practice or condition and shall fix a time and
25 place for a hearing before the Administrator or before a

1 person, designated by him to conduct such hearing, at
2 which evidence may be produced, and upon such evi-
3 dence the Administrator shall make written findings
4 which shall be conclusive, subject to right of review as
5 hereinafter provided for. If the Administrator shall find
6 that any unsafe or unsound practice or condition or vio-
7 lation specified in such statement has been established
8 and has not been corrected within the time above pre-
9 scribed in which to make such corrections, the Adminis-
10 trator may terminate guaranteed status of the insurer on
11 a date subsequent to such finding and to the expiration
12 of the time specified in such notice of intention. Unless
13 the insurer shall appear at the hearing by a duly author-
14 ized representative, it shall be deemed to have consented
15 to the termination of its guaranteed status and termina-
16 tion of such status thereupon may be ordered. Any in-
17 surer whose guaranteed status has been terminated by
18 order of the Administrator under this subsection shall
19 have the right of judicial review of such order only to
20 the same extent as provided for the review of orders un-
21 der subsection (i) of this section. The Corporation may
22 publish notice of such termination and the insurer shall
23 give notice of such termination to each of its policyhold-
24 ers at his last address of record on the books of the in-
25 surer, in such manner and at such time as the Adminis-

1 trator may find to be necessary and may order for the
2 protection of policyholders. In the event of failure to give
3 the notice to policyholders as herein provided, the Cor-
4 poration is authorized to give such notice. An order
5 terminating the guaranteed status of any participating in-
6 surer shall not affect any guaranteed policy issued by
7 such insurer prior to the date on which the order was
8 issued, but shall be effective with respect to (1) the re-
9 newal of such policy, and (2) any property, casualty,
10 or surety insurance policy thereafter issued by such in-
11 surer.

12 (i) Hearings and judicial review.—

13 (1) Any hearings provided for in this Act shall be
14 held in the Federal judicial district or in the territory
15 in which the principal officer of the insurer is located
16 unless the party afforded the hearing consents to an-
17 other place, and shall be conducted in accordance with
18 the provisions of chapter 5 of title 5, United States Code.
19 Such hearing shall be public, unless the Corporation, in
20 its discretion, after fully considering the views of the
21 party afforded the hearing, determines that a private
22 hearing is necessary to protect the public interest. After
23 such hearing, and within ninety days after the Corpora-
24 tion has notified the parties that the case has been sub-

1 mitted to it for final decision, the Corporation shall
2 render its decision (which shall include findings of fact
3 upon which its decision is predicated) and shall issue and
4 cause to be served upon each party to the proceeding
5 an order or orders consistent with the provisions of this
6 section. Judicial review of any such order shall be ex-
7 clusively as provided in this subsection. Unless a petition
8 for review is timely filed in a court of appeals of the
9 United States, as hereinafter provided in paragraph (2)
10 of this subsection, and thereafter until the record in the
11 proceeding has been filed as so provided, the Corporation
12 may at any time, upon such notice and in such manner
13 as it shall deem proper, modify, terminate, or set aside
14 any such order. Upon such filing of the record, the
15 Corporation may modify, terminate, or set aside any
16 such order with permission of the court.

17 (2) Any party to the proceeding may obtain a
18 review of any order by filing in the court of appeals of
19 the United States for the circuit in which the principal
20 office of the insurer is located, or in the United States
21 Court of Appeals for the District of Columbia Circuit,
22 within thirty days after the date of service of such order,
23 a written petition praying that the order of the Corpora-
24 tion be modified or set aside. A copy of such petition
25 shall be forthwith transmitted by the clerk of the court

1 to the Corporation, and thereupon the Corporation shall
2 file in the court the record in the proceeding, as provided
3 in section 2112 of title 28, United States Code. Upon
4 the filing of such petition, such court shall have jurisdic-
5 tion, which upon the filing of the record shall, except as
6 provided in the last sentence of said paragraph (1), be
7 exclusive, to affirm, modify, or set aside, in whole or in
8 part, the order of the Corporation. Review of such pro-
9 ceedings shall be had as provided in chapter 7 of title 5,
10 United States Code. The judgment and decree of the
11 court shall be final, except that the same shall be subject
12 to review by the Supreme Court upon certiorari as pro-
13 vided in section 1254 of title 28 of the United States
14 Code.

15 (3) The commencement of proceedings for judicial
16 review under paragraph (2) of this subsection shall not,
17 unless specifically ordered by the court, operate as a stay
18 of any order issued by the Corporation.

19 PENALTIES

20 SEC. 7. (a) Any insurer (other than a local insurer)
21 issuing any property, casualty, or surety insurance policy
22 which is required to be but is not guaranteed under this Act
23 shall forfeit to the United States a sum of not more than
24 \$1,000 for each and every day that such policy is in effect
25 and is not guaranteed under this Act. Such forfeiture shall be

1 payable to the Corporation for its use. The Corporation is
2 authorized to collect any unsatisfied forfeiture claim from the
3 directors and officers of the Corporation individually. This
4 subsection shall take effect upon the expiration of one year
5 after the effective date of this Act.

6 (b) Whoever falsely advertises or otherwise misrepresents
7 by any device whatsoever that any property, casualty,
8 or surety insurance policy is guaranteed by the Federal
9 Insurance Guaranty Corporation, or by the Government of
10 the United States, or by any instrumentality thereof, shall
11 be fined not more than \$1,000, or imprisoned not more
12 than one year, or both.

13 PAYMENT OF GUARANTY

14 Sec. 8. (a) Participating insurers assigned permanent
15 guaranty status.--Whenever any such insurer is placed in
16 liquidation, the Corporation shall pay all justified loss claims,
17 unearned premium and small loss claims, judgments, interest
18 thereon, including the first \$50 of such claims.

19 (1) The liquidator appointed by the State super-
20 visory authority will present such claims to the Corpora-
21 tion which is authorized to investigate, examine, adjust,
22 compromise, or settle any such claim.

23 (2) The Corporation shall investigate, examine,
24 adjust, compromise, or settle such claims as quickly as
25 possible in order to provide the public the insurance

1 protection that would have been available but for the
2 liquidation.

3) The Corporation shall present the liquidator
4 with complete report of the disposition of such claims
5 and the proceeds therefrom by the Corporation.

6) The Corporation is authorized to defend any
7 action pending or brought against the policyholder or
8 the insured for an insurable event occurring before or
9 fifteen days after the date of issuance of the liquidation
10 order.

11 (5) The Corporation shall be entitled to any valid
12 claim against the liquidator up to an amount equal to
13 the liabilities of such insurer paid by the Corporation.
14 Payment of such claim shall follow the normal order of
15 distribution of the liquidation laws of the State.

16 (b) Participating insurers assigned temporary guaranty
17 status—

18 (1) The Corporation shall assume and perform all
19 the obligations of a participating insurer under policies
20 which are guaranteed under this Act, if such insurer is
21 placed in liquidation and cannot perform its insurance
22 function by paying valid claims of policyholders and
23 insureds or their claimants or providing contracted for
24 legal services of policyholders and insureds. In such a
25 situation the receiver or liquidator shall make all books

1 and records (including claim files) available to the Cor-
2 poration; and the Corporation shall file forthwith a
3 certificate of assumption with the court having jurisdic-
4 tion over such insurer.

5 (2) Upon the filing of a certificate of assumption,
6 all proceedings pending in any court against the insured
7 or the insurer arising out of an occurrence within the
8 coverage of a policy guaranteed under this title shall be
9 stayed automatically for a period of thirty days.

10 (3) The Corporation shall be subject to the same
11 obligations, liabilities, terms, conditions, and waivers
12 of the insurer and shall have available any defense or
13 defenses (including that of policy limits) which would
14 be available to the insurer.

15 (4) The Corporation is authorized to investigate,
16 examine, adjust, compromise, or settle any claim pend-
17 ing against the insured or the insurer on or after the date
18 of the filing of a certificate of assumption. The Corpora-
19 tion is authorized to defend any action pending or
20 brought against the policyholder or the insured on or
21 after the date of the filing of such certificate.

22 (5) The Corporation shall be entitled to valid claim
23 against the insurer, or its liquidator, rehabilitator, con-
24 servator, receiver, or trustee in bankruptcy, in an
25 amount equal to the liabilities of such insurer paid from
26 the Fund.

1 (c) When the Corporation has determined that a par-
2 ticipating insurer is in danger of becoming insolvent, in
3 order to prevent such insolvency the Corporation, in the dis-
4 cretion of the Administrator, is authorized to make loans to
5 such insurer upon such terms and conditions as the Admin-
6 istrator, in consultation with the State supervisory authority,
7 may prescribe.

8 (d) Any person (including any individual, partner-
9 ship, association, or corporation) having a claim against his
10 insurer under any insolvency protection provision contained
11 in his insurance policy, which claim arises out of the insol-
12 vency of a participating insurer, may file a claim with the
13 liquidator or Corporation for the total amount of the alleged
14 loss without first proceeding against the insurer. If any per-
15 son having a claim against his insurer under any insolvency
16 protection provision contained in his insurance policy first
17 proceeds against the liquidator or the Corporation, the Cor-
18 poration is subrogated to the rights of that person against
19 his insurer. If any person first proceeds against his insurer,
20 any valid claim against the liquidator or Corporation will be
21 reduced by the amount recovered from his insurer under
22 any insolvency protection provision contained in his insur-
23 ance policy.

24 (e) When a participating insurer who has issued as-
25 sessable policies is liquidated, the Corporation shall exercise

1 discretion when claiming against the assets of the liquidated
2 insurer in order to avoid, so far as possible, the imposition of
3 unreasonable assessments on policyholders who were unaware
4 of the assessment exposure.

5

FINANCING

6 SEC. 9. (a) CAPITAL STOCK.—The Corporation shall
7 have a capital stock of \$10,000,000 which shall be divided
8 into shares of \$1,000 each. The total amount of such capital
9 stock shall be subscribed to by the Secretary of the Treasury.
10 For the purpose of making payments for such stock the Sec-
11 retary of the Treasury is authorized to use as a public debt
12 transaction the proceeds of the sale of any securities hereafter
13 issued under the Second Liberty Bond Act, and the purpose
14 for which securities may be issued under such Act are ex-
15 tended to include such purchases. The Corporation shall
16 make annual payments to the Secretary of the Treasury as
17 interest on the amounts advanced to the Corporation on stock
18 subscription, from the time of such advance until the amounts
19 thereof are repaid, at a rate determined annually by the Sec-
20 retary of the Treasury, taking into consideration the current
21 average market yields on outstanding marketable obliga-
22 tions of the United States.

23

(b) GUARANTY FUND.—

24

25

(1) Funds obtained by the Corporation from the
sale of its capital stock, as provided in subsection (a) of

1 this section, and from guaranty fees collected pursuant to
2 subsection (c) of this section shall be deposited in the
3 Guaranty Fund which is hereby established. The Fund
4 shall be held by the Corporation and used by it for carry-
5 ing out its guaranty functions under this Act, and for
6 operating expenses arising in connection therewith not
7 to exceed \$7,500,000 per year.

8 (2) Whenever after retirement of the outstanding
9 Treasury shares issued pursuant to subsection (a) of
10 this section the net asset value of the Fund exceeds one-
11 eighth of 1 per centum of the annual net direct premiums
12 written by all participating insurers, the Corporation
13 shall waive the requirements for fees as herein stated:
14 *Provided*, That such requirement shall be reinstated
15 whenever the net asset value of such Fund is less than
16 one-eighth of 1 per centum of the annual net direct writ-
17 ten premiums written by all participating insurers: *Pro-*
18 *vided further*, That no distribution or rebate shall be
19 made by reason of the fact that the total amount in fees
20 collected by the Corporation at any time exceeds one-
21 eighth of 1 per centum of such annual direct written
22 premiums. In determining net asset value for the pur-
23 poses of this paragraph, the Board shall include esti-
24 mated liabilities that may be chargeable to such Fund.

25 (3) The Corporation shall retire as rapidly as

1 practicable, having due regard to the need to maintain
2 at all times the solvency of the Fund, the capital stock
3 of the Corporation which is held by the Treasury.

4 (4) In the event that the Congress should repeal
5 this Act, any moneys remaining in such Fund at that
6 time, after redemption of any outstanding capital stock,
7 repayment of any outstanding loans from the Treasury
8 under subsection (c) of this section and discharge of
9 all expenses and obligations under this Act, shall be re-
10 turned to the participating insurers pro rata in accord-
11 ance with the guaranty fees they have paid into the
12 Fund.

13 (5) In the event that the Congress should reduce
14 the size of the Fund specified in subsection (b) of this
15 section, any excess in the Fund above the new statutory
16 limit shall be returned to the participating insurers pro
17 rata in accordance with the guaranty fees they have paid
18 into the Fund.

19 (c) Assessments.—

20 (1) National assessments —

21 (i) Each calendar year following the year in
22 which the application of a participating insurer was
23 certified, such participating insurer shall pay to the
24 Corporation at guaranty fee. This fee, which shall be
25 equal to one twenty-fifth of 1 per centum of the net

1 direct premiums written by the participating insurer
2 during the year, shall be assessed semiannually,
3 based on net direct premiums written during the
4 periods January 1 through June 30 and July 1
5 through December 31.

6 (ii) On or before the last day of the first month
7 following each of the above-mentioned semiannual
8 periods, each participating insurer shall file with the
9 Corporation a certified statement showing the net
10 direct premiums written by such insurer during that
11 period. In the event that accurate information is not
12 available at that time, an estimate may be filed:
13 *Provided, however,* That a final certified statement
14 must be filed not later than sixty days from the last
15 day of the reporting period.

16 (iii) The certified statements required to be
17 filed with the Corporation under subparagraph (ii)
18 of this paragraph shall be in such form and set forth
19 such supporting information as the Administrator
20 shall prescribe and shall be certified by the president
21 of the insurer or any other officer designated by its
22 board of directors to be, to the best of his knowledge
23 and belief, true, correct, and complete and in ac-
24 cordance with this Act and regulations issued there-
25 under. The assessment payments required from par-

1 participating insurers under subparagraph (i) of this
2 paragraph shall be made in such manner and at
3 such time or times as the Administrator shall pre-
4 scribe, provided the time or times so prescribed
5 shall not be later than sixty days after filing the
6 certified statement setting forth the amount of
7 assessment.

8 (iv) Except as otherwise provided in this sub-
9 section, the Administrator shall prescribe all need-
10 ful rules and regulations for the enforcement of
11 this subsection. The Administrator may limit the
12 retroactive effect, if any, of any of its rules or
13 regulations.

14 (v) The Corporation may (1) refund to a par-
15 ticipating insurer any payment of assessment in
16 excess of the amount due to the Corporation, or
17 (2) credit such excess toward the payment of
18 the assessment next becoming due from such in-
19 surer and upon succeeding assessments until the
20 credit is exhausted.

21 (vi) Any participating insurer which fails to
22 make any report of condition under subsection (g)
23 of section 6 of this Act or to file any certified state-
24 ment required to be filed by it in connection with
25 determining the amount of any assessment payable

1 by the insurer to the Corporation may be compelled
2 to make such report or file such statement by man-
3 datory injunction or other appropriate remedy in a
4 suit brought for such purpose by the Corporation
5 against the insurer and any officer or officers thereof
6 in any court of the United States of competent juris-
7 diction in the district or territory in which such
8 insurer is located.

9 (vii) The Corporation, in a suit brought at law
10 or in equity in any court of competent jurisdiction,
11 shall be entitled to recover from any participating
12 insurer the amount of any unpaid assessment law-
13 fully payable by such insurer to the Corporation,
14 whether or not such insurer shall have made any
15 such report of condition under subsection (g) of
16 section 6 of this Act or filed any such certified state-
17 ment and whether or not suit shall have been
18 brought to compel the insurer to make any such
19 report or file any such statement. No action or
20 proceeding shall be brought for the recovery of any
21 assessment due to the Corporation, or for the re-
22 covery of any amount paid to the Corporation in
23 excess of the amount due to it, unless such ac-
24 tion or proceeding shall have been brought with-
25 in five years after the right accrued for which the

1 claim is made, except where the participating in-
2 surer has made or filed with the Corporation a
3 false or fraudulent certified statement with the
4 intent to evade, in whole or in part, the pay-
5 ment of assessment, in which case the claim shall
6 not be deemed to have accrued until the discovery
7 by the Corporation that the certified statement is
8 false or fraudulent.

9 (viii) Should any participating insurer fail to
10 make any report of condition under subsection (9)
11 of section 6 of this Act or to file any certified state-
12 ment required to be filed by such insurer under any
13 provision of this section, or fail to pay any assess-
14 ment required to be paid by such insurer under any
15 provision of this Act, and should the insurer not
16 correct such failure within thirty days after written
17 notice has been given by the Corporation to an
18 officer of the insurer, citing this subparagraph, and
19 stating that the insurer has failed to file or pay as re-
20 quired by law, all the rights, privileges, and fran-
21 chises of the insurer granted to it under this Act
22 shall be thereby forfeited. Whether or not the
23 penalty provided in this subparagraph has been in-
24 curred shall be determined and adjudged after hear-
25 ing in the manner provided in section 6 (i) of this

1 Act. The remedies provided in this subparagraph
2 and in the two preceding subparagraphs shall not
3 be construed as limiting any other remedies against
4 any participating insurer, but shall be in addition
5 thereto.

6 (ix) Any participating insurer which willfully
7 fails or refuses to file any certified statement or pay
8 any assessment required under this Act shall be
9 subject to a penalty of not more than \$1,000 for
10 each day that such violations continue, which penalty
11 the Corporation may recover for its own use.

12 (2) State contributions and assessments.—

13 (i) Whenever the Corporation has advanced
14 funds in excess of those available from the sale of its
15 capital stock and collected guaranty fees in order to
16 perform its guaranty function under this Act and has
17 not recovered said funds (including any interest due
18 because of such advancement) from the assets of
19 the insurer upon final liquidation, then the Corpora-
20 tion shall seek recovery of said funds in the domicil-
21 iary State through the appropriate insurance in-
22 solvency protection plan.

23 (ii) If the domiciliary State cannot provide for
24 the recovery of said funds, then the Corporation, in
25 order to recover such funds, is authorized to assess

1 participating insurance companies doing business in
2 the domiciliary State on a pro rata basis relative to
3 the net direct premiums written in the State. No
4 such assessment shall exceed 1 per centum of the
5 net direct premiums written in any one year. Par-
6 ticipating insurers assessed by the Corporation in
7 the domiciliary State shall be subject to the same
8 rules and regulations during the State assessment
9 process as they are during the national assessment
10 process.

11 (3) Nothing in this Act shall be construed to deny
12 the several States the right to levy taxes or require lic-
13 ense fees for insurers doing business within their jurisdic-
14 tion: *Provided, however,* That no participating insurer
15 shall be required automatically to pay any annual or
16 other periodic or continuing assessment or fee under any
17 State insurers insolvency or liability security fund law
18 for any period during which the insurance policies of that
19 insurer are guaranteed pursuant to this Act.

20 (d) Treasury loans.—The Corporation is authorized to
21 borrow from the Treasury, and the Secretary of the Treasury
22 is authorized and directed to loan to the Corporation on such
23 terms as may be fixed by the Corporation and the Secretary,
24 such funds in the judgment of the Administrator of the Cor-
25 poration is from time to time required for insurance purposes,

1 not exceeding in the aggregate \$100,000,000 outstand-
2 ing at any one time, or such further sum as the Congress, by
3 joint resolution, may from time to time determine: *Provided,*
4 That each loan made pursuant to this subsection shall bear
5 interest at a rate determined by the Secretary of the Treas-
6 ury taking into consideration the current average market
7 yield on outstanding marketable obligations of the United
8 States with remaining periods to maturity comparable to the
9 average maturity of such loans. For such purpose the Secre-
10 tary of the Treasury is authorized to use as a public debt
11 transaction the proceeds of the sale of any securities here-
12 after issued under the Second Liberty Bond Act, as amended,
13 and the purposes for which securities may be issued under the
14 Second Liberty Bond Act, as amended, are extended to
15 include such loans. Any such loan shall be used by the Cor-
16 poration solely in carrying out its functions with respect to
17 such insu ce. All loans and repayments under this subsec-
18 tion shall be treated as public debt transactions of the United
19 States.

20 CORPORATION MONEYS; INVESTMENT

21 SEC. 10. Money of the Corporation not otherwise em-
22 ployed shall be invested in obligations of the United States
23 or in obligations guaranteed as to principal and interest by
24 the United States: *Provided,* That the Corporation shall not
25 sell or purchase any such obligations for its own account and

1 in its own right and interest, at any one time aggregating
2 in excess of \$100,000 without the approval of the Secretary
3 of the Treasury: *And provided further*, That the Secretary
4 of the Treasury may waive the requirement of his approval
5 with respect to any transaction or classes of transactions sub-
6 ject to the provisions of this section for such period of time
7 and under such conditions as he may determine.

8 EXEMPTION FROM TAXATION

9 SEC. 11. All notes, debentures, bonds, or other such ob-
10 ligations issued by the Corporation shall be exempt, both as
11 to principal and interest, from all taxation (except estate
12 and inheritance taxes) now or hereafter imposed by the
13 United States, by any territory, dependency, or possession
14 thereof, or by any State, county, municipality, or local tax-
15 ing authority: *Provided*, That interest upon or any income
16 from any such obligations and gain from the sale or other
17 disposition of such obligations shall not have any exemption,
18 as such, and loss from the sale or other disposition of such
19 obligations shall not have any special treatment, as such,
20 under the Internal Revenue Code, or laws amendatory or
21 supplementary thereof. The Corporation, including its fran-
22 chise, its capital, reserves, and surplus, and its income, shall
23 be exempt from all taxation now or hereafter imposed by
24 the United States, by any territory, dependency, or posses-
25 sion thereof, or by any State, county, municipality, or local

1 taxing authority, except that any real property of the Cor-
2 poration shall be subject to State, territorial, county, municipi-
3 pal, or local taxation to the same extent according to its value
4 as other real property is taxed.

5 FORMS OF OBLIGATIONS

6 SEC. 12. In order that the Corporation may be sup-
7 plied with such forms of notes, debentures, bonds, or other
8 such obligations as it may need for issuance under this
9 Act, the Secretary of the Treasury is authorized to pre-
10 pare such forms as shall be suitable and approved by the
11 Corporation, to be held in the Treasury subject to delivery,
12 upon order of the Corporation. The engraved plates, dies,
13 bed pieces, and other material executed in connection there-
14 with shall remain in the custody of the Secretary of the
15 Treasury. The Corporation shall reimburse the Secretary
16 of the Treasury for any expenses incurred in the prepa-
17 ration, custody, and delivery of such notes, debentures,
18 bonds, or other such obligations.

19 REPORTS; AUDITS

20 SEC. 13. (a) The Corporation shall annually make a
21 report of its operations to the Congress as soon as prac-
22 ticable after the 1st day of January in each year. Such
23 report shall include a statement with respect to the status
24 of the fund established pursuant to section 9, together

1 with such recommendations concerning its adequacy or
2 inadequacy as the Corporation deems necessary or desirable.

3 (b) The financial transactions of the Corporation shall
4 be audited by the General Accounting Office in accordance
5 with the principles and procedures applicable to commercial
6 corporate transactions and under such rules and regulations
7 as may be prescribed by the Comptroller General of the
8 United States. The audit shall be conducted at the place
9 or places where accounts of the Corporation are normally
10 kept. The representatives of the General Accounting Office
11 shall have access to all books, accounts, records, reports, files,
12 and all other papers, things, or property belonging to or in
13 use by the Corporation pertaining to its financial and other
14 operations and determined necessary by the Comptroller
15 General to facilitate the audit, and they shall be afforded
16 full facilities for verifying transactions with the balances or
17 securities held by depositaries, fiscal agents, and custodians.
18 All such books, accounts, records, reports, files, papers, and
19 property of the Corporation shall remain in possession and
20 custody of the Corporation.

21 (c) The fiscal year of the Corporation shall be the
22 calendar year. A report of the audit for each calendar year
23 shall be made by the Comptroller General to the Congress
24 not later than July 15 following the close of the calendar
25 year. The report shall also show specifically any program,

1 expenditure, or other financial transaction or undertaking
2 observed in the course of the audit, which, in the opinion of
3 the Comptroller General, has been carried on or made with-
4 out authority of law. A copy of each report shall be furnished
5 to the President and to the Corporation at the time submitted
6 to the Congress.

7 GOVERNMENT CORPORATION CONTROL ACT

8 SEC. 14. (a) Section 101 of the Government Corpora-
9 tion Control Act, as amended (31 U.S.C. 846), is amended
10 by adding after "Federal Housing Administration", the fol-
11 lowing: "Federal Insurance Guaranty Corporation".

12 (b) To the extent of any inconsistency between the
13 provisions of this Act and the provisions of the Government
14 Corporation Control Act, the provisions of this Act shall
15 govern.

16 SEPARABILITY CLAUSE

17 SEC. 15. If any provision of this Act is declared uncon-
18 stitutional, or the applicability thereof to any person or cir-
19 cumstance is held invalid, the constitutionality of the re-
20 mainder of the Act and the applicability thereof to other
21 persons and circumstances shall not be affected thereby.

[CONFIDENTIAL COMMITTEE PRINT NO. 1]

MARCH 10, 1970

Calendar No.

91st CONGRESS
2d SESSION

S. 2236

[Report No. 91-]

A BILL

To create a Federal Insurance Guaranty Corporation to protect the American public against certain insurance company insolvencies.

By Mr. MAGNUSON, Mr. DODD, Mr. HARR, Mr.
HOLLINGS, Mr. INOUE, Mr. MOSS, and Mr.
PASTORE

MAY 23, 1969

Read twice and referred to the Committee on
Banking and Currency

MAY 27, 1969

The Committee on Banking and Currency discharged,
and referred to the Committee on Commerce

ROBERTSON, MONAGLE, EASTAUGH, ANNIS & BRADLEY

R. E. ROBERTSON (885-1981)
M. E. MONAGLE
F. O. EASTAUGH
P. J. ANNIS
J. B. BRADLEY
W. G. RUDDY
T. P. BLANTON
L. B. JACOBSON

ATTORNEYS AT LAW
P. O. BOX 1211
JUNEAU, ALASKA 99801

April 2, 1970

200 NATIONAL BANK OF ALASKA BLDG.
PHONE 586-3340
CABLE ADDRESS: ROMEA

Hon. Barry W. Jackson, Chairman
House Judiciary Committee
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801

Re: House Bill No. 782

Dear Chairman Jackson:

As I understand your instructions, I am to submit a short statement of the position of American Insurance Association with respect to HB 782 now being considered by your Committee.

AIA agrees with the concept embodied in S. 2236 that if the insuring public is to be provided the protection it deserves in a timely fashion, action at the federal level is needed.

It agrees also with the concept that the protection is required in the property, casualty and surety fields.

As to the terms of S. 2236, and the amendments offered by the Administration on March 16, I have been advised by telegram that copies of both are on the way to me.

The Administration amendments are represented as creating a federal agency operating on a significantly reduced scale both in size and scope with that proposed in S. 2236; and, would limit the role of the federal agency to that of a vehicle for compensating the insolvency of claimants and policyholders while leaving full responsibility for insurance regulation in the hands of state authorities.

The states would continue to have sole authority for examination of insurers for solvency and would retain full and exclusive regulatory powers.

I suggest, without the ability to demonstrate, that the opposition of the NAIC to the federal approach was formulated prior to the proposed amendments to S. 2236, and

Hon. Barry W. Jackson
Page 2
April 2, 1970

that if the opposition is not eliminated or reduced by the amendments, the Committee is left to appraise the benefits of a uniform federal act as compared to a variety of state acts.

As already mentioned in my testimony to the Committee the AIA is opposed to the creation of a number of State funds for security of policyholders against insolvencies, such as the New York State fund of some \$125 million with a ceiling of \$200 million. The AIA is of the opinion that the federal approach will give wider and more uniform security, without encroachment upon state regulatory powers, and at less cost to the policyholders.

I will provide the Committee with copies of S. 2236 and the proposed amendments as soon as received.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'F. O. Eastaugh', with a long, sweeping horizontal line extending to the right across the top of the signature.

F. O. Eastaugh

FOE:bh

*Xerox copies
for committee*

LAW OFFICES OF
FAULKNER, BANFIELD, BOOCHEVER & DOOGAN
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MICHAEL M. HOLMES

TEL. 586-2210
AREA CODE 907

March 20, 1970

The Honorable Barry W. Jackson
Chairman, Judiciary Committee
House of Representatives
Juneau, Alaska 99801

Re: House Bill No. 782, to Guarantee
Certain Insurance Contracts

Dear Mr. Chairman:

As a representative of American Mutual Insurance Alliance I am interested in appearing before the Judiciary Committee of the House when you consider House Bill No. 782 which was reported favorably by the Commerce Committee of the House today and is next referred to your committee.

If this bill is enacted it will incorporate a corporation consisting of members. Every insurance company doing business in Alaska in the kinds of insurance covered by the Act will be required to be members of the corporation in order to continue doing business in Alaska. The insurance companies would elect a Board of Directors and if they failed to do so, the Insurance Commissioner would appoint directors.

In the event any insurance company which does business in Alaska is declared insolvent in Alaska or elsewhere, the corporation would go into action to reimburse anyone insured by that company who had suffered a loss prior to or within thirty days after the decree of insolvency is entered by any court. Moreover, the policyholder whose policies would otherwise be worthless have thirty days within which to turn in their policies and get a refund of the unearned premium from this corporation. One of the duties of the corporation is to give public notice of the insolvency of any insurance company declared to be insolvent by any competent court anywhere in the United States. Otherwise persons holding policies from such companies which may be doing only a small amount of business in Alaska may have no knowledge of the insolvency until some official notice is received from a trustee in bankruptcy. Until they get new insurance they would be otherwise uninsured. The policyholders in Alaska

The Honorable Barry W. Jackson
House of Representatives
Juneau, Alaska

March 20, 1970
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would have thirty days from the date of the decree of insolvency within which to replace their insurance with some other company, get a refund of their unearned premium and recover for any loss suffered whether before the decree or within thirty days thereafter.

The corporation would make an assessment on its members after the insolvency occurred. In Alaska we are proposing the alternative provision which would set up three separate accounts which would be as follows: workmen's compensation, automobile insurance and all other insurance coming under the act. If the insolvent insurance company was writing only automobile and workmen's compensation insurance in Alaska there would be separate assessments against every company in Alaska writing these two kinds of insurance. Payment of the assessments would be a condition to the continuance of doing business in Alaska. From the fund raised thereby the unearned premiums of the worthless policies and accumulated claims would be paid.

All kinds of insurance companies except life, title, security, disability, credit, mortgage guarantee and ocean marine insurance would participate as members.

No claim would be paid amounting to less than \$100 and claims would be paid up to a limit of \$300,000 except workmen's compensation claims would be fully paid including claims for permanent disability or death which run for long periods of time.

This bill is a model bill approved by the National Association of Insurance Commissioners on December 4, 1969, after which time it became available to the various state legislatures and being promoted by the Insurance Commissioners of the various states. It has already been adopted by South Dakota, Georgia, Iowa, West Virginia, Idaho and because of the need for this legislation it has probably been adopted by other states without my knowledge.

The model bill was revised by the Local Affairs Agency for the Commerce Committee to the extent necessary to make it conform to the style used in Alaska. After this was done I checked the bill against the model bill and found that it conforms to the model bill.

The Honorable Barry W. Jackson
House of Representatives
Juneau, Alaska

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Page Three

During the past few years we have had no losses by policyholders as a result of insolvency of insurance companies but in the not too distant past we have had several companies registered to do business in Alaska who were declared insolvent elsewhere and the policyholders had to go to court to fight over the bond posted by the Insurance Commissioner. Although the industry is closely regulated it is a hazardous industry as evidenced by the fact that the Wall Street Journal carried an article last Monday to the effect that State Farm Insurance Company lost \$91,000,000 in 1969 in the automobile casualty business.

This bill is a foolproof system of guaranteeing that the other insurance companies admitted to do business in Alaska will pay the claims and redeem the policies for their unexpired premiums of any company which does business in Alaska in the lines of insurance covered by the bill provided the policyholders will surrender their policies and present their claims within thirty days of the date of insolvency.

It is a system in which the Director of Insurance sits on the sidelines and polices the operation but the insurance companies do the work through their own board of directors and at their own expense except that directors can be repaid for their actual expenses in connection with their duties out of the corporation funds. The insurance companies would be allowed to take any losses into consideration in determining their premiums thereafter.

It is unfortunate that this bill is coming to your committee so late in the session and still must go to the Senate in order to be enacted. It is, therefore, requested that you give this matter your attention as soon as possible and let me know when it will be considered.

Yours very truly,

N. C. Banfield
N. C. Banfield

NCB:db

cc: Chas. A. Brown
Kenneth Nails
Wendell P. Kay
Tom Fink

ROBERTSON, MONAGLE, EASTAUGH, ANNIS & BRADLEY

R. E. ROBERTSON (1885-1961)
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March 23, 1970

200 NATIONAL BANK OF ALASKA BLDG.
PHONE 586-3340
CABLE ADDRESS: ROMEA

Hon. Barry W. Jackson, Chairman
House Judiciary Committee
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801

Re: House Bill No. 782

Dear Chairman Jackson:

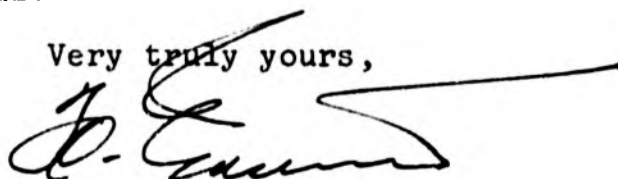
Here are the following enclosures which have an important bearing on the subject bill:

1. Key excerpts from Nixon Administration Testimony before Senate Commerce Committee
2. Statement of T. Lawrence Jones, President, American Insurance Association with respect to S. 2236 providing a Federal Insurance Guaranty Corporation Act, before Senate Commerce Committee.

I understand that Director Fritz and Mr. Banfield for the Mutual Alliance testified in favor of HB 782 and it was reported out favorably by the House Commerce Committee.

The American Insurance Association opposes HB 782 in favor of the federal approach in S. 2236 by Senator Magnuson. I would like to appear to answer the proponents of the bill at such time as your Committee considers it. In the meantime perhaps you and members of your Committee would like to review the enclosed material.

Very truly yours,



F. O. Eastaugh

FOE:bh
Encs.

KEY EXCERPTS FROM NIXON ADMINISTRATION TESTIMONY
BEFORE SENATE COMMERCE COMMITTEE
ON S.2236 TO CREATE A FEDERAL INSURANCE GUARANTY CORP.
JOINT STATEMENT OF DEPARTMENTS OF COMMERCE AND TRANSPORTATION
FEBRUARY 10, 1970

This Administration is strongly in support of federal legislation to guarantee that every citizen, every policyholder and every claimant is properly and fully compensated for his insured losses. We will present an Administration proposal for your consideration next month . . .

* * * *

With more than \$25 billion of premiums written annually, something less than \$25 million of insured property and casualty losses are going unmet each year as a result of insurer insolvencies . . .

Together, we speak for the Administration when we say that while the problem area is modest in comparison with the insurance in force nationwide, the adverse impact of insurer insolvency especially on individuals and smaller insureds, warrants federal legislation.

* * * *

It is impossible not to be impressed by the remarkable consensus regarding the importance of the problem shared among those whose views as to its solution are divergent . . .

* * * *

We believe that action is needed now. Even though some states have enacted insolvency plans and a number of others are considering doing so,

the continuing lack of adequate protection for many consumers from the financial consequences of insolvencies is incompatible with the interests of either the public or the insurance industry . . .

We also agree that if the insuring public is to be provided the protection it deserves in a timely fashion, action at the federal level is needed. We are prepared to cooperate in taking that action. . .

* * * *

The Administration believes that consumers should be protected from the financial consequences of insolvencies of insurance companies in the property, casualty and surety fields. Such protection can be afforded through a guaranty mechanism. . .

* * * *

The Administration does not favor the enactment of S.2236 in its present form. We will submit a proposal next month. . .

The Administration believes that a measure can be developed and enacted which can effectively accommodate the needs and interests of the consumer public, the insurance industry, state supervisory authorities and state governments generally . . .

* * * *

The activities of the federal agency should be those only of an administrator of the guaranty mechanism and not a regulator of the insurance industry. The basic supervisory function should remain the province of state

supervisory authorities. The federal agency should work through the state supervisory authorities whenever any question arises as to the solvency of a specific company.

There should be an assessment mechanism to meet reasonable and validated claimant and policyholder losses created by insolvency through a post-insolvency assessment technique. Such assessment mechanism should be compatible with programs which have been or may be adopted by any of the several states to meet the insolvency problems on a state basis and at the same time avoid the immobilization of insurance capital which is needed to supply the economy's growing demands for insurance and for the constructive employment of capital . . .

The federal agency contemplated by the Administration's proposal would operate on a significantly reduced scale both in size and scope compared with that currently provided in S.2236. The Administration proposal would limit the role of the federal agency to that of a vehicle for compensating the insolvency losses of claimants and policyholders while leaving full responsibility for insurance regulation in the hands of state authorities.

The states would continue to have sole authority for examination of insurers for solvency and would retain full and exclusive regulatory powers.

THE NEED FOR PROTECTION AGAINST INSURANCE COMPANY INSOLVENCIES

The Problem:

- Insurance company insolvency continues to be a problem for the public, state regulators and the insurance industry itself. It has cost the public over \$135,000,000 during the last twelve years in loss claims and premiums, plus additional indirect losses that are difficult to measure exactly.
- Present systems of surveillance and regulation have not been able to ameliorate the problem. Some insolvencies occur every year and an average of more than ten have occurred every year in the last twelve years.
- Victims of insurance company insolvency are not generally guaranteed reimbursement. For their benefit and for the health and strength of the industry, a system of prompt payment of innocent victims is needed, as is an improved system of detection of faulty insurance company operation..

The Background:

Public officials, legislators and the insurance industry itself have been concerned with the problem of insurance company insolvency for more than ten years.

All three groups agree that the prime consideration must be protection of the public in the event of an insurance company insolvency.

All three groups agree that a key objective of legislation or regulatory procedures should be the prevention of insurance company insolvencies.

Various Suggested Proposals:

1. Expansion of uninsured motorist endorsement.
2. State pre - insolvency assessment fund laws.
3. State post - insolvency assessment laws.
4. Private national or regional insurance guaranty facility.
5. National guaranty facility through a governmental corporation (Federal Insurance Guaranty Corporation).

The Solution:

WE BELIEVE THAT A FEDERAL INSURANCE GUARANTY CORPORATION -- PATTERNED AFTER THE HIGHLY - SUCCESSFUL FEDERAL DEPOSIT INSURANCE CORPORATION IN THE BANKING FIELD -- IS CLEARLY PREFERABLE TO ALL OTHER PROPOSALS.

The Reason:

Only the Federal Insurance Guaranty Corporation meets all of the essential requirements of:

- Strengthening the insurance regulatory process by supplementing state examination authority and responsibility, otherwise leaving state regulatory authority and responsibility and state taxation unchanged;
- Assisting in the detection of the interstate shifting of a company's assets, which has been a factor in many insolvencies; and,
- Prohibiting proliferation of state insolvency funds which are unsound and unfair in the concept.

The Shortcomings of the Other Suggested Proposals:

1. Expansion of the uninsured motorist insolvency coverage places the financial burden of insurance company insolvency where it does not belong, that is, on the responsible individual who selected a strong company. He pays for his own insurance and then has to insure himself against the unwise selection of another person. This coverage is slow to respond and cumbersome to administer. Lengthy procedures must be followed before insolvency is established and right to reimbursement is determined. There are significant "gaps" in the extent of coverage; many innocent victims of insolvency have no uninsured motorist coverage against which to proceed.
2. Pre - insolvency assessment laws in all states would add up to an unrealistic liability that would constrict the capacity of insurance companies and, therefore, the amount of insurance they would be able to make available. Such laws also create funds that can be diverted by the states to meet other financial obligations.
3. State post - insolvency assessment laws place the total economic burden on the solvent and well managed insurers. They are governmentally unsound in that they give the state regulator a "blank check" with which to cover the damage arising from failures of performance. And, they put a contingent liability on well managed companies that will make it difficult to portray and evaluate the exact financial condition of insurance companies.

Neither the pre - insolvency nor the post - insolvency assessment laws, as presently written, provide complete or prompt guarantee of reimbursement to the victims of insurance company insolvency and neither make any sound and workable contribution to the prevention of insolvency.

4. Private insurance guaranty facility would require extensive rewriting of the federal laws, including possible expansion of anti - trust exemptions, and would pose problems of practicality and propriety in requiring competitors to police one another.

SEYMOUR E. SMITH, CHAIRMAN
T. LAWRENCE JONES, PRESIDENT

H. CLAY JOHNSON, VICE CHAIRMAN
JOHN F. HEVILLE, VICE PRESIDENT

PERCY CHUBB II, VICE CHAIRMAN
SIDNEY W. BISHOP, GENERAL COUNSEL

AMERICAN INSURANCE ASSOCIATION

85 JOHN STREET · NEW YORK · N. Y. 10038

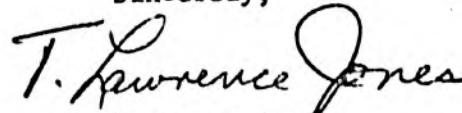
November 18, 1969

To the EXECUTIVES:

Gentlemen:

Attached is a copy of the statement we will give on Wednesday, November 19, before the Senate Commerce Committee with respect to S. 2236, providing for a Federal Insurance Guaranty Corporation.

Sincerely,



T. Lawrence Jones
President

TLJ:SSJ

enclosure

Statement of T. Lawrence Jones, President
American Insurance Association
With Respect to S. 2236, Providing A
Federal Insurance Guaranty Corporation Act,
Before Senate Commerce Committee
November 19, 1969

My name is T. Lawrence Jones and I am President of American Insurance Association, an organization of insurance companies writing all kinds of property and casualty insurance throughout this country. Our member companies have a premium volume of over \$7 billion. We are pleased to have this opportunity to appear before the Senate Commerce Committee to present our views on the general problem of insurance company insolvency, and more particularly on S. 2236. This bill, introduced by Senator Magnuson and co-sponsored by Senators Dodd, Hart, Hollings, Inouye, Moss and Pastore, would create a Federal Insurance Guaranty Corporation for the purpose of protecting the American public against insurance company insolvencies.

Public officials, legislators and the insurance industry itself have been concerned with the problem of insurance company solvency for many years. As could be expected, the intensity of concern has varied substantially as the number of company insolvencies rose and fell and as reports of insurance company liquidations increased and decreased.

Regardless of the understandable ups and downs of public concern, American Insurance Association is convinced that there is a real problem to which a solution must be found.

Historical Position of Insurance Industry

Some years ago the insurance industry held to the position that all measures by which insurance companies collectively helped, in

one way or another, to defray the losses of insolvent insurance companies were unsound. It was argued that these measures put weak companies on a parity with strong ones and tolerated, if not encouraged, bad management. It was further argued that these plans removed incentives on the part of agents and brokers to be sure they were placing their business with responsible and reputable insurance companies. We cannot disagree with the logic of these arguments, but times have changed. Today, such arguments are outweighed by social considerations and we believe the prime consideration is that the public must be protected in the event of an insurance company insolvency. In addition, the nagging insolvency problem damages the industry as a whole and each company suffers in public esteem.

The Dimensions of the Problem

There has been considerable debate as to the size of the problem.¹ Some have endeavored to treat it as de minimis. It is our view that the figures should speak for themselves, but in any event we have concluded that one insurance company insolvency is one too many, especially if there is no way to reimburse the victims of that insolvency.

The only question open for discussion, in our judgment, is what solution will best serve the public interest.

Solutions

Expansion of Uninsured Motorist Endorsement

American Insurance Association has been seeking the

¹ See New York Insurance Department Report to Governor Rockefeller, The Public Interest Now in Property and Liability Insurance Regulation, January 7, 1969 and Report of NAIC Special Committee on Automobile Insurance Problems, June 16, 1969.

best solution over a period of years and with renewed intensity since the introduction in January 1967 of S. 688, providing for a Federal Motor Vehicle Insurance Guaranty Corporation.²

Until recently the discussion has centered on automobile insurance. In fact, the earlier bills, such as S. 688, would have provided protection only against the insolvency of automobile insurers. The focus on automobile insurance suggested to some the desirability of expanding the uninsured motorist coverage specifically to include insurance company insolvencies.

All states, except Maryland and North Dakota, now have mandatory uninsured motorist laws.³ Most of these laws are specifically applicable in cases where the insurer is insolvent but, even in those states where the law is silent as to coverage in case of insurer insolvency, there is a strong likelihood that the laws would be construed to apply. In fact, practically all auto insurers today have voluntarily included provisions in their uninsured motorist coverage making the coverage specifically applicable to insolvencies.

American Insurance Association has never regarded the uninsured motorist endorsement with coverage for insolvency as either an adequate or effective answer to insurance company insolvencies.

These uninsured motorist laws are confined to automobile insurance and therefore do not provide protection to other claimants and policyholders who may be the victims of an insurer insolvency.

² A similar bill, S. 3919, was introduced in 1965 by Senators Dodd, Clark, Magnuson and Hart.

³ See attached American Insurance Association Chart Analysis, October 1969.

Even in the area of automobile accidents they do not protect the non-car-owning pedestrian who has the misfortune of being injured by a motorist whose insurance company has become insolvent.

The uninsured motorist insolvency coverage is an obvious example of placing the financial burden of insurance company insolvency where it does not belong. It is not a valid solution and we doubt whether anyone today will seriously contend otherwise.

State Security Funds

A number of states have endeavored to meet the problem by the enactment of laws providing for state security or insolvency funds. These laws were originally enacted to protect employees under state workmen's compensation laws. (See attached list of states having workmen's compensation security funds.) Most of these laws were enacted during the 1930 depression years. Legislators were concerned that workers injured in industrial accidents might find their workmen's compensation benefits endangered by insurance company insolvencies.⁴

Most of these workmen's compensation security funds were of the pre-insolvency assessment type - i.e. they required the collection of funds by assessing insurers prior to a company insolvency. Two of them (Maryland and Minnesota) are post-assessment insolvency funds, which means insurers are assessed only after the insolvency has occurred.

⁴The workmen's compensation laws, as originally enacted, made the employer liable for workmen's compensation benefits in the event the insurer became insolvent. This provision was eliminated in a few states which subsequently enacted security fund statutes.

The security-fund solution for automobile liability insurance companies was first enacted by the State of New York in 1947.⁵ This law (Section 333 of the New York Insurance Law) was amended in 1969 to make the New York security fund applicable to all property and casualty lines other than workmen's compensation which continues to have its own security fund law.

In the 1950's Maryland and New Jersey enacted automobile liability insurance security fund laws of the pre-insolvency assessment type. In subsequent years some state legislatures, from time to time, considered insolvency fund legislation but no additional states enacted these laws until the renewed interest this year when California, Michigan, New Hampshire and Wisconsin enacted post-insolvency assessment laws and, as noted above, New York expanded its law to cover other property and casualty lines. In addition, New York has also placed a much needed ceiling of \$200 million on the fund.⁶ This year Maryland amended its law to make the fund applicable to automobile physical damage insurance.⁷

This renewed interest in state insolvency fund legislation has been caused by a recent flurry of insolvencies, some of which

⁵In 1939 New York had established an insolvency fund to protect persons who had claims against a company providing the compulsory coverage for public motor vehicles.

⁶Under the New York law, before the 1969 amendment, the method of assessing insurers provided no realistic limitation on the size of the fund. It had grown to an amount in excess of \$125 million. For a number of years AIA and others have urged a limitation be placed on the size of this fund.

⁷See the attached AIA Special Management Legislative Bulletin summarizing insolvency fund legislation in 1969. See also attached summary of Property and Liability Security Fund laws.

have been widely publicized. In addition, the introduction of legislation in the Congress, patterned after the Federal Deposit Insurance Corporation Act with strong support in both the Senate and House of Representatives, has rekindled interest in legislation at the state level.

The position of American Insurance Association on state pre-insolvency assessment funds (Maryland, New Jersey and New York) and state post-insolvency assessment laws (California, Michigan, New Hampshire and Wisconsin) is clear-cut. Neither, in our judgment, provides a sound solution to the problems and we do not think the public interest is well served by such legislation.

State Pre-Insolvency Fund Laws

The pre-insolvency assessment type of law creates a fund in anticipation of some possible future insolvency. The proliferation of such funds in each of the fifty states to protect policyholders and claimants from insolvencies in a business which is transacted across state lines would be difficult to justify from the standpoint of efficient and sound public administration. In the years following the Southeastern Underwriters Association decision by the United States Supreme Court in 1944, it was recognized that a sure way to encourage federal action would be for a number of states to enact pre-insolvency security fund laws. It did not make sense then, and it makes no sense today, to have fifty states amass such funds, administer them and make payments to claimants and policyholders. If one accepts the hypothesis that pre-insolvency funding is more effective and equitable than post-insolvency laws, then clearly one fund is preferable to the establishment of fifty funds.

There is valid concern that these state pre-insolvency funds which tend to reach amounts far in excess of foreseeable needs will be diverted to other purposes. This fear has been ridiculed by some public officials but the plain fact is that such diversion has happened in the past few years. Twice the New Jersey automobile security fund monies have been diverted into the New Jersey Claim and Unsatisfied Judgment Fund (Chapter 241, Laws of 1967 and Chapter 322, Laws of 1968). So this is not a fanciful fear; it is a real possibility.

A major weakness in the state pre-insolvency fund legislation is that it is solely a "bail-out" remedy. It does absolutely nothing to bolster and strengthen regulatory procedures in order to prevent insolvencies. Some have even suggested that these pre-insolvency funds may accelerate the number of insolvencies because state regulatory authorities may become complacent and less diligent in exercising their supervisory functions, knowing that the funds will take care of policyholders and claimants. We disagree with that view. There are far too many other discomforting consequences which will beset an insurance commissioner in the event of an insolvency - including market restrictions, loss of jobs, loss of tax revenue and all the other heartaches associated with a liquidation proceeding. While regulatory bodies will not relax their vigilance in regulating to preserve solvency, these security fund laws in no way help to prevent insolvencies. The industry has long held the view, and I believe it does today, that any solution to the insolvency problem which provides financial assistance to policyholders and claimants must be accompanied

by additional affirmative regulatory procedures to prevent insolvencies. American Insurance Association still holds to that proposition.

State Post-Insolvency Assessment Laws

The post-insolvency assessment law avoids, or at least lessens, some of the defects inherent in pre-insolvency assessment fund laws. Large sums are not accumulated and thus do not remain idle and unproductive long before they are needed. Also, since no funds are accumulated, there is no enticing opportunity for diversion to other purposes. However, like the pre-insolvency laws, post-insolvency assessment laws do not make any sound and workable contribution to the prevention of insolvency.

The post-insolvency assessment plan has other serious defects. It exposes insurers to unknown liabilities which could occur at a time when they might be least able to sustain such additional liabilities, even though there are annual limitations on assessments.

There is no way the post-insolvency assessment plan can soften the patent inequity of placing the total economic burden on solvent and well-managed insurers. The post-insolvency law, as we have noted, does nothing to prevent insolvencies and then compounds this inadequacy by making the strong and reputable companies pay for the sins of the mis-managed and weak, including a number whose managements might have engaged in highly questionable, if not at times clearly fraudulent, practices.

The post-insolvency assessment concept is embodied in model state legislation being proposed by the American Mutual Insurance Alliance. The AMIA model bill, as we understand it, places some regulatory power in an insolvency board composed of the insurance commissioner and representatives of insurance companies, thereby recognizing that something more than a financial rescue is needed. Whether it is a proper responsibility for the private sector to become involved in this kind of industry policing, is debatable. It is noteworthy that up to the present time, no post-insolvency assessment law has bestowed any such authority on insurance companies.

Summarizing our views on state security fund laws, American Insurance Association is completely opposed to a solution which would establish security funds in each state by means of an annual assessment on insurers. We are also opposed to the post-insolvency assessment plan although we recognize that it is probably the least objectionable remedy available at the state level. An additional reason that these state post-insolvency assessment laws are less objectionable than some of the other state proposals is that they can be effectively meshed into a national solution should a national plan prove to be the ultimate answer.

Alternative Measures

Since the American Insurance Association companies have realized the shortcomings of the conventional state-oriented solutions, we have explored alternatives to the Federal Deposit Insurance Corporation approach in order to see if we could develop a national plan which could be administered largely, if not solely, by the industry.

In this phase of our study, we were guided by the following basic criteria:

1. Any such plan must provide additional safeguards to prevent insolvencies; bail-out alone would be unacceptable.
2. It should include a private guaranty facility, national in scope.
3. In order to avoid further echelons of regulation, the role of state and federal regulation should be as little as legally possible.
4. All insurers should be compelled or strongly induced to participate in the facility.

Within the context of these criteria, we studied the concept of a private facility along the lines of the National Association of Securities Dealers (NASD) which is authorized by the 1938 amendments to the Securities Exchange Commission Act of 1934 to regulate over-the-counter brokers. Such a plan would have contemplated one or more private facilities guaranteeing the policies of its members. All insurers would be required to belong to a facility which would have certain examination powers over its members.

In the course of our study of this proposal we were advised by counsel that a purely private facility without federal legislation could present problems. It was recommended to us that it might be necessary to have some federal supervisory power over the private facility and that members of the facility should have the right to appeal the action of the facility to the supervising federal body. It

was further suggested that it might be necessary to have some exemption from the federal antitrust laws. Part of the reasoning for this suggestion was that the activities of the facility would include the policing of insurers and this could be construed to constitute, "boycott, coercion and intimidation" which are expressly excluded from the scope of the exemption contained in the McCarran-Ferguson Act.

If it were necessary to obtain federal legislation to permit the operation of a private insurance guaranty facility, three practical questions had to be answered.

1. Could we reasonably anticipate that the Congress would favorably consider legislation authorizing a private facility to exercise a policing function, albeit a limited one?
2. Would the Congress be likely to expand the present antitrust exemption even for such a worthy purpose as providing policyholder and claimant security against insolvencies?
3. Against the background of the highly successful Federal Deposit Insurance Corporation Act, is there any reasonable likelihood that the Congress would consider a different approach in the insurance area?

We have endeavored to analyze realistically and objectively these three questions and have concluded that they must be answered in the negative.

One other consideration has affected our view of the private facility approach. Some of our member companies do not believe that private insurers should become involved in the policing of their competitors.⁸ Even if there were no federal legislative problems, they would be opposed to a private facility with policing powers. Additionally, we should reiterate that American Insurance Association is opposed to any solution which does not make a workable contribution to the prevention of insolvencies.

Although we have concluded that the private facility approach is not feasible, if we could be convinced that it did not necessitate far-reaching federal legislation, we would be willing to re-evaluate our position. The one caveat would be the practicality and propriety of any device requiring competitors to police one another.

We have examined other variations of the private facility approach, including the private insurance guaranty corporation proposal outlined in the June 16, 1969 Automobile Insurance Study Background Memorandum, prepared by the staff of the National Association of Insurance Commissioners' Central Office for consideration by the NAIC Special Committee on Automobile Insurance Problems.

We believe that our comments with respect to a private facility suggested by present regulation of over-the-counter brokers by NASD is applicable to the proposal suggested by staff of the NAIC Central Office.

Proposal of Economic Regulation Advisory Committee
to the DOT Auto Insurance and Compensation Study

The Economic Regulation Advisory Committee to the Department of Transportation Auto Insurance and Compensation Study under date of

⁸Some have attempted to compare this private industry role to insurance industry organizations which assist law enforcement authorities. We believe this is a far-fetched analogy and not at all relevant in the area of competitors.

July 8, 1969 submitted a report to the DOT on S. 2236. This advisory committee suggested its own proposal in lieu of S. 2236. Their plan would provide for the enactment by the Congress of a law providing for the imposition of a "substantial federal general revenue tax on insurance premiums derived within each state." It would further provide that the tax be forgiven in full as to all states which have in effect an insolvency guaranty law meeting certain criteria specified in the federal law. The purpose of this proposal is to apply maximum pressure on "state legislatures and regulators to have adequate legal requirements and adequate administrative supervision of insurers." The proposal contemplates the possibility of state enactment of insolvency fund laws similar to the New York law or a post-insolvency assessment law such as those enacted in four states this year.

This plan has all the weaknesses of the state insolvency measures and it is hard to see what it does to improve state regulatory machinery to prevent insolvencies.

We have great respect for the members of this advisory committee but we cannot convince ourselves that a tax threat proposal of this sort is a workable solution.

S. 2236

We come now to S. 2236, the consideration of which is the reason for the hearings of your committee.

S. 2236 is patterned on the highly successful federal legislation establishing the Federal Deposit Insurance Corporation which insures the deposits of all its member banks. The bill establishes a corporation to be known as the Federal Insurance Guaranty Corporation, to which practically all insurers are required to belong. Only a small number

of insurers would not be required to join since very few companies are not in one way or another engaged in interstate commerce.

Each insurer would pay an annual fee equal to one-eighth of one percent of its net direct premiums. These fees would be continued only to the extent it would be necessary to keep the net asset value of the fund at an amount not less than two percent of the annual direct premiums written by all participating insurers. Before this cut-off the corporation would have to retire the outstanding Treasury shares amounting to \$50 million which supply the initial financing.

The FIGC would be empowered to settle or adjust any claim against an insolvent member insurer. Claims for return premiums would not be allowed in excess of fifty percent of unearned premiums. The bill would require claimants to exhaust their claims against state insolvency funds before receiving payment from FIGC. No further fees or assessments under any state insolvency law would be permitted for any period during which the insurance policies of that insurer are guaranteed under this legislation.

In the case of insolvency protection under the uninsured motorist endorsement, a policyholder would first have to exhaust his remedies against any applicable state insolvency fund and then against the FIGC before receiving any payment from his insurer.

It is clear, therefore, that the bill seeks to establish a single program for providing payments to those who have claims against an insolvent insurance company.

The bill grants broad examination powers to the corporation. All such examinations are required to be coordinated as far as practicable

with appropriate state supervisory authorities and the National Association of Insurance Commissioners. It authorizes the corporation to terminate the guaranteed status of an insurer if it finds:

1. That the insurer is engaging in unsafe or unsound practices,
2. The insurer is in unsafe or unsound condition, or
3. The insurer has violated this law or any rule or regulation issued under it.

The corporation also has power to bring cease-and-desist proceedings if it believes an insurer is engaging in an unsafe or unsound practice or is violating the law.

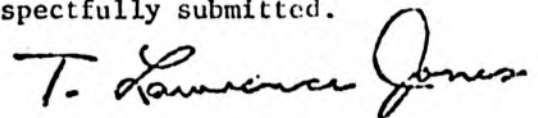
American Insurance Association, as previously stated, recognizes that a problem exists and a solution must be found. We have shared with this committee our analysis and conclusions with respect to the various proposals which are under consideration. It is our view that S. 2236, patterned after the Federal Deposit Insurance Corporation Act, is clearly preferable to all other proposals and we endorse this legislation.

It should be noted that S. 2236 provides a sure way to protect members of the public against the possibility of insurance company insolvency. It also prohibits the proliferation of state insolvency funds which, in our judgment, is a totally unacceptable solution. Finally, unlike all the other solutions under discussion, S. 2236 strengthens the regulatory process. It should prove to be especially helpful in preventing the interstate shifting of company assets, which has been beyond the reach of state regulatory power and which has been such a significant factor in a number of insolvencies.

We disagree with those who contend that this legislation portends the end of state regulation or that it diminishes the important role of state regulation. On the contrary, we believe it compliments and supplements state supervision. It will, in fact, strengthen state regulation by removing a long-standing source of criticism.

We have reached our decision supporting S. 2236 only after the most careful study. We are well aware that in varying degree a number of segments of the industry are opposed to this legislation. We also know that the National Association of Insurance Commissioners has adopted a resolution against this legislation. Our decision to support this bill reflects our considered judgment that the FDIC approach offers the most effective and workable solution to the insolvency problem of a business which is extensively transacted across state lines.

Respectfully submitted.



T. Lawrence Jones, President
American Insurance Association

MANDATORY UNINSURED MOTORIST PROVISIONS

(Compiled by the Law Department of the American Insurance Association)

October 1969

STATE	LIMITS	PROPERTY DAMAGE EXCLUSION	MAY INSURED REJECT COVERAGE?	UNINSURED MOTORIST FEE	APPLICABLE WHERE INSURER INSOLVENT?	UNUSUAL FEATURES
Alabama	10/20		Yes+	None	No prov.	
Alaska	15/30		Yes	None	No prov.	
Arizona	10/20		Yes+	None	No prov.	
Arkansas	10/20		Yes	None	Yes	
California	15/30		Yes	None	Yes	(b)(h)
Colorado	15/30*		Yes+	None	No prov.	
Connecticut	20/20(a)		No	None	Yes	(n)
Delaware	10/20		Yes+	None	Yes	
Florida	10/20		Yes+	None	Yes	
Georgia	10/20/5(m)	\$250	Yes+	None	Yes	(e)(h)(j)
Hawaii	10/20		Yes	None	No prov.	
Idaho	10/20		Yes+	None	Yes	
Illinois	10/20		No	None	Yes	
Indiana	10/20		Yes+	None	Yes	
Iowa	10/20		Yes+	None	Yes	(j)
Kansas	10/20		Yes+	None	Yes	(n)
Kentucky	10/20		Yes+	None	Yes	(h)(q)
Louisiana	5/10		Yes	None	Yes	(n)
Maine	20/40		No	None	Yes	
Massachusetts	5/10		No	None	Yes	
Michigan	10/20		Yes+	\$35	Yes	(o)
Minnesota	10/20(u)		(p)	None	Yes	
Mississippi	5/10		Yes+	None	Yes	(c)(j)
Missouri	10/20		Yes+	None	Yes	
Montana	10/20		Yes+	None	No prov.	
Nebraska	10/20		Yes+	None	Yes	
Nevada	15/30		Yes+	None	Yes	(c)(h)(j)(q)
New Hampshire	15/30(a)*		No	None	Yes	
New Jersey	10/20	\$100	Yes++	None	No prov.	
New Mexico	10/20/5	\$250	Yes+	None	No prov.	
New York	10/20		No	None	No prov.	(h)
North Carolina	10/20/5(i)	\$100	Yes	None	Yes	(g)(k)
Ohio	12.5/25*		Yes+	None	No prov.	
Oklahoma	5/10/(r)		Yes+	None	Yes	(s)(t)
Oregon	10/20		No	None	Yes	(c)(h)
Pennsylvania	10/20		No	None	Yes	
Rhode Island	10/20		Yes	None	No prov.	
South Carolina	10/20/5	\$200	No	\$50 max**	Yes	(d)(e)(f)(g)(h)(j)
South Dakota	10/20		Yes+	None	Yes	
Tennessee	10/20		Yes+	None	Yes	(e)(q)
Texas	10/20		Yes+	None	Yes	
Utah	10/20		Yes+	None	No prov.	
Vermont	10/20		No	None	Yes	
Virginia	20/30/5(a)*	\$200	No	\$50**	No prov.	(e)(g)(h)
Washington	15/30		Yes+	None	Yes	
West Virginia	10/20/5	\$300	No	None	Yes	(e)(j)
Wisconsin	10/20/(r)		Yes+	None	Yes	
Wyoming	10/20		Yes+	None	Yes	

* Effective January 1, 1970

** Fund distributed to insurers after deduction of administration expense.

e-Arbitration provision prohibited.

f-Insurer must give notice of termination of policy.

g-Insurer may defend uninsured motorist.

h-Also covers cases where insurer denies liability.

i-Requires contact in hit-and-run cases.

- + If rejected, insurer need not offer coverage on renewal unless requested
- ++ Insured must elect to accept or reject offer of coverage in writing.
- a-Insured may require limits equal to his liability limits.
- b-Failure to file evidence of financial responsibility under Financial Responsibility Law creates rebuttable presumption that vehicle was uninsured.
- c-Coverage not required in policy covering trucks of combined weight and load capacity of more than 6000 operated by employees covered by workmen's compensation.
- d-No charge to be made for coverage.
- k-Person who carries liability limits of at least 15/30 is entitled to 15/30 coverage.
- m-Insured vehicle and contents only.
- n-Arbitration optional with insured.
- o-All policies to contain notice that coverage was explained and that insured may reject.
- p-Coverage may not be rejected for policies covering private passenger vehicles or pick-up trucks. May be rejected as to others.
- q-"Uninsured motor vehicle" includes vehicle insured in lower limits.
- r-Insurer may make higher limits available.
- s-If agreement by arbitration is not reached within 3 months from demand for arbitration insured may sue tortfeasor.
- t-Inapplicable to motor carriers whose drivers are covered by workmen's compensation.
- u-After 1970 insured may require limits equal to his liability limits.

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WORKMEN'S COMPENSATION
SECURITY FUNDS

Arizona - Uninsured Employers and 2nd Injury Special Fund. -§23-1065, Revised Statutes - Fund is maintained by a tax not to exceed 2% of premiums; also in no-dependency death cases, carriers shall pay \$1,150 into fund. §23-907B authorizes payments out of special fund plus a 10% penalty on employer.

Connecticut - 2nd Injury & Compensation Assurance Fund - §§31-354 and 31-355-Gen. Stats.-1% of compensation paid during preceding year with payments to cease when fund reaches \$100,000 and to be resumed when it falls below \$100,000.

Maryland - §§85-89, Art. 101, Maryland Code-Post-insolvency assessment, pro-rata, upon all insurers not to exceed 1% of workmen's compensation premiums written during preceding calendar year.

Minnesota - §§79-28, 79-29, Minn. Stat. 1965. Assessment of other carriers for the payment of unpaid workmen's compensation awards of insolvent company. Pro-rata assessment in any one year in no case to exceed 1% of workmen's compensation premiums written during the preceding calendar year.

New Jersey - Sec. 34:15-103 ff. Revised Statutes of 1937. 1% of net written premiums payable bi-annually until fund, over and above liabilities, equals 5% of workmen's compensation loss reserves of all stock carriers as of December 31 next preceding; payments to be resumed when said fund falls below this figure.

New York - Art. 6-A (§§106-109) of Workmen's Compensation Law. One percent of net written premiums payable until fund, less liabilities, equals 5% of New York Workmen's Compensation loss reserves of all stock carriers as of December 31 next preceding, or equals \$2,300,000, whichever sum is greater. Payments are resumed when fund is reduced below this amount. Payments to be made quarterly.

North Carolina - Art. 3, Chap. 97, §§97-105-97-117, Gen. Stats. One percent of net written premiums payable bi-annually until fund over and above liabilities equals 5% of workmen's compensation loss reserves of all stock carriers as of December 31 next preceding; payments to be resumed when said fund falls below this figure.

Oregon - Direct Responsibility Employer's Adjustment Reserve §656.614, Oregon Rev. Stats.-Pro-rata assessment upon (DRE) employers sufficient to pay unpaid claims because of insolvency of surety or guarantor of employer.

Pennsylvania - Act No. 470, Laws of 1937. One percent of net written premiums payable annually until fund, over and above liabilities, equals 5% of workmen's compensation loss reserves of stock carriers as of June 30 next preceding. Payments are to be resumed when the fund falls below this amount.

United States Longshoremen's and Harbor Worker's Act - Special Fund - §§18 (b) and 44 - \$1,000 paid into Fund by employer in each no-dependency death case.

Wisconsin - Workmen's Compensation Law, Sec. 102.65. One percent of earned premiums payable annually until fund, over and above liabilities, equals 5% of the loss reserves of all stock carriers for the payment of benefits under said section as of December 31 next preceding. Payments are to be resumed when fund falls below this amount. Payments into stock fund are not to be discontinued unless said fund consists of at least \$25,000 over and above its known liabilities. This fund has now been consolidated with the mutual and reciprocal funds and transformed into a temporary fund for payment of assessments into the newly created post assessment Insurance Security Fund which has broad coverage, including workmen's compensation (S.B. 525) Chapter 144, Laws of 1969.

Broad Guarantee Provisions Including Workmen's
Compensation

California - Act 14.2 Sec. 1063 ff. of the Insurance Code. Provides for creation of California Insurance Guarantee Association to which all insurers, with certain exceptions life, title, etc. must belong. Workmen's compensation writers included as a separate category. Post insolvency assessment limited to 1% of net direct premium written in particular category (Chapter 1347, Laws of 1969, effective August 31, 1969).

Michigan - Secs. 7833 and 7901 ff. (compiled Laws of 1948, added by Act No. 277, Laws of 1969) creates Property and Casualty Guaranty Association to which all insurers, except life, must belong. Workmen's compensation writers included as a separate category. Post insolvency assessment limited to 1% net direct premium written in previous calendar year in particular category.

Wisconsin - described above.

AK:AF:jn
revised
11/13/69

Special Management Legislative Bulletin

INSOLVENCY FUND LEGISLATION-AS OF NOVEMBER 7, 1969

<u>STATE</u>	<u>BILL NO.</u>	<u>BRIEF SUMMARY</u>	<u>STATUS</u>
California	House 1310	Creates the Insurance Guarantee Ass'n, which will assess all insurers other than life or title; post assessment- maximum 1% in year.	<u>LAW</u>
Florida	Senate 920	Would have created security funds for casualty, property, surety and workmen's compensation insurance. Pre-assessment.	Died
	Senate 1523	Would have required insurers to pay 1% of premiums on post-assessment basis where insurer is insolvent, to defray losses to claimants.	Died
Maryland	Senate 199	Makes the Motor Vehicle Liability Security Fund applicable to physical damage	<u>LAW</u>
Michigan	House 3166	Would create the Property and Casualty Insurance Insolvency Fund, which would assess upon insurers the amount needed to pay for transfer by reinsurance or coinsurance of all policies in force on residents, and for cost of adjustment and payment of claims. Post assessment.	No Action
	House 3216	Would create the Michigan Casualty Assessment Association consisting of all insurers writing automobile and workmen's compensation insurance; the Association to assume obligations of any casualty insurer declared insolvent; post assessment- maximum 1% in year.	No Action
	House 3699	Creates an insolvency pool, and requires all insurers writing casualty, property and workmen's compensation insurance to assume obligations of insurer declared insolvent; post assessment- maximum 1% in year.	<u>LAW</u>

(over)

<u>STATE</u>	<u>BILL NO.</u>	<u>BRIEF SUMMARY</u>	<u>STATUS</u>
New Hampshire	House 668	Creates the N.H. Automobile Assessment Association to which all automobile insurers must belong. Upon determination that an insurer is insolvent, the Insurance Commissioner shall assess all members of the Association for payment of all bodily injury liability, property damage liability, medical payments, uninsured motorists, auto physical damage claims and claims for unearned premiums.	<u>LAW</u>
New York	Senate 3534	Broadens the Motor Vehicle Liability Security Fund to cover all property liability lines, payments to cease when Fund reaches \$200,000,000.	<u>LAW</u>
Wisconsin	Senate 525	Creates a Security Fund; post assessment-Maximum 2% in year.	<u>LAW</u>
U.S. Congress	H.R. 1087	Creates the Federal Motor Vehicle Insurance Guaranty Corporation, based on the Federal Deposit Insurance Corporation Act.	No Action
	H.R. 1376	Same as Above	No Action
	H.R. 2656	Same as Above	No Action
	H.R. 3671	Same as Above	No Action
	H.R. 6475	Same as Above	No Action
	Senate 2236	Would create the Federal Insurance Guaranty Corporation, applicable to all lines other than life, accident and health and title. Pre-assessment.	Hearings scheduled for November 12, 19, and 20.
	H.R. 13428	Same as Above	No Action

Property & Liability Security Funds

California - California Insurance Guaranty Association to which all insurers except those writing exclusively surety, credit, ocean, marine, life, title and certain other lines, must belong for purpose of providing each member with insolvency insurance. Post assessment, not more than 1% of net direct premium written in category (compensation, auto, other) in the State (Chapter 1347, Laws of 1969)

Maryland - Motor Vehicle Security Fund - for payment of allowed claims of injured parties and policyholders arising out of motor vehicle accidents by reason of insolvency or inability of insurer to meet its insurance obligations. Preassessment 1/4 of 1% net direct written auto liability and physical damage premiums. (§482A of Art. 48A, Annotated Code of Maryland)

Michigan - Property & Casualty Guaranty Association maintained by all authorized insurers, except life, which shall discharge obligations of insolvent insurers arising out of contracts issued or payable to residents. Policy contracts covered: Auto insurance, workmen's compensation, basic property insurance, homeowners, farm owners and commercial multiple peril. Post-assessment not to exceed 1% of net direct premiums during previous calendar year. (Act 277, Acts of 1969)

New Hampshire - Auto Assessment Association to which all auto insurers are required to belong. Post insolvency assessment for payment to residents

of bodily injury liability, property damage, medical payments, U.M., physical damage and claims for unearned premiums. Maximum assessment in any calendar year shall not exceed 3% of total amount of all net direct premiums written by all licensed auto insurers having such business in the State in said calendar year. (Chapter 349, Laws of 1969, effective June 30, 1969)

New Jersey - Motor Vehicle Liability Security Fund for purpose of securing the benefits under policies of motor vehicle liability insurance by reason of the default of an insurer which becomes insolvent - 1/2% of direct gross motor vehicle premiums; ceases when net value of Fund reaches \$6,000,000; resumes when Fund falls below such amount. (§§39:6-92 - 39:6-104 NJSA)

New York - Property & Liability Insurance Security Fund to be used in payment of allowed claims of residents by reason of the inability due to insolvency of an authorized insurer to meet its insurance obligations under generally all property and liability lines. Pre-assessment: 1% net direct written premiums until Fund reaches \$200,000,000. (§334 N.Y. Insurance Law, as amended by Chapter 189, Laws of 1969)

Wisconsin - Wisconsin Insurance Security Fund - Applicable generally to all lines. Fund divided into three separate accounts, life, disability and all other covered insurance, for purpose of paying claims of residents arising out of policy issued by authorized insurer and which claim has been approved in the liquidation of the insurer issuing the policy. Post assessment, maximum 2% of the assessable premiums (Chapter 144, Laws of 1969, effective 8/22/69)

*Justson
work copy*

Fritz Div of Insurance

Introduced: 3/11/70
Referred: Commerce and
Judiciary

1 IN THE HOUSE

BY THE COMMERCE COMMITTEE

2

HOUSE BILL NO. 782

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

SIXTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to guaranteeing certain insurance
7 contracts."

8

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

9

* Section 1. AS 21 is amended by adding a new chapter to read:

10

CHAPTER 80. ALASKA INSURANCE GUARANTY ASSOCIATION ACT.

11

Sec. 21.80.010. PURPOSE. The purpose of this chapter is to pro-

12

vide a mechanism for the payment of covered claims under certain insurance

13

policies to avoid excessive delay in payment and to avoid financial loss

14

to claimants or policyholders because of the insolvency of an insurer,

15

to assist in the detection and prevention of insurer insolvencies, and

16

to provide an association to assess the cost of this protection among

17

insurers.

18

Sec. 21.80.020. SCOPE. This chapter applies to all kinds of

19

direct insurance, except life, title, surety, disability, credit,

20

mortgage guaranty, and ocean marine insurance.

21

Sec. 21.80.030. CONSTRUCTION. This chapter shall be liberally

22

construed to effect the purpose under sec. 10 of this chapter which

23

constitute an aid and guide to interpretation.

24

Sec. 21.80.040. CREATION OF ASSOCIATION. There is created a non-

25

profit incorporated legal entity to be known as the Alaska Insurance

26

Guaranty Association. All insurers defined as member insurers in sec.

27

190(6) of this chapter shall be and remain members of the association

28

as a condition of their authority to transact insurance in this state.

29

The association shall perform its functions under a plan of operation

1 established and approved under sec. 70 of this chapter and shall exer-
2 cise its powers through a board of directors established under sec. 50
3 of this chapter. For purposes of administration and assessment, the
4 association shall be divided into three separate accounts; the work-
5 men's compensation insurance account; the automobile insurance account;
6 and the account for all other insurance to which this chapter applies.

7 Sec. 21.80.050. BOARD OF DIRECTORS. (a) The board of directors
8 of the association shall consist of not less than five nor more than nine
9 persons serving terms as established in the plan of operation. The
10 members of the board shall be selected by member insurers subject to
11 the approval of the commissioner. Vacancies of the board shall be
12 filled for the remaining period of the term in the same manner as
13 initial appointments. If no members are selected within 60 days after
14 the effective date of this chapter, the commissioner may appoint the
15 initial members of the board of directors.

16 (b) In approving selections to the board, the commissioner shall
17 consider among other things whether all member insurers are fairly
18 represented.

19 (c) Members of the board may be reimbursed from the assets of the
20 association for expenses incurred by them as members of the board of
21 directors.

22 Sec. 21.80.060. POWERS AND DUTIES OF THE ASSOCIATION. (a) The
23 association shall

24 (1) be obligated to the extent of the covered claims exist-
25 ing prior to the determination of insolvency and arising within 30
26 days after the determination of insolvency, or before the policy expira-
27 tion date if less than 30 days after the determination, or before the
28 insured replaces the policy or causes its cancellation, if he does so
29 within 30 days of the determination, but this obligation shall include

1 only that amount of each covered claim which is in excess of \$100 and is
2 less than \$300,000, except that the association shall pay the full
3 amount of any covered claim arising out of a workmen's compensation
4 policy; in no event shall the association be obligated to a policy
5 holder or claimant in an amount in excess of the obligation of the in-
6 solvent insurer under the policy form which the claim arises;

7 (2) be considered the insurer to the extent of its obliga-
8 tion on the covered claims and to that extent shall have all rights,
9 duties, and obligations of the insolvent insurer as if the insurer had
10 not become insolvent;

11 (3) allocate claims paid and expenses incurred among the
12 three accounts separately, and assess member insurers separately for
13 each account amounts necessary to pay the obligation of the association
14 under (a)(1) of this section subsequent to an insolvency, the expenses
15 of handling covered claims subsequent to an insolvency, the cost of
16 examinations under sec. 110 of this chapter and other expenses autho-
17 rized by this chapter; the assessments of each member insurer shall be
18 in the proportion that the net direct written premiums of the member
19 insurer for the preceding calendar year on the kinds of insurance in the
20 account bears to the net direct written premiums of all member insurers
21 for the preceding calendar year on the kinds of insurance in the
22 account; each member insurer shall be notified of the assessment not
23 later than 30 days before it is due; no member insurer may be assessed
24 in any year on any account an amount greater than two per cent of the
25 member insurer's net direct written premiums for the preceding calendar
26 year on the kinds of insurance in the account. If the maximum assessment,
27 together with the other assets of the association in any account, does
28 not provide in any one year in any account an amount sufficient to make
29 all necessary payments from that account, the funds available shall be

1 prorated and the unpaid portion shall be paid as soon thereafter as
2 funds become available; the association may exempt or defer, in whole
3 or in part, the assessment of any member insurer, if the assessment would
4 cause the member insurer's financial statement to reflect amounts of
5 capital or surplus less than the minimum amounts required for a certifi-
6 cate of authority by any jurisdiction in which the member insurer
7 is authorized to transact insurance; each member insurer may set off
8 against an assessment, authorized payments made on covered claims and
9 expenses incurred in the payment of these claims by the member insurer
10 if they are chargeable to the account for which the assessment is
11 made;

12 (4) Investigate claims brought against the association and
13 adjust, compromise, settle and pay covered claims to the extent of
14 the association's obligation and deny all other claims and may review
15 settlements, releases and judgments to which the insolvent insurer or
16 its insureds were parties to determine the extent to which settlements,
17 releases and judgments may be properly contested;

18 (5) notify persons as the commissioner directs under sec.
19 80(b)(1) of this chapter;

20 (6) handle claims through its employees or through one or
21 more insurers or other persons designated as servicing facilities;
22 designation of a servicing facility is subject to the approval of the
23 commissioner, but designation may be declined by a member insurer;

24 (7) reimburse each servicing facility for obligations of the
25 association paid by the facility and for expenses incurred by the facility
26 while handling claims on behalf of the association and shall pay the
27 other expenses of the association authorized by this chapter.

28 (b) The association may

29 (1) employ or retain those persons necessary to handle

1 claims and perform other duties of the association;

2 (2) borrow funds necessary to effect the purposes of this
3 chapter in accord with the plan of operation;

4 (3) sue or be sued;

5 (4) negotiate and become a party to those contracts as are
6 necessary to carry out the purposes of this chapter;

7 (5) perform all other acts necessary or proper to effectuate
8 the purposes of this chapter;

9 (6) refund to the member insurers in proportion to the con-
10 tribution of each member insurer to that account that amount by which
11 the assets of the account exceed the liabilities if, at the end of any
12 calendar year, the board of directors finds that the assets of the
13 association in any account exceed the liabilities of that account as
14 estimated by the board of directors for the coming year;

15 (7) appear in, defend, and appeal any action on a claim
16 brought against the association.

17 Sec. 21.80.070. PLAN OF OPERATION. (a) The association shall
18 submit to the commissioner a plan of operation and any amendments
19 necessary or suitable to assure the fair, reasonable, and equitable
20 administration of the association. The plan of operation and amendments
21 shall become effective upon approval in writing by the commissioner.
22 If the association fails to submit a suitable plan of operation within
23 90 days following the effective date of this chapter or if at any sub-
24 sequent time the association fails to submit suitable amendments to
25 the plan, the commissioner shall, after notice and hearing, adopt and
26 promulgate reasonable rules necessary or advisable to effectuate the
27 provisions of this chapter. These rules shall continue in force until
28 modified by the commissioner or superseded by a plan submitted by the
29 association and approved by the commissioner.

1 (b) All member insurers shall comply with the plan of operation.

2 (c) The plan of operation shall

3 (1) establish the procedures whereby all the powers and
4 duties of the association under sec. 60 of this chapter will be per-
5 formed;

6 (2) establish procedures for handling assets of the associ-
7 ation;

8 (3) establish the amount and method of reimbursing members
9 of the board of directors under sec. 50 of this chapter;

10 (4) establish procedures by which claims may be filed with
11 the association and establish acceptable forms of proof of covered
12 claims; notice of claims to the receiver or liquidator of the insolvent
13 insurer shall be deemed notice to the association or its agent and a
14 list of these claims shall be periodically submitted to the association
15 or similar organization in another state by the receiver or liquidator;

16 (5) establish regular places and times for meetings of the
17 board of directors;

18 (6) establish procedures for records to be kept of all
19 financial transactions of the association, its agents, and the board
20 of directors;

21 (7) provide that any member insurer aggrieved by a final
22 action or decision of the association may appeal to the commissioner
23 within 30 days after the action or decision;

24 (8) establish the procedures whereby selections for the
25 board of directors will be submitted to the commissioner;

26 (9) contain additional provisions necessary or proper for
27 the execution of the powers and duties of the association.

28 (d) The plan of operation may provide that any or all powers and
29 duties of the association, except those under secs. 60(a)(3) and

1 60(b)(2) are delegated to a corporation, association, or other
2 organization which performs or will perform functions similar to those
3 of this association, or its equivalent, in two or more states. Such a
4 corporation, association or organization shall be reimbursed as a
5 servicing facility would be reimbursed and shall be paid for its
6 performance of any other functions of the association. A delegation
7 under this subsection shall take effect only with the approval of both
8 the board of directors and the commissioner, and may be made only to a
9 corporation, association, or organization which extends protection not
10 substantially less favorable and effective than that provided by this
11 chapter.

12 Sec. 21.80.080. DUTIES AND POWERS OF THE COMMISSIONER. (a) The
13 commissioner shall

14 (1) notify the association of the existence of an insolvent
15 insurer no later than three days after he receives notice of the
16 determination of the insolvency;

17 (2) upon request of the board of directors, provide the
18 association with a statement of the net direct written premiums of
19 each member insurer.

20 (b) The commissioner may

21 (1) require that the association notify the insureds of the
22 insolvent insurer and any other interested parties of the determination
23 of insolvency and of their rights under this chapter; this notification
24 shall be by mail at their last known address, when available, but if
25 sufficient information for notification by mail is not available,
26 notice by publication in a newspaper of general circulation shall be
27 sufficient;

28 (2) suspend or revoke, after notice and hearing, the
29 certificate of authority to transact insurance in this state of any

1 member insurer which fails to pay an assessment when due or fails to
2 comply with the plan of operation. As an alternative, the commissioner
3 may levy a fine on any member insurer which fails to pay an assessment
4 when due; this fine may not exceed five per cent of the unpaid assess-
5 ment per month, except that no fine may be less than \$100 a month;

6 (3) revoke the designation of any servicing facility if
7 he finds claims are being handled unsatisfactorily.

8 Sec. 21.80.090. EFFECT OF PAID CLAIMS. (a) A person recovering
9 under this chapter shall be considered to have assigned his rights under
10 the policy to the association to the extent of his recovery from the
11 association. Every insured or claimant seeking the protection of this
12 chapter shall cooperate with the association to the same extent as the
13 person would have been required to cooperate with the insolvent insurer.
14 The association shall have no cause of action against the insured of
15 the insolvent insurer for any sums it has paid out except those causes
16 of action as the insolvent insurer would have had if the sums had been
17 paid by the insolvent insurer. In the case of an insolvent insurer
18 operating on a plan with assessment liability, payments of claims of the
19 association shall not operate to reduce the liability of insured to the
20 receiver, liquidator, or statutory successor for unpaid assessments.

21 (b) The receiver, liquidator, or statutory successor of an in-
22 solvent insurer shall be bound by settlements of covered claims by the
23 association or a similar organization in another state. The court
24 having jurisdiction shall grant these claims priority equal to that which
25 the claimant would have been entitled in the absence of this chapter
26 against the assets of the insolvent insurer. The expenses of the as-
27 sociation or similar organization in handling claims shall be accorded
28 the same priority as the liquidator's expenses.

29 (c) The association shall periodically file with the receiver or

1 liquidator of the insolvent insurer statements of the covered claims
2 paid by the association and estimates of anticipated claims on the
3 association which shall preserve the rights of the association against
4 the assets of the insolvent insurer.

5 Sec. 21.80.100. NONDUPLICATION OF RECOVERY. (a) A person having
6 a claim against an insurer under a provision in an insurance policy
7 other than a policy of an insolvent insurer which is also a covered
8 claim, shall be required to exhaust first his right under the policy.
9 Any amount payable on a covered claim under this chapter shall be
10 reduced by the amount of recovery under the insurance policy.

11 (b) A person having a claim which may be recovered under more than
12 one insurance guaranty association or its equivalent shall seek recovery
13 first from the association of the place of residence of the insured
14 except that if it is a first party claim for damage to property with a
15 permanent location, he shall seek recovery first from the association
16 of the location of the property, and if it is a workmen's compensation
17 claim, he shall seek recovery first from the association of the resi-
18 dence of the claimant. A recovery under this chapter shall be reduced
19 by the amount of recovery from any other insurance guaranty association
20 or its equivalent.

21 Sec. 21.80.110. PREVENTION AND DETECTION OF INSOLVENCIES. (a) It
22 is the duty of the board of directors, upon majority vote, to notify
23 the commissioner of information indicating that a member insurer may be
24 insolvent or in a financial condition hazardous to the policyholders or
25 the public.

26 (b) The board of directors may, upon majority vote, request that
27 the commissioner order an examination of a member insurer which the
28 board in good faith believes may be in a financial condition hazardous
29 to the policyholders or the public. Within 30 days of the receipt of

1 the request, the commissioner shall begin the examination. The examina-
2 tion may be conducted as a National Association of Insurance Commissioners
3 Examination or may be conducted by those persons the commissioner
4 designates. The cost of the examination shall be paid by the association
5 and the examination report shall be treated as are other examination
6 reports. In no event may the examination report be released to the
7 board of directors before its release to the public, but this does not
8 preclude the commissioner from complying with (c) of this section. The
9 commissioner shall notify the board of directors when the examination is
10 completed. The request for an examination shall be kept on file by the
11 commissioner but it shall not be open to public inspection before the
12 release of the examination report to the public.

13 (c) It is the duty of the commissioner to report to the board of
14 directors when he has reasonable cause to believe that a member insurer
15 examined or being examined at the request of the board of directors
16 may be insolvent or in a financial condition hazardous to the policy-
17 holders or the public.

18 (d) The board of directors may, upon majority vote, make reports
19 and recommendations to the commissioner upon any matter germane to the
20 solvency, liquidation, rehabilitation or conservation of a member in-
21 surer. These reports and recommendations shall not be considered public
22 documents.

23 (e) The board of directors may, upon majority vote, make recom-
24 mendations to the commissioner for the detection and prevention of
25 insurer insolvencies.

26 (f) The board of directors shall, at the conclusion of an insurer
27 insolvency in which the association was obligated to pay covered claims,
28 prepare a report on the history and causes of the insolvency, based on
29 the information available to the association, and submit this report

1 to the commissioner.

2 Sec. 21.80.120. EXAMINATION OF THE ASSOCIATION. The association
3 shall be subject to examination and regulation by the commissioner.
4 The board of directors shall submit, not later than March 30 of each
5 year, a financial report for the preceding calendar year in a form
6 approved by the commissioner.

7 Sec. 21.80.130. TAX EXEMPTION. The association shall be exempt
8 from payment of all fees and all taxes levied by the state or any of
9 its subdivisions except taxes levied on real or personal property.

10 Sec. 21.80.140. RECOGNITION OF ASSESSMENTS IN RATES. The rates
11 and premiums charged for insurance policies to which this chapter
12 applies shall include amounts sufficient to recoup a sum equal to the
13 amounts paid to the association by the member insurer less any amounts
14 returned to the member insurer by the association and these rates shall
15 not be considered excessive because they contain an amount reasonably
16 calculated to recoup assessments paid by the member insurer.

17 Sec. 21.80.150. IMMUNITY. There shall be no liability on the part
18 of and no cause of action of any nature shall arise against a member
19 insurer, the association or its agents or employees, the board of
20 directors, or the commissioner or his representatives for action taken
21 by them in the performance of their powers and duties under this
22 chapter.

23 Sec. 21.80.160. STAY OF PROCEEDINGS AND REOPENING OF DEFAULT
24 JUDGMENTS. All proceedings in which the insolvent insurer is a party
25 or is obligated to defend a party in a court in this state shall be
26 stayed for 60 days from the date the insolvency is determined to permit
27 proper defense by the association for all pending causes of action as
28 to any covered claims arising from a judgment under a decision, verdict
29 or fir based on the default of the insolvent insurer or its failure

*Appt to
propose
limited
immunity clause*

1 to defend an insured. The association either on its own behalf or on
2 behalf of the insured may apply to have this judgment, order, decision,
3 verdict or finding set aside by the same court or administrator that
4 made the judgment, order, decision, verdict or finding and shall be
5 permitted to defend against the claim on the merits.

6 Sec. 21.80.170. TERMINATION AND DISTRIBUTION OF FUNDS. (a) The
7 commissioner shall by order terminate the operation of the Alaska
8 Insurance Guaranty Association as to any kind of insurance covered
9 by this chapter with respect to which he has found, after hearing,
10 that there is in effect a statutory or voluntary plan which

11 (1) is a permanent plan which is adequately funded or for
12 which adequate funding is provided; and

13 (2) extends, or will extend to the Alaska policyholders and
14 residents protection and benefits with respect to insolvent insurers
15 not substantially less favorable and effective to the policyholders
16 and residents than the protection and benefits provided with respect
17 to the kinds of insurance under this chapter.

18 (b) The commissioner shall by the same order authorize discontinu-
19 ance of future payments by insurers to the Alaska Insurance Guaranty
20 Association with respect to the same kinds of insurance so long as the
21 assessments and payments continue, as necessary, to liquidate covered
22 claims of insurers adjudged insolvent before the order and the related
23 expenses not covered by the other plan.

24 (c) If the operation of the Alaska Insurance Guaranty Association
25 is terminated as to all kinds of insurance otherwise within its scope,
26 the association, as soon as possible thereafter, shall distribute the
27 balance of money and assets remaining (after discharge of the functions
28 of the association with respect to prior insurer insolvencies not
29 covered by the other plan, together with related expenses) to the

1 insurers which are then writing in this state policies of the kinds of
2 insurance covered by this chapter and which had made payments to the
3 association, pro rata upon the basis of the aggregate of the payments
4 made by the respective insurers during the period of five years next
5 preceding the date of the termination order. Upon completion of this
6 distribution with respect to all of the kinds of insurance covered by
7 this chapter, this chapter shall be considered to have expired.

8 Sec. 21.80.180. TITLE. This chapter may be known and cited as
9 the Alaska Insurance Guaranty Association Act.

10 Sec. 21.80.190. DEFINITIONS. In this chapter, unless the context
11 requires otherwise,

12 (1) "account" means any one of the three accounts created by
13 sec. 40 of this chapter;

14 (2) "association" means the Alaska Insurance Guaranty As-
15 sociation;

16 (3) "commissioner" means the commissioner of the Department
17 of Commerce or his representative;

18 (4) "covered claim" means an unpaid claim, including one of
19 unearned premiums, which arises out of and is within the coverage and
20 not in excess of the applicable limits of an insurance policy to which
21 this chapter applies issued by an insurer, if the insurer becomes an
22 insolvent insurer after the effective date of this chapter and (A) the
23 claimant or insured is a resident of this state at the time of the
24 insured event; or (B) the property from which the claim arises is
25 permanently located in this state; "covered claim" does not include
26 any amount due a reinsurer, insurer, insurance pool, or underwriting
27 association, as subrogation recoveries or otherwise;

28 (5) "insolvent insurer" means an insurer (A) authorized to
29 transact insurance in this state either at the time the policy was

1 issued or when the insured event occurred and (B) determined to be
2 insolvent by a court of competent jurisdiction;

3 (6) "member insurer" means a person who (A) writes any kind
4 of insurance to which this chapter applies under sec. 20 of this
5 chapter including the exchange of reciprocal or inter-insurance
6 contracts, and (B) is licensed to transact insurance in this state;

7 (7) "net direct written premiums" means direct gross
8 premiums written in this state on insurance policies to which this
9 chapter applies, less return premiums thereon and dividends paid or
10 credited to policyholders on direct business; "net direct written
11 premiums" does not include premiums on contracts between insurers or re-
12 insurers.