SB

116

MEMORANDUM State of Alaska

TO: Kevin K. Bruce
Committee Aide

DATE: February 23, 1982

FILE NO:

TELEPHONE NO: 465-2577

FROM: Don Koch
Chief of Market Surveillance
Division of Insurance

SUBJECT: CSSB 116(Jud) Work Draft

We have reviewed the proposed committee substitute and find that it is a much better draft than the original. It is structured in a more logical way. All the sections and intent of the original have been retained. We like it.

There are a few minor changes that we would suggest. They are:

On page 7, line 28, change "$150" to "$250".

On page 18, line 17, change "1982" to "1983".

On page 20, line 5, change "1982" to "1983".

Thank you.

Alaska State Legislature

Senate

Committee on Judiciary

Official Business

601 West Fifth, Suite 315
Anchorage, Alaska 99501
274-1042

Pouch V
State Capitol
Juneau, Alaska 99811

September 22, 1981

Mr. Don Koch
Division of Insurance
Pouch D
Juneau, Alaska 99811

Dear Mr. Koch:

As you may remember, you testified before the Senate Judiciary Committee on May 6, 1981 regarding SB116. At that time the Committee tabled action on the bill until language could be drafted which satisfied the Committee.

My files indicate that I forwarded the attached draft substitute to your office for comment on May 26, 1981. Frankly, I can't remember if you responded or not, the final weeks being what they are. At any rate, I would like you to examine and comment on the draft at this time.

On another subject, I sat in on the testimony you recently provided the House Labor and Commerce Committee regarding mandatory auto liability insurance. I would appreciate receiving the same information on the subject that you provided the House committee. Senator Rodey is interested in the area although we recognize some of the problems with this approach.

I appreciate your assistance in these matters.

Sincerely,

Kevin K. Bruce
Committee Aid

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Senator Bennett
Senator Hohman
Senator Parr
Senator Ray

FROM: Senator Rodey

DATE: May 26, 1981

SUBJECT: CSSB 116 "An Act relating to the creation of the Alaska Life and Disability Insurance Guaranty Association; changing Rule 62(a), Rules of Civil Procedure, by providing for an automatic stay of 60 days in a liquidation, rehabilitation, or conservation proceeding; and providing for an effective date."

Please find attached a proposed substitute for SB 116 and a memo from Legislative Affairs discussing the committee substitute.

I would appreciate your comments on this draft.

PMR/ods
Attachment

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

M E M O R A N D U M

TO: Don Koch
Division of Insurance

FROM: Kevin Bruce
Committee Aide

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KKB/ods
Attachment

Judiciary Hearing of 5/6/81

SB 116

Ray: Page 4, line 20, they guarantee to give back the money with the approval of the director, all of this is with the approval of the director. Why?

Koch: The director would approve the method by which the money goes back, whether it would be via a guarantee, an assumption...

Ray: That isn't what you're saying. You're just saying with the approval of the director. In other words, he makes the determination whether you are going to pay it back or not. He can say that "Well, I approve that or I don't approve that." What I'm saying is that if you can be a little more concise and say, "in a manner approved by the director", or something like that.

Kock: I would have no problem with that.

Ray: That's what you should do because, otherwise, you are just giving the director the right, with the approval of the director, to make the determination, that's fine; you either pay it or you don't. You should change that to "in a manner approved by the director." Do you agree, Charlie?

Parr: It makes no difference.

Koch: It may be clearer; I don't think a problem would occur with this, but I can see your point and I think the language could be a little clearer, as you suggest.

There are two minor problems, or errors, on page 7. Line 19 refers to health insurance. The term of art in the insurance code is "disability", so that should be changed from "health" to "disability". One line 26, the subsection (a) identifier has been left out, the small letter (a) has been left out.

Rodey: We will correct both of those. Are there other questions from members of the committee? Senator Parr.

Parr: Tax offset....I understood you to say, Mr. Koch, that this is optional in the model law. Mr. Thomas, in his letter to the chairman, said that the National Association of Insurance Companies ...led the National Association of Insurance Commissioners to conclude that a tax offset was justified. Is there a difference of opinion here?

Koch: As a matter of fact, on that sheet I gave you the very last paragraph states the NAIC's position.

Parr: Mr. Thomas apparently misunderstood that because he says that they concluded it was justified.

Koch: The NAIC's position was that they say they neither endorse nor reject the tax credit concept.

Parr: Essentially what happens, if I understand it correctly, is that the tax offset is given to people of the state through their tax monies or insuring.....if we don't do a tax offset, then the people who own the shares in the insurance companies . . . . .Is that correct?

Koch: Yes.

Ray: Page 19, prohibiting advertising of insurance sales. Are you saying that they can't, if they put in an advertising member, Joe Blow's Insurance, as a member of the Alaska Life and Diability Insurance Guaranty Association. Is that prohibitive?

Yes.

(Explanation from Kenneth Moore)

Ray: The last line, "This does not apply to the Alaska Life and Disability Insurance Guaranty Association." That doesn't make sense since you refer to it all the way through.

Rodey: The chair will take a look at the language and see if we can arrive at something that Senator Ray finds a little more readable.

Ray: I'm going to vote against the bill anyway.

Parr: We do have this, you said, for casualty companies already. What's the deal with them on the premium tax offset?

Koch: There is no premium tax offset for the casualty companies. The distinction that is made is that typically any casualty company writes its policies on a one-year basis, so they have a way they can recover their losses just by loading their premiums.

Parr: That's subject, of course, through the director's approval, I guess.

Koch: Yes, that's correct. The thing is, with a life and disability company, they generally write policies for a much longer term and can't change the rates that way, particularly in a life policy. . .so they would not be in any position to cover their expenses.

Rodey: What I want to do is lay SB 116 on the desk for a meeting, have a chance to make some language changes. It is a complex bill and have other members take a look at it. I know we haven't had a great deal of time.

Parr: I would like to amend it to include this offset. It doesn't seem to be just to require the shareholders of companies A, B, and C to spend their money unless company D goes in it, too. They are still going to have some administrative costs to bear, but they would then be able to recover that. If we want to decide as a matter of state policy that we want to guarantee people against that kind of loss, then we ought to pay for it out of state funds.

Rodey: Is there any objection to that language which the department has included in every member's packet? If not, then we will include that with the draft.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

M E M O R A N D U M

May 25, 1981

SUBJECT: CSSB 116 (Judiciary)

TO: Senate Judiciary Committee
Attn: Kevin Bruce

FROM: Thomas A. Sofo TAS
Legislative Counsel

After our discussion last week, I reviewed the CS for SB 116 (Judiciary) with the goal of attempting to improve its organization and the consistency of its language. After the revisor and I actually got into the bill beyond your requested amendments, we found much more to do than we had originally thought. We do not believe that our efforts have resulted in any substantive change to this legislation but would recommend that the Division of Insurance have an opportunity to review this in order to confirm our belief. Much of our time was spent trying to group the powers and duties of the association, the board, and the director in a more logical order with contiguous placement of related powers and duties. Since this bill did not originate with this office we were completely unfamiliar with its content which resulted in more time being spent on this than is typically the case.

TAS:ljb

Enclosure

SB116

IN THE MODEL, THIS SECTION APPEARS BETWEEN SECTIONS 100 AND 110.

Section 13. Credits for Assessments Paid (Tax Offsets)- OPTIONAL. 070(2)(2)-(3)

(1) A member insurer may offset against its (premium, franchise or income) tax liability (or liabilities) to this state an assessment described in Section 9(8) to the extent of 20% of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its (premium, franchise, or income) tax liability (or liabilities) for the year it ceases doing business.

070(2)

(2) Any sums acquired by refund, pursuant to Section 9(6), from the Association which have theretofore been written off by contributing insurers and offset against (premium, franchise or income) taxes as provided in subsection (1) above, and are not then needed for purposes of this Act, shall be paid by the Association to the Commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

Comment: Subsection (1) provides an offset against future premium, franchise or income taxes of assessments, over a five year period. The role of the certificate of contribution in the application of the credit, proposed in earlier drafts, has been removed with the view to minimizing the industry's federal tax, a result that may obtain if the possibility of such credit is not viewed as an admitted asset. The timing of the credit is dependent on the year the assessment is paid. It also allows the member insurer to select the applicable tax (premium, franchise or income) against which the credit may be applied and it permits member insurers going out of business to make use of the credit in their final year of operations.

The NAIC model insolvency guaranty bill for property and casualty insurance provides, in section 6, that rates "shall include amounts sufficient to recoup a sum equal to the amounts paid to the Associa . . . ." It is obvious that life insurance premiums, and premiums for certain forms of health insurance, cannot be changed on existing policyholders. Thus, recoupment is virtually unattainable through existing policy premium rates and building such assessments into rates for future policyholders is not only impractical but unfair to all policyholders. The only suitable and practical method of recoupment available to companies writing life and health insurance lies in offsets against premium or other taxes on such companies. The method suggested in this section is not only equitable to the companies involved but also reduces the impact on state revenue by the partial offset over a period of years. To the extent the recovery from the insolvent company exceeds the tax credit received, the state would be the ultimate beneficiary. Such equitable treatment of assessment for tax purposes would have additional positive effects: (1) the state legislature would have an additional incentive for providing adequate funds for insurance department personnel and administration, and (2) participation in the economic loss would be shared, to some degree, by the general public rather than solely by insureds, thus minimizing what might otherwise be a penalty on thrift and savings. It may be advisable in some jurisdictions to provide a cross-reference to the premium or other tax statutes to avoid questions of conflicting statutory provisions.

Some states allow this credit and others do not. Accordingly, this section is optional, and the NAIC neither endorses nor rejects the tax credit concept. Each state will wish to consider this provision in the light of its own regulatory experience.

IN THE MODEL, THIS SECTION APPEARS BETWEEN SECTIONS 100 AND 110.

Section 13. Credits for Assessments Paid (Tax Offsets)– OPTIONAL. 070(b)(2)-(3)

(1) A member insurer may offset against its (premium, franchise or income) tax liability (or liabilities) to this state an assessment described in Section 9(8) to the extent of 20% of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its (premium, franchise, or income) tax liability (or liabilities) for the year it ceases doing business.

(2) Any sums acquired by refund, pursuant to Section 9(6) 070(c), from the Association which have theretofore been written off by contributing insurers and offset against (premium, franchise or income) taxes as provided in subsection (1) above, and are not then needed for purposes of this Act, shall be paid by the Association to the Commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

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The NAIC model insolvency guaranty bill for property and casualty insurance provides, in section 16, that rates "shall include amounts sufficient to recoup a sum equal to the amounts paid to the Association. . . ." It is obvious that life insurance premiums, and premiums for certain forms of health insurance, cannot be changed on existing policyholders. Thus, recoupment is virtually unattainable through existing policy premium rates and building such assessments into rates for future policyholders is not only impractical but unfair to all policyholders. The only suitable and practical method of recoupment available to companies writing life and health insurance lies in offsets against premium or other taxes on such companies. The method suggested in this section is not only equitable to the companies involved but also reduces the impact on state revenue by the partial offset over a period of years. To the extent the recovery from the insolvent company exceeds the tax credit received, the state would be the ultimate beneficiary. Such equitable treatment of assessment for tax purposes would have additional positive effects: (1) the state legislature would have an additional incentive for providing adequate funds for insurance department personnel and administration, and (2) participation in the economic loss would be shared, to some degree, by the general public rather than solely by insureds, thus minimizing what might otherwise be a penalty on thrift and savings. It may be advisable in some jurisdictions to provide a cross-reference to the premium or other tax statutes to avoid questions of conflicting statutory provisions.

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070(c)

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(2) Any sums acquired by refund, pursuant to Section 9(6) 070(i), from the Association which have theretofore been written off by contributing insurers and offset against (premium, franchise or income) taxes as provided in subsection (1) above, and are not then needed for purposes of this Act, shall be paid by the Association to the Commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

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OF COUNSEL
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April 30, 1981

HAND DELIVERED

The Honorable Patrick Rodey
Chairman, Judiciary Committee
Alaska State Senate
Pouch V, State Capitol Bldg.
Juneau, Alaska 99811

Re: SB 116

Dear Senator Rodey:

This letter is written concerning Senate Bill 116, on behalf of the American Council of Life Insurance, a trade association of major life insurance companies. I am very sorry that I will not be able to attend the scheduled hearing on this bill on Friday the 1st of May, since I will be out of State. Ironically, I was able to attend the Committee's hearing on two previous occasions when the bill was scheduled and the Committee was unable to get to it.

The idea of a guaranty association made up of admitted insurers writing the same kinds of insurance is generally a sound one. The concept has been carefully worked out by the National Association of Insurance Commissioners, and the legislation that you have before you is largely modelled upon their model act. The Director of Insurance or his representative will undoubtedly provide the Committee a section by section analysis of the legislation and an explanation of the way the guaranty association will work, so I will not repeat that information. However, there is one important point in which the administration's draft legislation diverges from the model legislation of the NAIC. The NAIC draft has, in its Section 13, a provision whereby amounts which the life insurance companies are assessed in order to pay, through the guaranty association, the benefits contracted for in policies with an insolvent company can be

recouped by the insurance companies by offsetting such amounts against taxes otherwise due the state. We believe that the tax offset provision is essential, and that its deletion from this draft legislation is unfair.

The guaranty association is basically a device to provide a public service by protecting certain Alaskans from losses that they would suffer because they or persons who have named them as beneficiaries have contracted with a company that then fails. Because the insurance companies have the expertise to adjust, settle, and administer benefits for the kinds of insurance that they sell, it is not unjust to ask them to help by providing those services. However, the Committee should be careful to analyze who should, and can, pay for the cost of providing the benefits. With the tax offset provided in the NAIC model, the cost is spread to the people of the state as a whole. With no offset, the cost is spread to future purchasers of insurance from the remaining solvent, and presumably better managed, insurance companies, or, and more likely, to those companies' shareholders.

In the case of casualty insurance, a guaranty association assessment can be recouped rather quickly by building the assessment into the rate base. The reason that it can be done quickly is that most casualty and property insurance policies are for one year, and rate increases can therefore be passed along without much delay. Life insurance policies, on the other hand, are not subject to rate increases during their term, except as the contract may originally have provided. Thus, in order to pass the cost of the assessments along, rate increases would have to be built into new policies only and recouped over some fairly extensive future time. Because life insurance companies generally write at the same premium rate nationwide, because the policies have such an extensive life, and because life insurance insolvencies are relatively unusual and are one time occurrences, building such items into a rate base is impracticable. Therefore, unlike the property casualty companies, who will normally recoup their assessments promptly, the life insurance companies generally, again as a practical matter, will have to swallow the loss, which of course is then a loss only to the companies' shareholders.

I believe it was consideration such as this that led the National Association of Insurance Commissioners to conclude that a tax offset was justified.

The premium tax paid by insurance companies in Alaska is "in lieu" of corporate income and other similar taxes. Of course, in recent years, many taxes have been repealed. The insurance companies have not asked that the premium tax be repealed. I am not aware of the aggregate amount of money raised by the premium tax, but relative to the state budget, it is certainly not significant. Conversation with Director Moore has led me to believe that his concern is not with loss of revenue or burden of these fairly rare insolvencies upon the people of the state, but is rather that the presence of a tax offset would take away a cost incentive for the companies to attempt to identify and report to the director in an impending or threatened insolvencies. Put another way, the assessments would be used as threatened punishments for failing to anticipate or somehow assist in preventing the failure of a business competitor. While the companies are certainly willing to cooperate fully in protecting Alaska citizens from the individual impacts of a company insolvency, once that insolvency has been recognized by the director and declared by a court of competent jurisdiction, they feel very strongly that it is inappropriate for them to be called upon to "blow the whistle" on a competitor company which they suspect may be financially weak, although it has not yet been adjudged insolvent. If the company reported turned out not to be insolvent, the companies attempting to cooperate with the director would be concerned about allegations they had slandered the credit of the subject company. Further, if the solvent companies worked together to call attention to weak companies, there are various scenarios that can be imagined whereby their activity could be considered anti-competitive. While there is presently in place federal legislation which exempts the business of insurance from the anti-trust statutes, the insurance industry is very much aware that this exemption is under constant scrutiny. While I certainly cannot represent to have taken a poll among life insurance companies on the question, one has to wonder whether the companies would consider it in their best interest to try to anticipate, report on, or work in concert with regard to financially weak companies, even if they knew they would have to share the cost of the failure. Again, we would submit that such considerations support a concept of a guaranty association limited in its function to protecting Alaskan citizens from insolvencies once they have been clearly identified by appropriate authority. Thus, a tax offset is both justified and equitable to all concerned.

Because of the Council's very grave concern about the absence of a tax offset provision, it is opposed to the passage of SB 116 unless amended to add that provision.

Again, I am very sorry that I am not going to be in town at the time this bill is heard. I fear that my concerns, which are being dictated the evening before I leave town, and which will not even be read by me before being signed by one of my partners on my behalf, will seem strident or unreasonable. I would much prefer to have the opportunity to discuss the bill and our concerns with it, with the director present, in front of the full Committee. If it is possible to do so, consistent with any commitments that have been made concerning moving the bill out of Senate Judiciary, I would greatly appreciate the bill being held until that opportunity exists.

I want to thank you and the members of the Committee for considering these comments.

Sincerely,

M. T. Thomas, for the
American Council of Life Insurance

MTT:sd

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

A G E N D A

Senate Judiciary Committee Hearing
Monday, April 13, 1981
Butrovich Committee Room - 1:30 p.m.

CALL TO ORDER

LEGISLATION BEFORE COMMITTEE:

SB 287 "An Act requiring that evidence of motor vehicle liability insurance be furnished to the Department of Public Safety when vehicle registration is made or renewed; and providing for an effective date."

Scheduled Testimony:

Senator Mike Colletta

Mike Thomas
American Insurance Association

Don Koch
State of Alaska
Division of Insurance

Bill Brown
Department of Public Safety
Division of Motor Vehicles

LEGISLATION BEFORE COMMITTEE:

SB 116 "An Act relating to the creation of the Alaska Life and Disability Insurance Guaranty Association; changing Rule 62(a), Rules of Civil Procedure by providing for an automatic stay of 60 days in a liquidation, rehabilitation, or conservation proceeding; and providing for an effective date."

Not heard - rescheduled 5-1-81

Scheduled Testimony:

Don Koch, Division of Insurance

ADJOURN

Rule 62. Stay of Proceedings to Enforce a Judgment.

(a) **Automatic Stay—Exceptions.** Except as to judgments entered on default or by consent or on confession, and except as stated herein, no execution shall issue upon a judgment nor shall proceedings be taken for its enforcement until the expiration of 10 days after its entry. Unless otherwise ordered by the court, an interlocutory or final judgment in an action for an injunction or in a receivership action shall not be stayed during the period after its entry and until an appeal is taken or during the pendency of an appeal. The provisions of subdivision (c) of this rule govern the suspending, modifying, restoring, or granting of an injunction during the pendency of an appeal or proceedings for review.

(b) **Stay on Motion for New Trial or for Judgment.** In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for a directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

(c) **Injunction Pending Appeal or Review.** When an appeal is taken or review sought from an interlocutory or final judgment or order or [illegible]ision granting, dissolving or denying an injunction, the court in its discretion may suspend, modify, restore or grant an injunction during the pendency of the appeal or the proceedings for review upon such terms as to bond or otherwise as it considers proper for the security of the rights of the adverse party.

(d) **Stay Upon Appeal or Proceedings for Review.** When an appeal is taken or review sought the appellant or petitioner by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond

Senate Bill 116
Section by Section Commentary

Section 1. AS 21.21.050(7)

AS 21.21 is the chapter in the insurance code dealing with investments of insurance companies. .050 deals with limitations by kinds of investment to provide for diversity in the investment portfolio of an insurer. This change adds notes and other evidence of indebtedness of the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) to the miscellaneous category of investments which are limited to 10% of assets.

Section 2. AS 21.21.250(c)

AS 21.21.250 defines miscellaneous investments and is changed by adding notes and other evidence of indebtedness of the ALDIGA.

Section 3.

Section 21.79.010. PURPOSE.

The basic purpose of this model act is to protect policyholders, insureds, beneficiaries, annuitants, payees and assignees against losses, both in terms of paying claims and continuing coverage, which might otherwise occur due to an impairment or insolvency of an insurer. Unlike the property and liability situations, life and annuity contracts in particular are long-term arrangements for security. An insured may be of impaired health or an advanced age so as to be unable to obtain new and equivalent coverage from other insurers. The payment of cash values alone does not adequately meet such needs. Thus, it is essential that coverage be continued. In like manner, an insured may be unable to obtain new health insurance or at least he may lose protection for prior illnesses.

Section 21.79.020. SCOPE.

This section outlines what the bill does and does not cover. Basically, it covers those policies of life, disability, and annuities written by insurers which have submitted to regulation in this State. Policies of nonadmitted insurers are not covered. The term "disability" also includes "accident and health," "sickness and accident" and more.

Subsection (b)(1) is directed toward variable policies and contracts. That portion of the contract where the risk is borne by the policyholder is excluded. However, the obligations of the insurer for mortality and expense guarantees are covered.

Subsection (b)(2) excludes deductibles from coverage.

Subsection (b)(3) exempts the reinsurance business of the impaired or insolvent insurer other than reinsurance for which assumption certificates are used.

Subsection (b)(4) excludes Blue Cross. The logic to this is that Blue Cross is a nonprofit health care provider. It markets prepaid health care through participant providers who in effect guarantee the delivery of the contracted service. The financial structure of Blue Cross is such that they cannot be expected to participate in insolvencies of profit making corporations.

Some additional limitations on the scope are found elsewhere in the act. For example, ALDIGA assumes no liability concerning policies of nonresidents issued by a foreign or alien insurer or for policies of residents issued by a foreign or alien insurer, if such insurer is domiciled in a state having a comparable act (See Section .060). These limitations are not found in the scope section, since it provides exclusion from the entire act and not just portions of it.

Section 21.79.030. CONSTRUCTION.

This section calls for liberal construction.

Section 21.79.040. CREATION OF THE ASSOCIATION.

Subsection (a) creates three accounts, for both administration and assessment purposes, the disability insurance account, the life insurance account, and the annuity account. These three categories of coverage are significantly different, so that persons protected by virtue of one account should not be required to pay for the protection afforded persons protected by the other accounts.

Supplementary contracts are covered under the account in which the basic policy is covered for purposes of assessment. For example, settlement options under a life insurance contract would be covered under the life insurance account.

Section 21.79.050. BOARD OF GOVERNORS.

Subsection (a) provides that the number and term of the members of the Board of Governors shall be determined in the plan of operation. To avoid problems in initially selecting the board, this section includes a provision for a start-up meeting, which shall be called by the Director of Insurance. To determine voting rights at the organizational meeting, each member insurer would have one vote. Thereafter the plan of operation will establish the voting procedures, bylaws, etc., governing the conduct of ALDIGA.

Section 21.79.060. POWERS AND DUTIES OF THE ASSOCIATION.

Subsections (a)-(f) constitute the heart of this model act. These subsections detail the duties of the association by distinguishing: (1) between those insurers whose "impaired" status is attributable to a finding by the Director prior to an order of liquidation, and those whose "insolvent" is attributable to such orders; and, (2) between insolvent domestic insurers and insolvent foreign or alien insurers.

Prior to an order of liquidation, rehabilitation or conservation, ALDIGA has no liability. However, upon a finding by the Director that the insurer is impaired under (a), ALDIGA is authorized to guarantee, assume, or reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the impaired insurer to assess member insurers the amounts necessary to effectuate this activity. ALDIGA would presumably do so in those situations where early assessments would prevent a more costly insolvency later, such as liquidation. ALDIGA, as a condition of its assistance, may negotiate any requirements or safeguards it deems necessary so long as they are approved by the Director and are accepted by the impaired insurer and do not impair the contractual obligations to the policyholders, insureds, and beneficiaries. In the absence of any court order, before any negotiations become final the impaired insurer's acceptance of the terms of ALDIGA is necessary. Through this approach, a mechanism is provided for early action by ALDIGA before the situation further deteriorates. The policyholder, insured, and beneficiaries are protected, claims are paid and coverages continued, for example, through rehabilitating the impaired insurers, or reinsuring the policies elsewhere. Furthermore, the statutory language is highly flexible as to what techniques the association may employ so as to be able to meet a variety of situations.

Under (b) and (c), if the insurer acquires its insolvency status as a result of a final order of liquidation, rehabilitation or conservation, the association shall, rather than may, guarantee, assume, reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer and to assure payment of contractual obligations.

It should be noted that the duties of ALDIGA vary with the kind of insurer. If it is a domestic insurer then all the covered policies must be continued and the contractual obligations met (See (b)). However, if the insolvent insurer is a foreign or alien insurer, contractual obligations which apply to residents of the State must be paid or continued if they are not covered by a similar law in such insurer's domiciliary jurisdiction. (See (c) and (d))

Subsection (d) avoids duplication of coverage by providing that the association shall have no liability for any covered policy of a foreign or alien insurer domiciled in the State having similar protection by statute or regulation. If every state adopts the model act, each state association would protect only covered policies of domestic insurers.

Subsections (e) and (f) relate to the imposition of policy and contract liens, moratoriums, etc. These are devices which have been used in the past in connection with the continuation of the insolvent insurers' coverage. Since, by definition, the assets of the insolvent insurer were not adequate to support its contractual obligations, liens were used to reduce his obligations to a level where the assets would be adequate. However, in the past there was no means to infuse additional funds where needed to make whole policyowners, insurers and beneficiaries. The purpose of the model act is to provide against losses due to insolvent insurers by prompt fulfillment of the insolvent insurer's contractual obligations. To the extent that liens and moratoriums are sanctioned, the model act retreats from this principle. Of course, in situations prior to a court order there may be some question whether a lien or moratorium could be legally imposed so as to impair the contractual obligations of the insurer even in the absence of the specific provisions of this act.

On the one hand, it can be argued that if liens or moratoriums cannot be used there will be a run on the assets of the impaired company. In the past this seems to have been true. However, unlike the past, the performance of the insurer's contractual obligations would be guaranteed under this act.

Also, the standard nonforfeiture laws provide that an insurer in its policies shall reserve the right to defer the payment of cash values for a period of six months after demand thereof with surrender of the policy. Similarly, it is common to require an insurer to reserve for a period of six months the right to defer the granting of any policy loan (other than to pay premiums). For these various reasons, the model act does not encourage use of these liens and moratoriums in ordinary situations.

On the other hand, in periods of severe liquidity problems and economic stress, perhaps of even catastrophic proportions, such devices may become essential. While the model bill concentrates on the protection of those to whom the impaired insurer has a contractual obligation, the impact of assessments on the policyholders of assessed companies is also an important consideration, such as the significant sales of depressed value assets in a tight money market. Consequently, Subsection (e) authorizes ALDIGA to cause to be imposed liens and moratoriums or other similar means.

1. If the court finds that the amounts assessable are less than what is needed, or that the economic or financial conditions as they affect member insureds are sufficiently adverse to render the use of such tools in the public interest; and,

2. The court approves the use of a specific lien, moratorium, etc.

This provides a highly flexible mechanism while, at the same time, it avoids impairing the contractual obligations of the impaired insurer as a routine manner under ordinary economic and financial conditions. The provision also recognizes that while contractual rights of policyowners may not constitutionally be impaired, when the insolvent insures obligation under the contract as assumed by another insurer, the policyowner has two options. The policyowner may accept the new contract with such liens or moratoriums as permitted by the court, or accepts such pro rata payment as is available from the State of the insolvent insurer.

Furthermore, to provide added flexibility in a temporary situation, such as a run on assets, Subsection (f) provides for temporary moratoriums or liens on payment of cash values and policy loans, but not on the payment of other benefits, with the court's approval.

Subsection (g) permits the Director to assume the duties of ALDIGA if they fail to exercise their authority under the act within a reasonable period of time.

Subsection (h) permits the Director to request ALDIGA member assistance with impaired or insolvent insurer issues.

Subsection (i), to enable ALDIGA to protect its interest and the best interests of the policyholders in the handling of an impairment or insolvency, provides that ALDIGA shall have standing to appear in a court with jurisdiction over an insolvent insurer and such standing will extend to any matters concerning the duties of ALDIGA.

Subsection (j) provides for assignment of rights of a beneficiary of benefits under this act. It also establishes subrogation rights for ALDIGA and provides that ALDIGA's right to assets of the insolvent insurer is the same as any other person entitled to benefits under this act.

Subsection (k) places a limit on the liability of ALDIGA as respects a single life.

Subsection (l) allows ALDIGA to contract, sue or be sued, borrow money, employ persons, negotiate, act as a domestic life or disability insurer and take legal action to avoid payment of improper claims.

Section 21.79.07C. ASSESSMENTS.

Subsection (b) outlines different assessment methods for assessments needed to cover foreign or alien insurers and for assessments needed to cover domestic insurers. When a foreign or alien insurer is impaired or insolvent, the member insurers will be assessed on the basis of the premiums they write in the State. This corresponds to the association's liability which is limited to covered policies of residents when the policies are issued by a foreign or alien insurer. When a domestic

insurer is impaired or insolvent, the total amount to be assessed will be allocated to each state in which the impaired or insolvent insurer was authorized at any time to transact insurance in the proportion that the impaired or insolvent insurer premium income in each state for the last calendar year preceding the assessment in which it had premium income bears to its total premium income in such calendar year. The amount allocated to each state will then be assessed to the member insurers in the proportion that the member's premium income from such State for the calendar year preceding the assessment bears to all premium income of member insurers from that State in the calendar year preceding the assessment. Thus, in making the pro ration it is necessary to look to the premium income of the impaired or insolvent insurer in the last year it actually received such income, but in determining each company's assessment, the association would look to the last calendar year preceding the assessment. In any case, assessments would be made separately for each account and the amount assessed from each account will be in the proportion that the total premiums of the impaired or insolvent insurer bear to the premiums of the impaired or insolvent insurer from the kind of insurance in the account.

For example, if a total assessment of $100,000 is needed for the disability insurance account, and the domestic impaired or insolvent insurer received 50% of its premium from state X, then 50% of $100,000 or $50,000 will be allocated to state X. Member insurers receiving premium income from state X will then be assessed in proportion to their share of that state's market, as reflected in premium income. For example, if member insurers receive $30,000,000 in premium from state X and a certain member received $3,000,000 of that amount, then 3/30 of the $50,000 assessment will come from this company, that is, the company will be assessed $5,000 (3/30 = 1/10 and 1/10 of $50,000 is $5,000).

This assessment system should be relatively simple to administer. More importantly, it provides a base broad enough to meet fairly large demands on the association. Equally important, since it reflects the market share of each member in the state considered, it is an equitable method of apportioning the burden of the assessments.

The maximum assessment per year may be varied from State to State depending on the size of the base and the concentration of the business. The two percent maximum should produce an adequate amount, while at the same time, not impose an undue strain in any given year on the assessed companies and their policyholders. In order to prevent further financial difficulties caused by an assessment, Subsection (g) permits abatement of assessments when financial difficulties might result.

Subsection (h) provides some limitation on the amounts which can be assessed in any given year. If these limits are reached, to fulfill its responsibilities, ALDIGA is empowered to borrow funds which later can be repaid out of future assessments.

Subsection (j) provides that a member insurer may consider, in its premium rates and dividends scale, an amount reasonably necessary to meet its assessment obligations. This makes it clear that the cost can be ultimately passed on to the policyowners, that is, to persons who enjoy the protection provided by the act.

Subsection (k) provides that ALDIGA shall issue to assessed insurers certificates of contribution in the amount levied. The certificates may be carried by an insurer in its annual statement as an asset in such form, amount and period as may be approved by the Director. By permitting the company to carry these certificates as an asset, to the extent of their estimated value, the impact on member insurers will be lessened.

Section 21.79.080. PLAN OF OPERATION.

The NAIC has adopted a model plan of operation which is available in our office should you wish to have a copy of same. It is anticipated that ALDIGA, upon passage of this act, would substantially adopt the provisions contained in this model plan of operation.

Section 21.79.090. POWERS AND DUTIES OF THE DIRECTOR.

Subsection (b) requires that the Director give notice of an impairment to the impaired insurer, and hence to its stockholders, and serve a demand that impairment be made good. If the company and stockholders fail to raise the necessary funds, this will be a factor bearing upon the stockholders' ownership rights under Section 110(d).

Subsection (d) provides that the Director shall be appointed liquidator or rehabilitator of a domestic insurer and conservator of a foreign or alien insurer being liquidated or rehabilitated. Requiring the Insurance Director to be the receiver, it is necessary to obtain the benefits of a "reciprocal" state under the Uniform Insurers Liquidation Act, which Alaska adopted in 1966. See AS 21.78.020, .030, .130-.200 and .330(2)-(13).

Proceedings for the liquidation, rehabilitation, or conservation of insurers present several difficulties which the Uniform Insurer's Liquidation Act seeks to solve. Briefly, the difficulties have two sources. First, in some states the liquidator, rehabilitator or ancillary receiver may be a person unfamiliar with insurance regulation. Inefficient administration of the proceedings may result.

Second, the laws of more than one state may be applied to the proceedings particularly regarding ownership of assets and preferences for payment. The result is confusion and inequity in the collection and distribution of the assets. The Uniform Insurers Liquidation Act meets the first source of problems by designating the insurance Director as the receiver of a domestic insurer or the ancillary receiver of a foreign

insurer. To solve the problem of multiple laws and marshalling of assets, the Uniform Act gives the receiver title to the assets. The ancillary receiver is then required to forward all assets to the receiver. The Uniform Act also details laws under which preferences and the distribution of assets will be determined.

In drafting this model guarantee bill, the NAIC made particular effort to the extent possible, to avoid disrupting State liquidation and rehabilitation of laws.

Section 21.79.100. PREVENTION OF INSOLVENCIES.

This section basically establishes a dialogue between the Director and ALDIGA, concerning impairment and insolvency issues. It also enables ALDIGA to cause an examination of a suspect insurer, which is the primary tool in determining financial status.

Section 21.79.110. MISCELLANEOUS PROVISIONS.

Subsection (b) requires that the records be kept of the negotiations and actions by the association. ALDIGA should be held publicly accountable for its actions. On the other hand, effective handling of the rehabilitation or liquidation effort requires minimum publicity. Thus, such records will be made public only after the liquidation, rehabilitation or conservation proceeding is terminated, the impairment or insolvency is terminated or there is a prior order by a court of competent jurisdiction.

Since this act imposes obligation upon the association to continue coverage for policyholders of insolvent insurers, the assets of the insolvent insurer ought to be used, to the extent available, for the purpose of continuing such coverage. Subsection (c) is designed to accomplish this purpose.

Subsection (d), in conjunction with Section .090(b), is intended to prevent the shareholders of an impaired insurer from sitting back and doing nothing and then reaping the benefit of funds put up by the association. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this act. The court is empowered to modify and distribute the ownership rights of impaired insurers in an order to do equity as between the interested parties.

Subsection (e) is designed to recapture excessive dividend payments to affiliates that exercised control over the insolvent insurer. The NAIC Model Holding Company Regulatory Act which has been adopted in Alaska, in large measure, prevents improper distribution of dividends by an insurer to its holding company, since extraordinary dividends are subject to the prior approval of the Director, and ordinary dividends are required to be reported to the Director. If, however, dividends are

paid under circumstances that the insurer should have recently known that such payment could reasonably be expected to affect its ability to perform its contractual obligation to its policyholders, the holding company and affiliates should be required to repay such dividends subject to certain reasonable limitations.

Section 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.

This section enables the Director to examine ALDIGA. ALDIGA must also provide an annual report.

Section 21.79.130. TAX EXEMPTIONS.

ALDIGA is tax exempt except for real property taxes. ALDIGA is not a profit making organization, rather, it is a guarantee mechanism thus its tax exempt status.

Section 21.79.140. IMMUNITY.

ALDIGA will be engaged in some very sensitive issues when performing its duties under this act. The immunity provides protection while performing these duties.

Section 21.79.150. STAY OF PROCEEDINGS.

See Section 5.

Section 21.79.900. DEFINITIONS.

This act covers "insolvent insurers" which are difined to include an insolvent insurer under an order of liquidation issued by a court of competent jurisdiction. An "impaired insurer" is an insurer deemed by the Director to be unable, or potentially unable, to fulfill its contractual obligations.

This model bill enables an association to become involved to the actual court order as noted in Section .060. The finding by the Director that an insurer is impaired, even though not subject to a court proceeding, serves as a triggering mechanism enabling the association to function.

Subsection 10 defines "resident" for the purposes of determining on whose behalf the association may become liable under Section .060, if a foreign or alien insurer becomes insolvent.

Section 4. Section 21.36.035. PROHIBITED ADVERTISEMENT IN INSURANCE SALES.

This section makes it a prohibited unfair trade practice for any person to make use, in any manner, of the protection afforded by this act to aid him in the sale of insurance. This would extend to a person with

an interest in a policy who uses the presence of ALDIGA to support the value of the policy as collateral in a loan transaction, which action would be prohibited. The legitimate function of advertising the existence of the act by the guarantee association and the Director, conduct which would be particularly desirable in notifying policyholders of a company found to be insolvent, or by insurers in public service institutional advertisements, would be permitted. Enforcement and penalties for violation of the section are found in the Unfair Trade Practices Act (AS 21.36).

Section 5. AMENDING CIVIL RULE 62(c).

Section 21.79.150 provides for an automatic stay of 60 days in actions involving the liquidation, rehabilitation or conservation of an insolvent insurer.

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB-116
Title An act relating to Alaska Life and Disability Guaranty Association
Requested by Governor Date 2-6-81

II. FISCAL DETAIL
Agency Affected Division of Insurance
Program Category Affected Public Protection
BRU, Program, or Subprogram(s) Affected Division of Insurance
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 81	FY 82	FY 83	FY 84	FY 85	FY 86
100 PERSONAL SERVICES	0	0	0	0	0	0
200 TRAVEL	0	0	0	0	0	0
300 CONTRACTUAL	0	0	0	0	0	0
400 COMMODITIES	0	0	0	0	0	0
500 EQUIPMENT	0	0	0	0	0	0
600 LAND & STRUCTURES	0	0	0	0	0	0
700 GRANTS, CLAIMS, ETC.	0	0	0	0	0	0
TOTAL	0	0	0	0	0	0

FUNDING (Thousands of Dollars)

GENERAL FUND	0	0	0	0	0	0
FEDERAL FUNDS	0					
OTHER (Specify Fund Source)	0					

POSITIONS

FULL TIME	0					
PART TIME	0					
TEMPORARY	0					

III. ANALYSIS (See Fiscal Note Preparation Instructions, Section III)

IV. DATE 2-6-81 PREPARED BY Kenneth C. Moore Div. of Insurance
AGENCY Commerce & Economic Development
PHONE 2515

Original: Legislative Finance
cc: Budget and Management
Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/80

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February 17, 1981

RECEIVED
FEB 18 1981

Hon. Patrick Rodey, Chair
Judiciary
Pouch V
Juneau, Alaska 99811

Re: Senate Bill No. 116

Please notify the undersigned of any hearings in regard to the above captioned matter.

Sincerely,

ROBERTSON, MONAGLE, EASTAUGH & BRADLEY

M. T. Thomas

MTT/dh

Called 4-10 for more hearing 3/13

Alaska State Legislature

Senate

Judiciary Committee

Official Business

Pouch V
State Capitol
Juneau, Alaska 99811

May 19, 1981

Mr. Michael T. Thomas
Robertson, Monagle, Estaugh
& Bradley
Attorneys at Law
P. O. Box 1211
Juneau, Alaska 99802

Dear Mike:

Thank you for your recent letter concerning SB 116. The Judiciary Committee conducted hearings on this legislation, but no action was taken.

A committee substitute is now being prepared to address some of the issues raised in committee, and I will have my staff contact you when a future hearing date is scheduled.

Sincerely,

Pat

Senator Patrick M. Rodey
Chairman

PMR/ods

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Senator Patrick Rodey
Chairman, Senate Judiciary Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Rodey:

I feel I owe an apology to you and to the members of your committee. You and your staff have been unfailingly courteous in notifying me of upcoming hearings on bills relating to the insurance industry, something which I have greatly appreciated. Recently you had a hearing on SB 116, a bill on which I had written a letter on behalf of the American Council of Life Insurance and had requested to be present when it was heard. I got due notice of the hearing, but then on the day of the hearing got myself entangled in another proceeding which went straight through from the morning and which I was unable to walk out of.

I know from discussions I have had since, that Director Moore was, as I would have expected, more than fair in presenting the alternatives with regard to the guaranty association bill, and I appreciate the fact that the committee fully considered the merits of the council's position, even though I mysteriously did not show up.

I regret not having been there. I treat legislative hearings as pre-empting other matters whenever it is at all possible to do so. I did not want you to think that the matter was not important to me, or that I did not appreciate your care in hearing out the affected parties to legislation before your committee.

Sincerely,

Michael T. Thomas

MTT/ke