

H B

283

STATE OF ALASKA



POUCH V
JUNEAU, ALASKA 99811
(907) 465-3873

HOUSE LABOR AND COMMERCE COMMITTEE

MEMORANDUM

February 8, 1984

To: John Cowdery, Chairman

From: Ken Johnson, Committee Aide

RE: HB 283 -- An Act relating to the creation of the Alaska Life and Disability Insurance Guaranty Association.

This bill was drafted about two years ago by the National Association of Insurance Commissioners. The NAIC put together a number of so called "model acts" in order to help states bring insurance statutes and regulations up to date. These model acts were presented to all 50 states for fine tuning and legislative introduction. This is one of those bills. To date, 34 states have passed very similar legislation.

The bill of course would create the Alaska Life and Disability Association. Any company licensed to sell insurance in the state would be a member of this association. Each member would pay an assessment, not to exceed \$150 per year, to cover the costs of administration and general expenses.

The purpose of the association is to guarantee the policy's of an insurer who has become impaired or insolvent. In the event an insurance company insolvency, the association would assume control of the company's policies and set into motion the action necessary to see policy holders do not lose any investment or benefit. For example, an impaired or insolvent company may get a loan from or its assets be sold by the association. There are limits set for the aggregate liability the association will assume.

The association has the power to borrow and loan money. Most all of the funds necessary for the associations transactions would come from assessments on its members. There is a formula which would be used to make these assessments, however, Ken Moore, Director of the Division of Insurance could better explain this formula. He would serve as director of this association.

A board of governors would be elected, by association members, to carry out the duties of the association. The director must approve the selection of each board member.

This is a general outline of a lengthy and detailed bill. The NAIC has deemed this legislation a "consumer protection bill" because of the insurance policy guarantees. It has passed, as I stated, in 34 states some which have created standing committees in their legislatures to deal with insurance matters.

STATE OF ALASKA 1984 LEGISLATIVE SESSION
FISCAL NOTE

Revision Date: _____

REQUEST

Bill/Resolution No.: HB 283
Title: Life Guaranty Association

Sponsor: Governor
Requestor: Labor & Commerce
Date of Request: _____

FISCAL DETAIL

Agency Affected: Commerce & Economic Development
Program Category Affected: Public Protection
BRU, Program or Subprogram(s) Affected: Insurance

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 84	FY 85	FY 86	FY 87	FY 88	FY 89
OPERATING						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 SUPPLIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS						
900 MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director Phone: 465-2515
Division: Insurance Date: _____

Approved by Commissioner: Richard A. Lyon Date: 2/7/84
Agency: Commerce and Economic Development

- Distribution (by Agency preparing fiscal note):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

RECEIVED FEB 14 1984

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February 10, 1984

Honorable John Cowdery
Chair, House Labor & Commerce Committee
Alaska State Legislature
Pouch V
Juneau, AK 99811

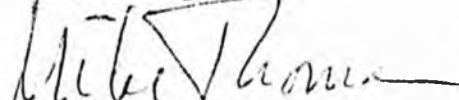
Re: HB 283

Dear Representative Cowdery:

On behalf of the American Council of Life Insurance, this is to make a matter of record the support of that organization for HB 283.

May I also extend our thanks for your help in seeing to it that HB 373, the Valuation and Non-Forfeiture bill, was unanimously passed by the House of Representatives. That bill will mean real savings for Alaskans.

Best regards,


Michael T. Thomas

MTT/gmm

cc: Kenneth C. Moore
William L. Lincoln

BILL SHEFFIELD
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 18, 1983

The Honorable Joe L. Hayes
Speaker of the House
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Mr. Speaker:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill establishing the Alaska Life and Disability Insurance Guaranty Association (the association). This bill is based on the Life and Health Insurance Guarantee Association Model Act proposed by the National Association of Insurance Commissioners in 1971, as amended in 1976.

The bill would provide a mechanism for paying claims on direct life insurance policies, disability insurance policies, and annuity contracts, which are outstanding against insolvent or impaired insurers. The bill would require that all insurers licensed to do business in Alaska be members of the association, and would provide for periodic assessments of the members of the association.

The Alaska Life and Disability Insurance Guaranty Association will provide protection for life and disability insurance similar to the protection provided under existing law for other kinds of direct insurance by the Alaska Insurance Guaranty Association Act (AS 21.80).

Sincerely,

A handwritten signature in cursive script that reads "Bill Sheffield".

Bill Sheffield
Governor

BRIEF SUMMARY: This bill provides a mechanism for paying claims on direct life insurance policies, disability insurance policies, and annuity contracts which are outstanding against insolvent or impaired (next page) (Attach a more detailed explanation if you can.)

ESTIMATED FISCAL IMPACT: none

OTHER STATE AGENCIES CONSULTED/AFFECTED: _____

CONSTITUENT GROUPS:
Those opposed: _____

Those in favor: _____

Those yet to be contacted: _____

Has this or a substantially similar bill been introduced (and not passed) in the legislature in a previous session? Yes x No _____

If so, please state: Bill number SB 116 (1981)
Dept. of Law log no: J-77-064 - 081
(if it was a Governor's bill)

PREFERRED HOUSE OF INTRODUCTION: either

RATE THE BILL'S IMPORTANCE TO DEPARTMENT BY PRIORITY #: 4

DRAFT ATTACHED: Yes x No Not finalized _____

COMMISSIONER'S SIGNATURE: [Signature]

DATE: 1/10/83

Alaska Life and Disability Insurance Guaranty Association
Summary continued

insurers. The bill would require that all insurers licensed to do business in Alaska be members of the association, and would provide for periodic assessments of the members of the association.

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STATE OF ALASKA
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Commerce & Econ. Dev.	DIVISION Insurance	BILL NUMBER HB 283	SPONSOR Governor
DEPARTMENT POSITION			
In favor			
PREPARED BY Kenneth C. Moore	DATE 2/7	COMMISSIONER'S SIGNATURE Richard A. Lyon	DATE

SUMMARY

OTHER AGENCIES AFFECTED BY BILL None	CONSTITUENT GROUP(S) AFFECTED BY BILL All holders of life or disability insurance and annuity contracts.
ORGANIZATIONAL SUPPORT FOR BILL Not known	ORGANIZATIONAL OPPOSITION TO BILL Not known

FISCAL IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This bill will provide public protection that currently does not exist. Policyholders of life and disability policies issued in Alaska will have their policies guaranteed by all life and disability insurers doing business in this state. It also provides a mechanism to enhance the director's review of life or disability insurer solvency.

ANALYSIS OF BILL/PROGRAM EFFECTS

This proposal is based on the Life and Health Insurance Guarantee Association Model Act of the National Association of Insurance Commissioners developed in 1971 and amended in 1976. The bill would provide a mechanism for paying claims on life, disability and annuity contracts on behalf of an impaired or insolvent insurer. Participation would be a condition to license in this state.

Alaska has previously had a domestic insolvency of a life insurance company. In June 1969, the Alaska Western Life Insurance Company was placed in receivership and was ultimately liquidated. The division managed some control through AS 21.78, but that chapter offers little protection for policyholders.

This bill is similar in concept to AS 21.80 which provides protection for property and casualty kinds of insurance.

AMENDMENTS PROPOSED

- On page 7, line 20, change "health" to read "disability."
- On page 7, line 27, insert "(a)" following "ASSESSMENTS."

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

~~25.~~ WHAT OTHER STATES HAVE LIFE GUARANTY FUND ACTS?

While it has not been determined exactly how the provisions of these Acts would apply to the financial problems of NILIC and UNIVERSITY, the following 34 states and the Commonwealth of Puerto Rico have Life Guaranty Acts:

- | | |
|----------------|--------------------|
| 1. Alabama | 18. Nevada |
| 2. Arizona | 19. New Hampshire |
| 3. Connecticut | 20. New Mexico |
| 4. Delaware | 21. New York |
| 5. Florida | 22. North Carolina |
| 6. Georgia | 23. North Dakota |
| 7. Hawaii | 24. Oklahoma |
| 8. Idaho | 25. Oregon |
| 9. Illinois | 26. Pennsylvania |
| 10. Indiana | 27. South Carolina |
| 11. Kansas | 28. Texas |
| 12. Kentucky | 29. Utah |
| 13. Maryland | 30. Vermont |
| 14. Michigan | 31. Virginia |
| 15. Minnesota | 32. Washington |
| 16. Montana | 33. West Virginia |
| 17. Nebraska | 34. Wisconsin |

STATE OF ALASKA 1984 LEGISLATIVE SESSION
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BRU, Program or Subprogram(s) Affected: _____
Insurance

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700 GRANTS, CLAIMS						
800 MISCELLANEOUS						
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CAPITAL						

REVENUE						
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FUNDING: (Thousands of Dollars)

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FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

ANALYSIS: Attach a separate page for analysis

Prepared By: Kenneth C. Moore, Director Phone: 465-2515
Division: Insurance Date: _____

Approved by Commissioner: Richard A. Lyon Date: 2/7/84
Agency: Commerce and Economic Development

Distribution (by Agency preparing fiscal note):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

12/1/83

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 21.79.070. 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 .230(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 defined 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.