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HOUSE COMMITTEE REPORT

(7)

Date Referred: April 27, 1990

FURTHER REFERRALS:

Date of Committee Action: 5/3/90

The LABOR & COMMERCE Committee considered: CSSB 259 (JUD) (efd am)

CS SB NO. 259 (Jud) (efd am) INSURANCE GUARANTY FUNDS

"An Act relating to insurance guaranty funds and to definitions of "impaired or impairment" and "insolvent or insolvency" in laws relating to insurance; amending Rules 24(a) and 62(a), Alaska Rules of Civil Procedure; and providing for an effective date."

- RECOMMENDATIONS:
- be replaced with _____ the same title
 - a new title
 - have attached amendment(s)
 - do pass
 - do not pass
 - no recommendation
 - individual recommendations
 - additional referral to the _____ Committee

ADOPTS: _____ letter of intent

- ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Date/Dept)
- fiscal impact _____ fiscal note(s) _____
 - zero fiscal note _____ zero fiscal note(s) C + ED 4/3/89
 - zero with analysis _____ zero fn/analysis _____

SIGNING DO PASS:

SIGNING:

(Check approv. column)

Do Not Pass No Rec Amend

<u>Dave Donley</u>	<u>Collins</u>	X	
<u>Greenberg</u>	<u>Leman</u>		
<u>Boucher</u>			
<u>Finkelstein</u>			

Dave Donley
Chairman's Signature

STEVE COWPER
GOVERNOR



STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 4, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

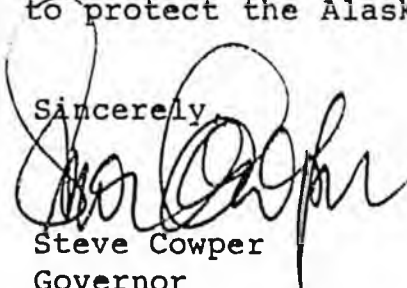
Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to insurance guaranty funds. This bill addresses the problem of providing funds for the payment of claims when an insurance company becomes insolvent.

When insurer insolvencies occur, policyholders should be able to have their claims paid through an industry financed guaranty fund. The policy implemented by guaranty funds is that the risk of insolvency should be spread over all other insurers in the system. Although Alaska already has a guaranty fund, its inadequacies have been exposed by recent experience. The commissioner of the Department of Commerce and Economic Development reports that in a recent case as much as \$5 million in claims of injured seamen could be deprived of coverage because our present fund does not provide for it. This proposal creates a new marine insurance account within our existing guaranty fund. The proposal also allows pre-funding assessments to the present fund so that it may be able to meet demands upon it in the future.

An even more serious inadequacy is our current lack of any guaranty fund at all for life, annuity, and disability insurance coverage. This proposal establishes a new guaranty fund for these kinds of insurance, based on the Life and Health Insurance Guaranty Association Model Act adopted by the National Association of Insurance Commissioners in 1986.

The division of insurance will provide a more detailed description of this proposal to protect the Alaskan insurance consumer.

Sincerely,


Steve Cowper
Governor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CS SB 259 (JW)
PUBLISH DATE: 4/24/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Econ. Dev.
Title: An Act relating to Insurance BRU: Insurance
Guarantee Funds
Sponsor: Rules Components: Operations
Requester: Governor

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (Thousands of dollars)

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

POSITIONS:

FULLTIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact on the division.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
Division: Insurance Date: 3-31-89

Approved by Commissioner: Larry Mercurieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 4/3/89

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
37120-1/040389a

Changes in CS SB 259 (JW)
have no fiscal impact. This
fiscal note is appropriate.
Projections of no fiscal impact
would continue through 1996.

J. P. Tangen

My name is [redacted] I am [redacted] Counsel for the American Council of Life Insurance (ACLI). The ACLI is a national trade association representing over 600 legal reserve life insurance companies. These companies write approximately 93% of the life insurance in force in the United States. Three hundred and forty-four of our companies are licensed to do business in Alaska, accounting for 96.4% of the life insurance in force in the state.

We support the enactment of life and health insurance guaranty associations in all states, the District of Columbia, and Puerto Rico. Currently, such associations exist in ⁴⁶~~45~~ of the 52 jurisdictions. The ^{SIX} [redacted] jurisdictions without guaranty associations for the life and health insurance industry are Alaska, California, Colorado, the District of Columbia, Louisiana, ^{and} New Jersey, [redacted]



We also support Senate Bill 259 in concept. The bill is patterned substantially after the Life & Health Insurance Guaranty Association Model Act adopted by the National Association of Insurance Commissioners (NAIC). We would like to offer [redacted] amendment, which we believe will more closely align the bill with [redacted] the legislation enacted in other states. The [redacted] amendment we recommend to the language currently contained in Senate Bill 259 are as follows:

Premium Tax Offset

The NAIC Model Act includes, as an optional provision, the following language:

A member insurer may offset against its premium, ~~tax liability~~ to this state an assessment described in Section ~~_____~~ to the extent of twenty percent 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 ~~_____~~ tax liability ~~_____~~ for the year it ceases doing business.

This provision has been adopted in some form by ~~37~~ ⁴⁶ of the ~~46~~ jurisdictions which have operational life/health guaranty associations. We strongly believe it should be incorporated into the language of Senate Bill 259.

The problem of insurance company insolvency is a social problem, not simply an industry problem. State regulators play an important role in policing the solvency of the industry to prevent loss to consumers. When the system fails, the cost should be spread as broadly as possible, not borne entirely by the insured population of the state. Moreover, it is patently unfair to require solvent, well-managed companies to pay the losses of their poorly-managed competitors. In effect, the financially sound companies pay twice -- once when they lose business to competitors whose products cost less, and again when that competitor's inappropriate pricing levels result in an insolvency for which guaranty association assessments are levied.

Without a premium tax offset, consumers who choose to pay the actuarially sound premium rates charged by the well-managed companies are penalized as their premium levels are increased to reflect their company's cost of paying the losses for an insolvent competitor.

Even with a full premium tax offset, insurers do not recoup their full assessment. They still lose the time value of their money. Insurers lend money up front to pay all claims of insolvent competitors, then recover it, without interest, at the rate of 20% per year over the next five years. Companies estimate that this results in a total recoupment of 70-80% of the monies initially paid to the guaranty association by way of assessment.

For an Act entitled: An Act relating to insurance guaranty funds and to definitions of "impaired or impairment" and "insolvent or insolvency" in laws relating to insurance; amending Rules 24(a) and 62(a), Rules of Civil Procedure; and providing for an effective date.

SECTION 1

Sec. 21.21.250(c) Other Investments; Prohibitions (Page 1, Lines 12 to 18.)

This Section allows insurers to invest in notes and other evidence of indebtedness of the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) and to have those notes and other evidence of indebtedness considered as admitted assets of the insurer.

SECTION 2

Sec. 21.36.035 Prohibited Advertisements and Representations (Page 1, Line 19 to Page 2, Line 3.)

This Section makes the use of the protection afforded by this Act to aid a person in the sale of insurance a prohibited unfair trade practice. This would extend to a person with an interest in a policy who uses the presence of the Alaska Life and Disability Insurance Guaranty Association (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 ALDIGA and the Director would be permitted. This would be particularly desirable in notifying policyholders of a company found to be insolvent. It would also be appropriate for insurer trade groups not engaged in sales to provide such information as public service announcements.

Enforcement mechanisms for this section already exist in current statute.

SECTION 3

Sec. 21.79 Alaska Life and Disability Insurance Guaranty Association (Page 2, Line 4 to Page 24, Line 4.)

This Section creates the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) which will address the problem of providing funds for the payment of claims when an insurance company becomes insolvent. The proposal creates a funding mechanism to guarantee life insurance, disability

insurance and annuity writings of admitted insurers. These kinds of insurance are not presently covered by any form of protection. The proposal is based on a model drafted by the National Association of Insurance Commissioners.

Sec 21.79.010 Purpose
(Page 2, Lines 7-12.)

The basic purpose of ALDIGA is to provide protection for policyholders and claimants from the financial loss resulting from insurer impairment or insolvency.

Sec. 21.79.020 Scope
(Page 2, Line 13 to Page 4, Line 25.)

This section outlines what ALDIGA does and does not cover.

Subsection (a)
(Page 2, Line 13 to Page 3, Line 3.)

This subsection lists persons covered by ALDIGA.

Subsection (b)
(Page 3, Lines 4 to 9.)

This subsection lists the kinds of contracts and policies covered by ALDIGA. Basically it covers life, disability, annuity and supplemental contracts or policies written by insurers which have submitted to regulation in this state.

Subsection (c)
(Page 3, Line 10 to Page 4, Line 19.)

This subsection lists items not covered by ALDIGA.

Subsection (c)(1) excludes coverage for parts of the policy or contract not guaranteed by the insurer. It is directed toward the non-guaranteed portion of variable policies and contracts.

Subsection (c)(2) excludes that part of the risk borne by the insured. It acts to exclude the deductible portion of a policy.

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

Subsection (c)(4) limits coverage for the rate of interest on policies or contracts which exceed levels established in the section.

Subsection (c)(5) excludes coverage for life, disability or annuity products offered by self insurers or are self funded.

Subsection (c)(6) excludes coverage for dividends or experience rating credits or allowances for administration of the policy or contract.

Subsection (c)(7) excludes coverage for policies issued by a member insurer while it was nonadmitted in Alaska.

Subsection (d)

(Page 4, Lines 20 to 25.)

This subsection defines the term "published monthly average" used in Subsection (c)(4) which limits the rate of interest used on covered policies and contracts.

Sec. 21.79.025 Liability Limits

(Page 4, Line 26 to Page 5, Line 13.)

This section states the limits of coverage offered by ALDIGA. The limits are

- √ \$300,000 on any one life.
- √ \$100,000 for cash surrender value.
- √ \$100,000 for disability insurance benefits.
- √ \$100,000 in the present value of annuity benefits.
- √ \$5,000,000 in unallocated annuity contract benefits irrespective of number of contracts held the contract holder.

Sec. 21.79.030 Construction

(Page 5, Lines 14 to 15.)

This section provides for liberal construction.

Sec. 21.79.040 Creation of Association

(Page 5, Line 16 to Page 6, Line 4.)

Subsection (a)

(Page 5, Lines 16 to 28.)

This subsection creates ALDIGA as a nonprofit entity. Membership in ALDIGA is a condition of an insurers authority to transact insurance in this state. To pay for assessment and administration, two accounts are established. One is for disability insurance and the other is for life insurance annuity and unallocated annuity contracts.

Subsection (b)

(Page 5, Line 29 to Page 6, Line 4..)

This subsection places ALDIGA under the supervision of the Director of Insurance. Provision is made for public meetings.

Sec. 21.79.050 Board of Governors

(Page 6, Lines 5 to 19.)

Subsection (a)

(Page 6, Lines 5 to 12.)

This subsection provides for the number and term of the members of the Board of Governors of ALDIGA to be determined in the plan of operation.

Subsection (b)

(Page 6, Lines 13 to 15.)

This subsection provides for approval by the Director of the board members in which he must consider fair representation by member insurers.

Subsection (c)

(Page 6, Lines 16 to 19.)

This subsection provides that board members are not to be compensated except for expenses incurred while performing duties as a member of the board.

Sec. 21.79.060 Powers and Duties of the Association

(Page 6, Line 20 to Page 14, Line 1.)

This Section is the heart of the ALDIGA proposal. It details the duties of the ALDIGA by distinguishing between:

1. those insurers whose "impaired" status is attributable to a finding by the Director prior to an order of liquidation and those whose "insolvent" status is attributable to such an order; and,
2. insolvent domestic insurers and insolvent foreign or alien insurers.

Prior to an order of liquidation, ALDIGA has no liability.

Subsection (a)

(Page 6, Line 20 to Page 7, Line 1.)

This subsection allows the ALDIGA to act to guarantee, assume or reinsure any or all policies of an impaired domestic insurer. ALDIGA would

presumably do so in those situations where early action would prevent a more costly insolvency of later liquidation. Action under this subsection is not limited to resident policyholders.

Subsection (b)

(Page 7, Lines 2 to 14.)

This subsection requires ALDIGA to act even without an order of liquidation in the case of an impaired member insurer (not insolvent) that is not paying claims provided the conditions in Subsection (c) are met. 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, 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.

Subsection (c)

(Page 7, Line 15 to Page 8, Line 13.)

This subsection establishes conditions precedent to required action by ALDIGA. One of the most important conditions is that there be a statutory provision for the repayment of ALDIGA prior to the return of the company to shareholder or private control. The ALDIGA role here is the payment of benefits and "hardship" cash withdrawals to covered persons. It also establishes that no action has been taken that would effectively render the insurer a non-viable entity.

Subsection (d)

(Page 8, Lines 14 to 26.)

This subsection details the main role of ALDIGA in the event of an insolvency. It provides that if the insurer acquires its insolvent status as a result of a final order of liquidation, rehabilitation or conservation, ALDIGA 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.

Subsection (e)

(Page 8, Line 27 to Page 9, Line 26.)

Subsection (e)(1)

(Page 8, Line 27 to Page 9, Line 12.)

This subsection provides time limits for claims incurred on life and disability insurance policies. The responsibility of ALDIGA varies depending on whether the contract is group or individual.

Subsection (e)(2)

(Page 9, Lines 13 to 15.)

This subsection calls for a diligent effort by ALDIGA to give at least 30 days notice of termination of coverage.

Subsection (e)(3)

(Page 9, Lines 16 to 26.)

This subsection requires ALDIGA to make substitute coverage available to insureds or policyholders who are by law or contractual obligation entitled to continued coverage.

Subsection (f)

(Page 9, Line 27 to Page 10, Line 7.)

This subsection provides that the substitute coverage required in Subsection (e)(3) be offered without new underwriting and with coverage for conditions that existed under the replaced coverage.

Subsection (g)

(Page 10, Lines 8 to 22.)

This subsection provides that the alternative policy offered by ALDIGA shall be subject to the approval of the Director of Insurance. It allows for multiple alternatives that are subject to the same kinds of rate and form standards as other life and disability insurance policies. The primary difference is that ALDIGA cannot reflect changes in the health of the insured after the original policy was last underwritten.

Subsection (h)

(Page 10, Lines 23 to 28.)

This subsection provides that reissue rates that are different from those on the terminated coverage are subject to the approval of the Director of Insurance or by the court.

Subsection (i)

(Page 10, Line 29 to Page 11, Line 4.)

This subsection provides that ALDIGA's obligations to provide coverage under a policy of an impaired or insolvent insurer cease when the coverage is replaced with similar coverage.

Subsection (j)

(Page 11, Lines 4 to 7.)

This subsection ties the coverage providing for guaranteed interest to the limit on interest in Section 21.79.020(c)(4).

Subsection (k)

(Page 11, Lines 9 to 14.)

This subsection provides that non-payment of premiums by 31 days after required by the contract terminates ALDIGA's obligations under the contract other than for claims incurred or cash surrender values due.

Subsection (l)

(Page 11, Lines 15 to 19.)

This subsection provides that premiums due after an order of liquidation belong to and are payable to ALDIGA.

Subsection (m)

(Page 11, Lines 20 to 23.)

This subsection 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 a 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.

Subsection (n)

(Page 11, Line 24 to Page 12, Line 5.)

This subsection provides that under certain circumstances, the court can issue policy or contract liens in connection with ALDIGA provided guarantees, assumptions or reinsurance agreements. This is a device that has 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 its obligations to a level where the assets would be adequate.

Subsection (o)

(Page 12, Lines 6 to 11.)

This subsection permits ALDIGA to seek court imposed temporary stays on the payment of cash values and policy loans. This is intended to avoid a run on the assets of the impaired or insolvent insurer. The language on Lines 10 to 11 which reads "in addition to a contractual provision for deferral of a cash or policy loan value" refers to potential policy provisions which delay access to cash or policy loan value. The injunction ability is in addition to those contractual provisions.

Subsection (p)

(Page 12, Lines 12 to 15.)

This subsection grants the Director of Insurance the authority to assume the duties and powers of ALDIGA if it fails to exercise its authority under the Act within a reasonable period of time.

Subsection (q)

(Page 12, Lines 16 to 19.)

This subsection allows the Director of Insurance to enlist the aid of ALDIGA in matters relating to an impaired or insolvent insurer.

Subsection (r)

(Page 12 Lines 20 to 25.)

This subsection confers standing in court on ALDIGA extending to any matters concerning the duties of ALDIGA. This enables ALDIGA to protect its interests and those of the insureds and policyholders in the handling of an impairment or insolvency proceeding.

Subsection (s)

(Page 12, Line 26 to Page 13, Line 7.)

This subsection provides that a person who receives a benefit from ALDIGA on a covered policy makes an assignment to ALDIGA to the extent of the benefits received. It also establishes subrogation rights for ALDIGA. It 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 (t)

(Page 13, Line 8 to Page 14, Line 1.)

This subsection allows ALDIGA to contract, sue or be sued, borrow money, employ persons, negotiate, act as a domestic life or disability insurer, take legal action to avoid payment of improper claims, to join an association of

similar organizations, and perform other acts that are proper or necessary to implement this Act.

Sec. 21.79.070 Assessment
(Page 14, Line 2 to Page 15, Line 11.)

This Section establishes a post-insolvency assessment approach as the funding mechanism for the guaranty function imposed by this legislation. .

Subsection (a)
(Page 14, Lines 2 to 8.)

This subsection establishes the assessment mechanism to fund the purposes of this Act. Late payments accrue a 10% penalty charge.

Subsection (b)
(Page 14, Lines 9 to 17.)

This subsection provides for two kinds of assessment that will be used by ALDIGA to pay claims under the Act as well as certain examinations and the administrative costs of ALDIGA.

Subsection (c)
(Page 14, Lines 18 to 27.)

This subsection describes how the assessment to fund certain examinations and the administrative costs of ALDIGA will be made.

Subsection (d)
(Page 14, Line 28 to Page 15, Line 4.)

This subsection describes how the assessment to fund claims under the Act will be made.

Subsection (e)
(Page 15, Lines 5 to 11.)

This subsection allows ALDIGA to reduce or defer payment of the assessment if such would endanger the ability of the insurer to meet its obligations.

Sec. 21.79.080 Plan of Operation
(Page 15, Line 12 to Page 16, Line 20.)

This section requires the adoption of a plan of operation by ALDIGA to provide for the administration of ALDIGA. This plan would be subject to review and approval by the Director of Insurance. The National Association of Insurance Commissioners has adopted a model plan of operation which is

available in the office of the Division of Insurance. It is anticipated that ALDIGA, upon passage of this Act would substantially adopt the provisions contained in the model plan.

Sec. 21.79.090 Powers and Duties of the Director
(Page 16, Line 21 to Page 17, Line 14.)

Subsection (a)
(Page 16, Lines 21 to 24.)

This subsection requires the Director to provide premium data to ALDIGA on request. This data will be used to confirm that assessments are being properly paid.

Subsection (b)
(Page 16, Line 25 to Page 17, Line 7.)

This subsection allows the Director to take action against an insurer that fails to comply with the Act, such as failure to pay assessments and failure to comply with the ALDIGA Plan of Operation.

Subsection (c)
(Page 17, Lines 8 to 11.)

This subsection provides an appeal mechanism to the Director for actions of ALDIGA.

Subsection (d)
(Page 17, Lines 12 to 14.)

This subsection requires the liquidator, rehabilitator, or conservator (the Director of Insurance) to notify interested parties of the effect of this Act. Other sections in Title 21 tie in with this Act. AS 21.69.530 provides a response to a situation where a deficiency in capital or assets is found. AS 21.78 contains provisions for the director to seek appointment as receiver and speaks to rehabilitations and liquidations.

Sec. 21.79.100 Prevention of Insolvencies
(Page 17, Line 15 to Page 19, Line 17.)

This section basically establishes a dialogue between the Director and ALDIGA, concerning impairment and insolvency issues.

Subsection (a)
(Page 17, Lines 15 to 26.)

This subsection requires the Director to notify other states of action taken against an insurer relating to issues impacted by this Act.

Subsection (b)

(Page 17, Line 27 to Page 18, Line 3.)

This subsection requires the Director to notify ALDIGA of actions taken by other states against an insurer relating to issues impacted by this Act.

Subsection (c)

(Page 18, Lines 4 to 6.)

This subsection requires the Director to notify ALDIGA of companies suspected of being impaired or insolvent during the course of or following an examination.

Subsection (d)

(Page 18, Lines 7 to 12.)

This subsection requires the Director to furnish ALDIGA with early warning data developed by the National Association of Insurance Commissioners used in detecting problem insurers.

Subsection (e)

(Page 18, Lines 13 to 15.)

This subsection allows the Director to seek the advice of ALDIGA concerning companies seeking to do business in Alaska.

Subsection (f)

(Page 18, Lines 16 to 23.)

This subsection requires ALDIGA to report and make recommendations to the Director concerning companies seeking to do business in Alaska, and report to the Director information indicating impairment or insolvency of a member insurer.

Subsection (g)

(Page 18, Line 24 to Page 19, Line 8.)

This subsection allows ALDIGA to request an examination by the Director of an insurer. This exam is paid for by ALDIGA. Examination is the principle tool in determining financial status.

Subsection (h)

(Page 19, Lines 9 to 10.)

This subsection allows ALDIGA to make recommendations to the Director concerning the detection and prevention of insolvencies.

Subsection (l)

(Page 19, Lines 11 to 17.)

This subsection requires ALDIGA to make a report at the conclusion of an insolvency. This report is to discuss the history and cause of the insolvency. This subsection seeks to find common causes which may be used to detect future problems with other insurers.

Sec. 21.79.110 Miscellaneous Provisions

(Page 19, Line 18 to Page 21, Line 26.)

Subsection (a)

(Page 19, Lines 18 to 21.)

This subsection provides that assessments under an assessable policy are not forgiven through the presence of this Act.

Subsection (b)

(Page 19, Line 22 to Page 20, Line 1.)

This subsection requires ALDIGA to maintain records of all its negotiations and actions. ALDIGA should be held publicly accountable for its actions. On the other hand, effective handling of a 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 the court.

Subsection (c)

(Page 20, Lines 2 to 17.)

This subsection provides that since ALDIGA has the obligation imposed upon it 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 (d)

(Page 20, Lines 18 to 29.)

This subsection 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 ALDIGA. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this Act. The court is empowered by order to modify and distribute the ownership rights of impaired insurers to establish equity.

Subsection (e)

(Page 21, Lines 1 to 26.)

This subsection is designed to recapture excessive dividend payments to affiliates that exercised control over the insolvent insurer. AS 21.22 deals with much of this issue, however, if dividends are paid under circumstances that the insurer should have reasonably known that such payment could reasonably be expected to affect its ability to perform its contractual obligations to its policyholders, the holding company and affiliates should be required to repay such dividends subject to certain reasonable limitations.

Sec. 21.79.120 Examination of the Association, Annual Report

(Page 21, Line 27 to Page 22, Line 4.)

This section enable the Director of Insurance to examine ALDIGA. It also requires ALDIGA to file an annual report.

Sec. 21.79.130 Tax Exemptions

(Page 22, Lines 5 to 7.)

This section provides that 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.

Sec. 21.79.140 Immunity

(Page 22, Lines 8 to 11.)

This section provides ALDIGA with immunity protection while performing its duties under this Act. Since ALDIGA will be engaged in some very sensitive issues when performing its duties under this Act, this is needed.

Sec. 21.79.150 Stay of Proceeding, Reopening Default Judgements

(Page 22, Lines 12 to 16.)

This section provides for an automatic stay of 60 days in actions involving the liquidation, rehabilitation or conservation of an insolvent insurer, which requires a change in the rules of the court.

Sec. 21.79.900 Definitions

(Page 22, Line 17 to Page 24, Line 2.)

Sec. 21.79.990 Title

(Page 24, Lines 3 to 4.)

Sec 21.79 will be cited as the "Alaska Life and Disability Insurance Guaranty Association Act."

SECTION 4

Sec. 21.80.020 Applicability
(Page 24, Lines 5 to 10.)

This amendment expands the existing Alaska Insurance Guaranty Association (AIGA) to include marine coverage for vessels under 100 feet in length. Presently no marine coverage is provided under AIGA. It also clarifies that coverage is extended only for policies written by an admitted insurer.

SECTION 5

Sec. 21.80.040 Creation of Association
(Page 24, Lines 12 to 26.)

This expansion of the existing Alaska Insurance Guaranty Association (AIGA) to include marine coverage for vessels under 100 feet in length has been placed in the "all other insurance" account.

SECTION 6

Sec. 21.80.050(a)
(Page 24, Line 27 to Page 25, Line 7.)

This amendment provides a mechanism for assuring the AIGA board is always fully staffed.

SECTION 7

Sec. 21.80.060(a)
(Page 25, Line 8 to Page 27, Line 25.)

This amendment clarifies that the obligation of the association commences with an order from the court when the insolvent insurer or the receiver has ceased payment of any or all claims.(Page 25, Lines 12 to 16).

This amendment increases the covered claim amount from \$300,000 to \$500,000 (Page 25, Line 21).

Assessments may be deferred if it would endanger the member insurers ability to meet its contractual obligations (Page 26, Lines 23 to 24).

It requires that AIGA's servicing facility operate and maintain its principal office in Alaska unless cost savings can be demonstrated without service delays (Page 27, Lines 14 to 18).

SECTION 8

Sec. 21.80.070(a)
(Page 27, Line 26 to Page 28, Line 9.)

This amendment removes language that is no longer necessary. Since the plan does exist and the Director may require revision, it no longer accomplishes anything.

SECTION 9

Sec. 21.80.080(b)
(Page 28, Line 10 to Page 29, Line 3.)

The level of penalty for failure has been increased from a minimum of \$100 per month to \$250 per month (Page 28, Line 26).

This amendment also allows the Director of Insurance to assume AIGA powers if the court finds that AIGA has failed to act in accordance with statute, or its plan of operation (Page 28, Line 29 to Page 29, Line 3).

SECTION 10

Sec. 21.80.120 Examination of Association
(Page 29, Lines 4 to 9.)

This amendment requires that the annual report by AIGA be certified.

SECTION 11

Sec. 21.80.140 Recognition of Assessments in Rates
(Page 29, Lines 10 to 24.)

This Section allows assessments to be reflected in future charges made for insurance policies. This amendment allows an assessment to be reflected as a separate charge on the policy. It also allows a rating organization to make a provision in the rate structure for recovery of assessments by its member or subscriber insurers. That charge is not taxable.

SECTION 12

Sec. 21.90.900(24)-(25)
(Page 29, Line 25 to Page 30, Line 5.)

This amendment adds definitions for "impaired", "impairment", "insolvent", and "insolvency" to the Title.

SECTION 13

Repealed
(Page 30, Lines 6 to 7.)

AS 21.80.070(d) is repealed. This section relates to allowing the functions of AIGA to be performed out of state.

AS 21.80.170 is repealed. This section relates to termination of AIGA. If AIGA is to be disbanded, it would be appropriate to address that issue at the time it becomes a possibility.

SECTION 14

Rule 62(a) Rules of Civil Procedure
(Page 30, Lines 8 to 11.)

This Section reflects the change made in Sec. 21.79.150 on Page 22, Lines 12 to 16.

SECTION 15

Rule 24(a) Rules of Civil Procedure
(Page 30, Lines 12 to 15.)

This Section reflects the change made in Sec. 21.79.060(r) on Page 12, Lines 20 to 25.

SECTION 16

Initial Organization of Association
(Page 30, Lines 16 to 24.)

This is a temporary statute since its impact is of short duration. To avoid problems in initially selecting the board, this section provides for an organizational meeting to be called by the Director of Insurance. A voting

process is described. If no board members are selected within 60 days the Director may appoint the initial board.

SECTION 17

Effective Date
(Page 30, Line 25.)

This proposal is effective January 1, 1991.

SB259

MEMORANDUM

State of Alaska

TO: Don Koch
Chief of Market Surveillance
Acting Deputy Director
Division of Insurance

DATE: February 16, 1990

FILE NO.:

THRU:

TELEPHONE NO.: (907) 465-2577

SUBJECT: CPA Mutual Ins. Co.
Risk Retention Group

FROM: Ted Lehrbach *HL*
Insurance Market Analyst III
Division of Insurance
Department of Commerce and
and Economic Development

Per your instructions I have formulated a response letter to Mr. H. P Head, of the CPA firm of Thomas, Head & Greisen. Mr. Head wrote to me, copying the Commissioner and the Senate and House Labor & Commerce Committees regarding an implied threat by his risk retention group CPA Mutual Insurance Company Risk Retention Group, to non-renew his policy because they feel that our initial registration fee of \$1,000 is too high. Attached is a copy of my response letter to Mr. Head.

As you know, this is one of many ongoing issues involving many state regulatory agencies, the NAIC, and the risk retention interests. The regulatory notice and hearing process was properly followed. The fee is non discriminatory as required by the Federal Liability Risk Retention Act of 1986.

I suspect that Mr. Head may not fully realize the distinctions between his risk retention group "insurer" and that of an admitted insurer, so I attempted to touch upon some of the important distinctions in my letter to him.

Needless to say, it is frustrating to receive a letter such as this when you realize the inherent dangers to the insuring public regarding the use of undercapitalized risk retention groups and/or purchasing group insurers. I am especially concerned about CPA Mutual's implied threat to cancel these two Alaska policyholders because they do not like our fee structure. Most of the risk retention groups who are active in the state have had no problem in complying with our registration requirements and the initial registration fee.

MEMORANDUM

David Walsh
2/16/90

I attach to this memo the following items which may constitute a briefing of the development process for the regulations and the fees.

1. My memo of March 24, 1989 to Director Paul Roller.
2. Ron Zobel's memo to Art Peterson, Dept. of Law, of June 7, 1989.
3. Art Peterson's memo to Director Roller of July 24, 1989.
4. Copy of the original policy statement drafted in Oct. 1988.
5. Copy of Order 89-3 and the regulations.

Confirming our worries about the risk retention solvency issue, is the fact that within this month, two risk retention groups have announced that they will no longer be writing or renewing any policies.

Petromark Risk Retention Group has written to its policyholders about a problem with their most recent actuarial statement. The letter starts out as follows:

Dear Policyholder, I have some very bad news to report. In short, the Board was shocked to learn last week from Wyatt and Co., Petromark's actuaries, that the December 31, 1989 financial statement reserves which Wyatt projects are needed to pay for outstanding claims are nearly three times the reserves that have been established on a case by case basis by Petromark's claims managers.

Petromark goes on to explain that they will have the issue reviewed, but in the interim, they will be forced to non-renew any policies coming due within the next 60 days and cease writing any new policies.

I have requested the names of any Alaskan policyholders from them but in 5 days and several phone calls have not received an adequate response.

Another risk retention group, Environmental Protection Insurance Co., has discontinued operations due to what was described as "a lack of interest from buyers,..." in an article appearing in the January 15th 1990 issue of Business Insurance. I do not believe they have any Alaska policyholders.

Regarding CPA's statement that our fees are "inordinately high" and are "five times higher" than any other state, I would like to submit the attached copy of the most recent issue of The Risk Retention Reporter, an unofficial industry voice for risk retention interests. Of interest is Vermont's decision to charge a \$200 registration fee to out of state risk retention groups. In addition to the \$200 fee they also charge another \$300 once the risk retention group is

MEMORANDUM

David Walsh
2/16/90

accepted by the Vermont DOI. This means Vermont will now implement a total initial registration fee of \$500 for the registration and acceptance of a risk retention group. Their total continuation fee charges will now be \$400. Add to this the fact that South Carolina's registration fee is \$600, it reaffirms the reasonableness of our charges, especially when one considers the burden of Alaska's geographical location.

It appears that many other states are looking hard at registration and continuation fees due to increased time and effort spent by states which must now at least register and monitor not only risk retention groups but purchasing groups as well.

Also in the February 15th issue, reference is made to Georgia's recent decision to require all risk retention groups providing coverage to members in Georgia to comply with their Unauthorized Insurers Act. It appears that they are following our lead as outlined in our policy statement of Oct. 1988, regarding a stricter regulatory stance.

If anyone wishes any further information such as copies of the federal act or copies of the many informative articles collected in my topic files about the issues surrounding risk retention, I will be happy to provide them.

HTL

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

February 20, 1990

Mr. H.P. Head, President
Certified Public Accountants
Thomas, Head and Greisen
A Professional Corporation
1400 West Benson Blvd., Suite 400
Anchorage, AK 99503-3658

Dear Mr. Head:

RE: CPA Mutual Insurance Company of America
Risk Retention Group

This will acknowledge and thank you for your letter of January 26, 1990, received February 5. I can understand your concern regarding the letter received from your risk retention group, CPA Mutual Insurance Company of America Risk Retention Group, which seems to imply that they may decide to discontinue doing business in Alaska primarily because they object to our registration requirements and fees.

In this letter, I will attempt to address your concerns and will also attempt to clarify several items in CPA's letter which we feel may be misleading. I'm sure that you can appreciate that in any dispute, there are always two sides to any issue. The following is somewhat lengthy but will hopefully respond to your concerns.

In your letter you ask by what authority and procedure the registration fees were established. The fees were established by Order 89-3 adopting regulations 3 AAC 24.101-590. In addition, 3 AAC 31.060(a)14 established the amount of the fees, as implemented by Orders 89-2 and 89-4. I enclose copies for your benefit.

The regulations were developed in late 1988 and copies were sent on January 20, 1989 to all risk retention groups with a notice of a hearing to be held on March 10, 1989. Notices were placed in the major newspapers in Alaska during the week of January 26, 1989 stating that a hearing would be held in Juneau on March 10, 1989. The notice also solicited any written testimony from any risk retention group or interested party; the deadline being March 10, 1989. The hearing date was also published in several insurance periodicals within articles covering the proposed regulations.

The hearing was held on March 10, 1989 and three people attended, with no one wishing to give verbal testimony. There were three submissions of written testimony; two objected to the establishment of fees. Our research had indicated that the state does have authority implied in the federal law, and vested in state law, to require risk retention groups to register with and pay appropriate fees on a nondiscriminatory basis.

The regulations were reviewed and revised by our Department of Law and were signed by the director on April 24, 1989 and by the Lt. Governor on July 24, 1989. The effective date was set at August 23, 1989. Order 89-3 was sent to all risk retention groups in October of 1989 and a Notice of Fees Due was sent out referring to the adopted regs on December 8, 1989. We granted a grace period of 30 days beyond the December 31 due date for the payment of the registration fees. In essence, ample notice was given by the division of its intent to establish registration fees and requirements for registration.

The director wished to establish guidelines so that risk retention groups, even though they are subject to certain exemptions from our state laws, could still be monitored and watched closely due to the potential risks involved regarding issues of solvency and disclosure.

The registration and fee regulations came about with a process started in 1988 when the Director of Insurance requested that a policy statement be drafted regarding the applicable state insurance regulatory laws and the regulation of risk retention groups and purchasing groups formed under the 1986 Federal Liability Risk Retention Act. A policy statement was developed and mailed to all risk retention groups who had sent to us a letter of intent.

This included CPA Mutual Insurance Company of America, A Risk Retention Group. The policy statement outlined applicable state laws which would apply to the registration and regulation of risk retention groups operating in Alaska. Under the Federal Liability Risk Retention Act of 1986, risk retention groups were allowed to form by domiciling themselves in one of the 50 states. They were then exempted from most state regulatory laws and, in essence, were allowed to do business across state lines. The states do retain certain regulatory powers, but, unfortunately, the federal law left some regulatory voids between where the federal law provided exemptions versus where state regulatory authority would prevail.

For example, risk retention groups would still be subject to certain portions of each state's laws regarding deceptive, false, or fraudulent practices, but are preempted from some portions of the state unfair trade practices laws that relate to unfair methods of competition or unfair acts or practices. In addition, risk retention

groups were exempted and prevented from participating in any insurance insolvency guaranty association or fund of any state. Because both of these issues were of a great concern to the director, he felt it necessary to try to define the boundaries of our state regulatory insurance laws with respect to the federal act. The issue of solvency is extremely important to any state insurance department as, I am certain as a CPA, you can appreciate. In addition, we recognized that certain problems regarding the solicitation and sale of policies to Alaskan insureds would occur and complaints would arise. Unfortunately, even though the federal law preempts certain of our unfair practices and trade laws, the U.S. Department of Commerce failed to set up any form of complaint department to handle concerns raised by insureds in states outside of the state of domicile of the risk retention groups. The director anticipated, correctly, that complaints would first come to us, and we would attempt to assist our Alaskan insurance consumers to the extent that we were not hampered by the federal law.

In establishing the fee amount, the director looked to our existing fees for a comparison. The division has a nonrefundable fee of \$1,000.00 for insurers who seek to obtain a certificate of authority and, thus, become an "admitted insurer" in our state. They submit an application and documents which are reviewed and analyzed by the department. If the application is rejected, the fee is not refunded.

Since the federal act requires that we cannot discriminate against risk retention groups because of minimum capital and surplus requirements, we cannot reject them for not meeting our minimum financial requirements for "admitted" insurers. However, we still have the obligation to review the registration materials submitted by the risk retention groups to ascertain whether or not they meet the requirements of the Risk Retention Act by definition and meet their domiciled state's requirements. This is a similar process to what is done with insurers' applications for certification or admittance, even though our remedies with risk retention groups are limited.

Therefore, it was determined that since we already had a fee standard set for the review of those insurers who apply for a certificate of authority, the director used the same fee to apply to the registration of risk retention groups. In essence, the fee figure of \$1,000.00 meets the federal law definition of being "nondiscriminatory" as contained in Sec. 3 (a)4. of the Liability Risk Retention Act of 1986:

Sec. 3(a) Except as provided in this section, a risk retention group is exempt from any state law, rule, regulation, or order to the extent that such law, rule, regulation or order would --

(4) otherwise discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of state laws generally applicable to persons or corporations.

Please be aware that the division has given this matter much thought. We are concerned about the plight of the Alaskan businessman regarding the availability and affordability of insurance. The Risk Retention Act was an attempt by Congress to address this problem. It is a good concept in many ways, but is far from perfect. There have been ongoing issues which are still being debated within the insurance industry and by state regulators. Please recognize that CPA Mutual, as a risk retention group, is apparently unhappy with our regulatory position. This is their right and we have no problem with that. However, please also be aware that our reasons for attempting to apply Alaska insurance laws where they are not preempted by federal law is to try to protect the Alaska insurance consumer as best we can. This is our duty and is not done in a capricious manner as the letter from CPA Mutual seems to imply.

It is interesting to note that their letter describes our fee as being "inordinately high" being "five times higher" than any other state. This is simply misleading. Many states charge registration fees. South Carolina has a registration fee of \$600. It concerns me that your risk retention group is implying a threat of cancellation of your policy because they disagree with our fees or feel that it is too high. They also imply that the fee is so high that it is a financial burden to them. I would hope that this is not the case. As an insurer domiciled in Vermont, I would assume that they have enough capital and surplus to meet their operating and claims obligations. To apparently threaten two lone Alaskan policyholders because of a one-time initial fee of \$1,000 (by the way, the continuation fees are \$200 annually for a risk retention group as opposed to \$500 for an admitted insurer) seems to be highly unusual coming from an insurer who may potentially have to pay a policy limit claim of \$500,000 or \$1,000,000.

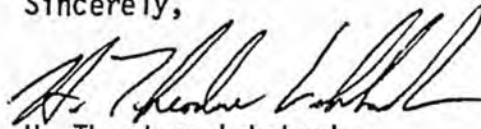
We can only assume that CPA Mutual Insurance Company Risk Retention Group gave you the proper disclosure notice as required by the federal act. This disclosure notice is to inform policyholders that the risk retention group is not subject to all of the insurance laws of your state and is not subject to the state insurance insolvency guaranty fund. This means that if your risk retention group does become insolvent, for whatever reason, then both you as a policyholder, and any persons having a claim under the policy, may be left unprotected. This is one of the disclosure issues with which state

February 20, 1990

insurance departments are concerned. The notice is supposed to be stamped on the policy. We are curious to know if this issue was ever discussed or explained to you when the policy was solicited. I would appreciate hearing from you.

We realize this letter is long; however, we have attempted to deal with the issues with which you are concerned. There are many more sub-issues which cannot be reasonably discussed in a letter. I would be more than happy to discuss the issues further with you by phone, if you desire. My telephone number is (907) 465-2560).

Sincerely,



H. Theodore Lehrbach
Insurance Market Analyst

HTL/jc2101q
022090c

Enclosures

cc: Larry Mercurieff, Commissioner
Department of Commerce & Economic
Development
David Walsh, Director, Division
of Insurance
House Labor & Commerce Committee
Dave Donley
Max Gruenberg, Jr.
Mark Boyer
Virginia Collins
Loren Leman
Senate Labor & Commerce Committee
Dick Eliason
Patrick Rodey
Jan Faiks
Jay Kerttula
Jack Coghill

CPA Mutual

G
FYI

March 1, 1990

The Honorable Max F. Gruenberg, Jr.
House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Gruenberg:

Re: Response to a Letter from Mr. M. P. Head

Enclosed is a memorandum and supporting material compiled in response to the letter received from Mr. Head, written January 19, 1990 and received on February 5, 1990. The memorandum packet includes a copy of the response letter sent from Ted Lehrbach, Insurance Market Analyst, to Mr. Head. The rest of the supporting information will provide a detailed review of the issues and promulgated regulations referred to by Mr. Head.

If there are any questions, you may contact Mr. Lehrbach at 455-2560. He will be happy to answer any questions you might have.

Very truly yours,

David J. Walsh
Director

DJW/dkt1272c
022700b
Enclosures

cc: House Labor and Commerce Committee
Representative Dave Donley, Chairman
Representative Mark Boyer
Representative Virginia Collins
Representative Loren Leman

Senate Labor and Commerce Committee
Senator Richard I. "Dick" Elfrason, Chairman
Senator Patrick Rodey
Senator Jon Faiks
Senator Jalmar H. Kerttula
Senator John B. "Jack" Coghill

STATE OF ALASKA
DIVISION OF INSURANCE

POLICY STATEMENT
RISK RETENTION GROUPS
PURCHASING GROUPS

The Division of Insurance has received a number of inquiries concerning the regulation of Risk Retention Groups and Purchasing Groups that seek to transact insurance business in the state of Alaska. The Liability Risk Retention Act of 1986 (LRRRA 1986) prescribes the extent to which states may license, regulate and tax Risk Retention Groups (RRGs) and Purchasing Groups (PGs). The following is a summary outline of the applicable state statutes and regulations with which these groups must comply. It is advisable that this outline be used as a guide only, and, the specific state statutes mentioned herein should always be referred to. The purpose of this outline is to advise RRGs and PGs as to how the State of Alaska, Division of Insurance, intends to exercise those regulatory and taxing powers reserved to the states under LRRRA 1986.

I. RISK RETENTION GROUPS DOMICILED IN THE STATE OF ALASKA

Risk Retention Groups chartered under the laws of the State of Alaska will be organized, regulated and taxed as a domestic liability insurance company. They may be formed under Title 21 of the Alaska Insurance Code. Risk Retention Groups are exempt and excluded from The Alaska Insurance Guarantee Act (AS 21.80), pursuant to section 3 (a)(2) of the LRRRA 1986. Therefore all policies issued by a domestic RRG must provide the notice set forth in section 3(a)(1)(I) of the LRRRA 1986.

Risk Retention Groups chartered in this state must also comply with section 3(d)(1)(A) and 3(d)(2)(3) of the LRRRA 1986.

II. RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE

A. Registration:

The division will require the registration of RRGs on a form prescribed by the director, and payment of a registration fee to cover the costs of processing both the registration forms and the forms required for the designation of the Director of Insurance for service of legal documents and process. Proposed regulations are pending pursuant to AS 21.06.090. The registration form is attached. The proposed fee is \$1000.

B. Laws Relating to the Procurement of Coverage for RRG Members:

The division requires that insurance written or placed with an RRG upon a subject or a risk resident, located, or to be performed in Alaska be done through a properly licensed Alaska Surplus Lines Broker. There is no residency requirement to obtain the license. The applicable state law is AS 21.34.

Since the Federal law preempts the states from requiring non-domestic RRGs to maintain minimum surplus or capital, AS 21.34.040(c) does not apply. However, the balance of AS 21.34, including the Surplus Lines Brokers Bond per AS 21.34.140 has not been preempted.

Therefore a properly licensed Alaska Surplus Lines Broker, (either resident or non-resident) may place coverage with a Risk Retention Group without the required surplus and capital required in AS 21.34.040(c).

This will only apply to Risk Retention Groups who have met all of the registration requirements as set forth in the proposed regulations and who meet the requirements of their state of domicile as a chartered and licensed liability insurer.

who is also authorized to do business as a liability insurer in any state. It should be noted that any Risk Retention Group that may have formed under the special captive laws of a state must still meet the requirement of being able to do business as a liability insurer in that state in order to meet the required definition of an RRG as defined in section 2 (a)(4)(C)(i) of the LRRRA 1986.

C. Examination Statutes:

With the exceptions and limitation as outlined in section 3 (a)(1)(E) of the LRRRA 1986, all of the laws of the State of Alaska pertaining to the examination of admitted insurers shall apply to the examination of RRGs whether domiciled in this state or not. Specific laws of interest to RRGs are AS 21.06.080, AS 21.06.120-170.

Any person acting or offering to act as an agent or broker for an RRG not domiciled in Alaska shall be subject to the examination provisions outlined in AS 21.34 and must hold a valid Alaska surplus lines broker's license. However, if a placement is made by a person acting for or offering to act for an RRG, who does not hold a valid Alaska surplus lines broker's license, that person may be subject to fines and penalties including those contained in AS 21.33, AS 21.34 and AS 21.36.

D. Taxes:

The Risk Retention Group is responsible for the reporting and payment of premium taxes pursuant to AS 21.09.200 and AS 21.09.210. Currently that rate is 2.7%. However, where the Risk Retention Group provides documentation to the Division verifying the proper collection, reporting and payment of applicable taxes by a properly licensed Alaska Surplus Lines Broker pursuant to AS 21.34.180, the liability for the payment of that portion of tax is waived.

E. Annual Report:

The filing of an annual report as prescribed by LRRRA 1986 should be done according to AS 21.09.200 and/or AS 21.34.040.

III. PURCHASING GROUPS

A. Registration:

The division is currently proposing regulations that will require the registration of Purchasing Groups upon a form prescribed by the director and the payment of a registration fee to cover the costs of processing the registration forms and the forms designating the Director of Insurance for service of legal documents and process. The registration form is attached. The proposed fee is \$500.

B. Laws Relating to the Procurement of Insurance Coverage by or for Purchasing Groups on Subjects Resident, Located or to be Performed in Alaska:

The following requirements must be met regarding the procurement of insurance by a Purchasing Group whether it is self purchased by the PG or placed through a licensed agent or broker. If the purchase is made from:

1. **An Admitted or Domestic Insurer;** the person acting or offering to act or aiding in the procurement, whether an employee or member or the PG or not, must have a valid Alaska agent's or broker's license. There is no discrimination as to residency of the agent or broker.

2. A **Nonadmitted Insurer**; the purchase can only be from an "eligible" insurer meeting the requirements of AS 21.34.040 and AS 21.34.050. This type of placement can only be made through a properly licensed Alaska surplus lines broker. Again, no discrimination as to the residency of the broker will apply.

The purchase of liability insurance from a noneligible or unauthorized insurer that does not meet the requirements of AS 21.34.040-050 is not legal and is subject to AS 21.33.037 and all applicable penalties including those outlined in AS 21.33.055. Penalties contained in AS 21.36 may also apply.

3. A **Risk Retention Group Domiciled in Alaska**; the purchase must be made as outlined in section I of this outline.

4. A **Risk Retention Group Not Domiciled in Alaska**; the purchase must be done through a properly licensed Alaska surplus lines broker as outlined in section II (B) above.

C. Taxes:

The method of payment of taxes on policies issued on risks located, resident or to be performed in Alaska, by a Purchasing Group, shall be determined by the method of procurement of the coverage. If the coverage was placed with a domestic or admitted insurer, or a domestic RRG, the appropriate taxes shall be paid by the insurer or RRG.

If the method of procurement is through a non-admitted but "eligible" insurer, or an RRG not domiciled in Alaska, the tax shall be paid by the surplus lines broker placing the business.

FOR FURTHER INFORMATION

Write to State of Alaska, Division Of Insurance, Ted Lehrbach, Market Analyst,
PO Box D, Juneau, Alaska, 99811-0800.

MEMORANDUM

State of Alaska

TO: Paul Roller
Director
Division of Insurance

DATE: March 24, 1989

FILE NO.:

THRU: Don Koch
Chief of Market Surveillance

TELEPHONE NO.: (907) 465-2560

SUBJECT: Adoption of Risk Retention
Regulations

FROM: Ted Lehrbach
Insurance Market Analyst
Division of Insurance
Department of Commerce and
and Economic Development

I conducted a hearing March 10, 1989 in the Large Conference Room, 9th Floor, State Office Building, Juneau at 9:00 a.m. for the purposes of receiving testimony on the proposed adoption of new regulations 3 AAC 24.010 - 290, and 3 AAC 24.300-590, relating to the registration and payment of fees by risk retention and purchasing groups.

Three people appeared for the hearing, but none wished to provide oral or written testimony.

Four pieces of written testimony were received prior to the deadline of 5:00 p.m. the same day. No other testimony was received after the deadline. The written testimony was received from:

The National Risk Retention Association
The National Association of Wholesaler-Distributors (A Risk Retention Group)
John J. Sarchio of Chadbourne & Parke, representing Chicago Insurance Company
The Housing Authority Risk Retention Group, Inc.

PURPOSE AND NEED FOR THE REGULATIONS

The Federal Liability Risk Retention Act of 1976 allows for the establishment of two types of entities; Risk Retention Groups, and, Purchasing Groups. Risk Retention Groups are created as insurance companies domiciled in one state. Purchasing Groups are set up as any group of individuals or entities with a common liability exposure, to purchase insurance for it's members on a group basis.

The intent of Congress in allowing these types of entities to be established was to increase availability and affordability of liability insurance, especially those lines of insurance which were hit by the "hard" market of 1986.

Congress gave risk retention groups exemptions to all state regulatory laws, except the insurance laws of the domiciliary state and some specific laws that are mentioned in the act, which any state may apply to risk retention groups. On the other hand, purchasing groups were required to comply with all state insurance laws except those laws for which they were specifically exempted as contained in the Federal Act. This means that with respect to non-domiciliary states, purchasing groups are subject to all state insurance laws except where specifically exempted, but risk retention groups are more broadly exempted from state insurance laws, except where the Federal Act specifically provides authority. This is an important distinction which should be kept in mind whenever interpreting the Federal Act and applying Alaska Insurance Statutes to each of the two entities created by the LRRRA of 1986.

MEMORANDUM

Paul Roller
Risk Retention Regulations

The Federal Act sets forth a process of informing each state in which groups want to do business. This process requires a letter of intent to be sent to the state listing some basic information. The Federal requirements are greater for risk retention groups than for purchasing groups. The Federal act does require that both entities "register with and designate the state insurance commissioner of each state in which it does business as its agent solely for the purpose of receiving service of legal documents or process..." It does allow an exemption for any risk retention group or purchasing group which was formed prior to April 1, 1986 under the 1981 Product Liability Risk Retention Act.

The purpose of the proposed regulations is to set specific registration requirements for both risk retention groups and purchasing groups that wish to do business in Alaska. Since we have issued a policy statement which describes how and to what extent Alaska law applies to these entities, it has become clear that we do not receive all the information we need from the Federally required "letters of intent" to properly monitor and regulate the groups according to the Alaska Insurance Laws which apply.

The most significant of the applicable Alaska Laws is AS 21.34, the surplus lines laws. In order for us to adequately protect the insuring public from the overuse or improper use of unauthorized insurers, we need to have the information which is outlined in the proposed regulations. It is also a method by which we can inform each group wishing to do business in Alaska on how AS21.34 applies to them.

The fees are necessary to cover our regulatory costs and are non-discriminatory. The \$1,000 registration fee for risk retention groups, for example, is the same charged an admitted insurer entering our state.

SUMMARY OF WRITTEN TESTIMONY

The prevailing argument contained in the written testimony is that Alaska has no authority by the Federal Act to require registration or fees for such. There is strong objection to the amount of the fees, the general feeling being that they are too high or discriminatory.

There is also a reference to the registration requirements as being an "unnecessary and duplicative burden" upon the groups.

The testimony from The National Association of Wholesaler-Distributors addresses the "grandfather" clause in the Federal Act, surmising that those groups that were formed prior to the 1986 amendments to the act are exempt from any registration requirements.

ANALYSIS AND RECCOMENDATION

The Federal Act does not specifically rule out registration or fees by the non-domiciliary states. To the contrary, if one looks at the act as a whole, the only way a group gains the exemptions from state laws is for it to qualify as a bona fide risk retention or purchasing group as defined in the Federal Act. Therefore the non-domiciliary states may need more information than that provided in the initial letter of intent in order to determine if, for example, all of the members of a purchasing group have a common liability exposure.

The potential for abuse of the Federal Act by those who would seek to use the state exemptions to create markets for unauthorized insurers, and the potential harm to the Alaska insuring public, require the need for the proposed regulations. The additional information which the proposed regulations will require to be provided is a small and insignificant burden upon those groups that seriously seek to transact insurance legally in Alaska and will help us to properly monitor those that may only seek to use the Federal Act for their own advantage.

MEMORANDUM

Paul Roller
Risk Retention Regulations

The two recent Federal Court decisions, *Insurance Company of the State of Pennsylvania v. Corcoran*, No. 87-7858, 2d. cir. and *Frontier Insurance Company, nc. et al. vs. William D. Hager, Commissioner of Insurance of the State of Iowa*, No. 87-645-E, clearly reinforce the rights of non-domicillary states to regulate purchasing groups and their insurers in such a manner as to protect the insuring public.

It should also be noted that many other states have adopted similar registration and fee requirements.

It is my recommendation that we adopt the regulations as proposed, with **one small change**:

3 AAC 24.030 should be changed to show a continuation fee of \$200 instead of \$500.

This recommendation is suggested as the original figures for Risk Retention Groups are based upon the same fees and continuation fees for admitted insurers. The continuation fee of \$500 is the same fee proposed for all admitted insurers in a pending insurance bill before the legislative committees. It includes the combined costs for the filing of Annual statements and rate and form filings by admitted insurers.

Since Risk Retention Groups are only required to submit Annual Statements and are exempt from most of our rate and form filing requirements, the \$200 figure is more reasonable than the \$500 figure in the original proposal.

ENCLOSURES

Written Testimony
Sign In Sheet of the March 10th Hearing
Policy Statement
Registration Forms
Federal Liability Risk Retention Act of 1986
Articles on the Iowa and New York Court Decisions
Articles regarding the issues

MEMORANDUM

State of Alaska

Department of Law

TO: Art Peterson
Assistant Attorney General
and Regulations Attorney-Juneau

DATE: June 7, 1989

FILE NO: 993-89-0086

TEL. NO: 276-3550

SUBJECT: Regulations regarding risk
retention groups and risk
purchasing groups
(3 AAC 24.010 -- .290 and
3 AAC 24.300 -- .590)

FROM: Ron Zobel *RZ*
Assistant Attorney General
Commercial Section-Anchorage

Attached are regulations adopted by the Director of Insurance to require the registration of entities known as risk retention groups and risk purchasing groups. Although the regulations are relatively simple, the need for the regulations and the background of the Federal Liability Risk Retention Act, as amended in 1986, is somewhat complex.

The Congress in 1986 allowed entities known as "risk retention groups" and "risk purchasing groups" to form as an alternative method of insurance in order to meet the "liability crisis." The Liability Risk Retention Act, as amended, 15 U.S.C.A. § 3901 -- 3906 (Supp. 1989) preempted certain aspects of state insurance regulation in order to allow these groups to operate free from competing and inconsistent state regulations. These regulations are an effort to require the regulation of such groups and give the Director of Insurance information that will allow him to regulate them to the extent federal law allows, and also to give him information so that he can verify that they are a group qualifying under the Act. The justification for these regulations is explained in the March 24, 1989, memorandum from Ted Lehrbach to Paul Roller in the file.

The insurance regulators across the country have been somewhat concerned about these risk retention groups, and especially, the risk purchasing groups. Our Director of Insurance, along with other insurance regulators, sees much potential abuse in the use of the "risk purchasing group" device to evade state laws that require minimum solvency and security for policy holders.

As the comments submitted concerning these regulations, especially by the National Risk Retention Association, indicate, there is a dispute as to the extent of state power to regulate these entities. Although there is an argument that the federal act preempts a registration that is for any purpose other than receiving service of legal documents or process, the federal act does not specifically exempt these groups from registration or fees by nondomestic states.

The two major cases that have considered the extent of state regulation under the Liability Risk Retention Act have construed the Act rather narrowly and allowed state regulation where there was no

Art Peterson
993-89-0086

June 7, 1989
Page 2

express preemption. Insurance Co. of the State of Pennsylvania v. Corcoran, 350 F.2d 88 (2d Cir. 1988) (Liability Risk Retention Act does not prohibit all state policy form and rate regulation of purchasing groups) and Frontier Insurance Co. v. Hager, Case No. 87-645-E (U.S.D.C. of Iowa, May 1988) (Risk Retention Act does not preempt the state of Iowa from requiring that insurers be admitted in Iowa before selling insurance to Iowa members of purchasing groups).

My review of this matter indicates that the position of the Director that the state retains the power to register these risk retention groups and risk purchasing groups is likely to be sustained by the courts. It is possible that Congress intended to preempt such regulation, but if that is what they intended, they did not express themselves very clearly. Other than this preemption issue, I do not foresee any other substantial legal or constitutional difficulties in these regulations.

I have gone over the other items on the checklist, such as notice, and find it to be in order. I have made small editorial changes in the regulations in order to conform their style with the manual. I have used the U.S.C.A. cite for the Risk Retention Act since it is not in the U.S.C. I hope that was correct. I have added AS 21.03.010 as authority. This is the basic section which subjects those transacting the business of insurance to the insurance code. The term "transact the business of insurance in Alaska, relative to a subject or risk resident, located or performed in Alaska" is a term of art finding its source in section AS 21.03.010. The definition of "transact" is the same as that found in AS 21.90.900. I have left this redundancy in the regulations in order to make it clear that the term as applied to these particular entities has the same meaning as used in the code. I know that we generally do not repeat statutory language, but I thought there may be reason to do so here because of the very dispute as to whether these entities are transacting the business of insurance so as to subject themselves to regulation and the lack of any specific chapter in the code subjecting these entities to specific regulation, as there is with other entities formed to provide insurance.

If you have questions about these regulations, please do not hesitate to call.

RZ:lms

MEMORANDUM

State of Alaska

Department of Law

RECEIVED
JUL 27 1989

TO: Paul A. Roller, Director
Division of Insurance
Department of Commerce
and Economic Development

DATE: July 24, 1989

FILE NO.: 993-89-0086

TEL. NO.: 465-3600

SUBJECT: Regulations re risk of
tention groups and pur
chasing groups (3 AAC
24.010 -- 590)

Department of Commerce and
Economic Development
Division of Insurance

FROM: Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

Under AS 44.62.060, we have reviewed your adoption of these regulations, and approve them for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with the regulations and related documents.

The January 20, 1989 public notice and your April 24, 1989 adoption order both state that this action is not expected to require an increased appropriation. Therefore, AS 44.62.195 does not require a fiscal note.

As suggested by your staff, we have deleted "risk" from the phrase "risk purchasing group," wherever it appeared in this set of regulations, to conform that term to the way it appears in 15 U.S.C. 3901 -- 3906. It had been included in that term in error. By the duplicate original of this memorandum, I am asking the lieutenant governor's staff to instruct the publisher to make that same correction in 3 AAC 31.060(a)(16) and (17), where that same phrase appears.

We have slightly reworded 3 AAC 24.040 and 3 AAC 24.330 (virtually identical sections) to clarify your intent. In both sections, the lieutenant governor's staff will be inserting the effective date of those regulations in the blanks that we have penned in.

Under the authority of AS 44.62.060(a)(4), in 3 AAC 24.290 and 3 AAC 24.590 we have deleted the definition of "transact," which restates AS 21.90.900, and have replaced it with a reference to that statute. (Please see pp. 27 and 28 of the Drafting Manual for Administrative Regulations [Dept. of Law, 9th ed., July 1985], regarding the restating of statutes.)

In accordance with AS 44.62.125(b)(6), some other, more minor, corrections have been made in these regulations, as shown on the attached copy.

Paul A. Roller, Director of Insurance
Dept. of Commerce & Economic Devel.
Our file: 993-89-0086

July 24, 1989
Page 2

3 AAC 24.030 and 3 AAC 24.320 refer to a "continuation fee" that must accompany a "continuation application." We note that nowhere else in the regulations is a "continuation application" mentioned. We recommend that, as soon as possible, your division begin a regulations project to address this procedural gap. The regulations in that project should cover such items as (1) how long an initial registration is in effect, (2) what must be done to "continue" the registration (i.e., submission of a continuation application along with certain information), and (3) how long the "continuation" is in effect.

AHP/BJJ/pjg

cc w/enc.: Hon. Larry Mercurieff, Commissioner
Department of Commerce & Economic Development

Ron Zobel, Assistant Attorney General
Department of Law - Anchorage

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

ORDER 89-3 ADOPTING REGULATIONS OF THE DIVISION OF INSURANCE

The attached five pages of regulations, dealing with risk retention groups and risk purchasing groups, is hereby adopted and certified to be a correct copy of the regulations that the Division of Insurance adopts under authority vested by AS 21.06.090 and after compliance with the Administrative Procedures Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor, as provided in AS 44.62.180.

DATE: April 24, 1989
Juneau, Alaska



Paul Roller
Director of Insurance

FILING CERTIFICATION

I, Stephen McAlpine, Lieutenant Governor for the State of Alaska, certify that on July 21st, 1989, at 4:59 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Stephen McAlpine
Lieutenant Governor

Effective: August 23, 1989
Register: 119, October 1989

PR/djd0124B
042189b

CHAPTER 24.
RISK RETENTION GROUPS AND PURCHASING GROUPS.

Article

- 1. Risk Retention Groups (3 AAC 24.010 - 3 AAC 24.290)
- 2. Purchasing Groups (3 AAC 24.300 - 3 AAC 24.590)

Article 1.
RISK RETENTION GROUPS.

Section

- 10. Purpose
- 20. Filing of registration forms
- 30. Payment of fee
- 40. Existing operation; compliance
- 290. Definitions

3 AAC 24.010. PURPOSE. The purpose of 3 AAC 24.010 - 3 AAC 24.290 is to establish, consistent with 15 U.S.C. 3901 -- 3906, as amended as of October 27, 1989, (Liability Risk Retention Act of 1986), a procedure for the registration of risk retention groups that seek to transact the business of insurance in Alaska, or relative to a subject or risk that is resident, located, or to be performed in Alaska, and to provide for the payment of fees for the administrative cost of the registration process. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090

3 AAC 24.020. FILING OF REGISTRATION FORMS. Before transacting the business of insurance in this state, a risk retention group shall submit to the director

(1) a completed registration form that shall include the following information:

(A) each state in which the risk retention group is chartered or licensed to do business as a liability insurer;

(B) the date of its charter or license;

(C) the state in which it is domiciled;

(D) the complete physical address and mailing address of

(i) its offices in its state of domicile;

(ii) its principal place of business; and

(iii) its directors and principal officers;

(E) the complete name, firm name, physical address and mailing address of all persons acting, or offering to act, as an agent, broker, or surplus lines broker for the risk retention group, and identification of all types of licenses held by each person and firm, including the state in which each license is held;

(F) all classes or lines of insurance the risk retention group intends to offer; and

(G) such other information, including information concerning its membership, that the director requires to establish its qualification as a risk retention group to transact business in Alaska;

(2) a copy of its plan of operation and the feasibility study submitted to its state of domicile, including all revisions;

(3) a complete copy of the financial statement submitted to its state of domicile, certified by an independent public accountant, including a statement of opinion on its reserves for loss and its reserves for loss adjustment expenses prepared by a member of the American Academy of Actuaries or by another qualified specialist in such reserves;

(4) a copy of each examination of the risk retention group, certified by the commissioner or other public officer conducting the examination, except that if no examination has been conducted or if one is pending, a statement to that effect, signed by an officer of the risk retention group, shall be submitted in its place;

(5) upon a form prescribed by the director, a statement appointing the director as its agent for the purpose of receiving service of legal documents or process; and

(6) such other information as the director requires to verify its qualification and continuing qualification as a risk retention group transacting or seeking to transact business in Alaska. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090

3 AAC 24.030. PAYMENT OF FEE. The initial registration fee set by 3 AAC 31.060(a)(14) must accompany each registration form. The annual continuation fee set by 3 AAC 31.060(a)(15) must accompany each continuation application. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090
AS 21.06.250

3 AAC 24.040. EXISTING OPERATION; COMPLIANCE. A risk retention group transacting insurance before 8/23/89, on a risk or subject resident, located or to be performed in Alaska, has 60 days after that date in which to comply with 3 AAC 24.020 and 3 AAC 24.030. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.05.090

3 AAC 24.290. DEFINITIONS. As used in 3 AAC 24.010 --
3 AAC 24.290,

(1) "risk retention group" means any entity meeting the definition of a risk retention group in 15 U.S.C. 3901(a)(4), as amended as of October 27, 1986 (Liability Risk Retention Act of 1986);

(2) "transact" means the same as in AS 21.90.900.

(Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090

Article 2. PURCHASING GROUPS

Section

- 300. Purpose
- 310. Filing of registration forms
- 320. Payment of fee
- 330. Existing operation; compliance
- 590. Definitions

3 AAC 24.300. PURPOSE. The purpose of 3 AAC 24.300 -- 3 AAC 24.590 is to establish, consistent with 15 U.S.C. 3901 -- 3906, as amended as of October 27, 1989 (Liability Risk Retention Act of 1986), a procedure for the registration of purchasing groups that seek to transact the business of insurance in Alaska, or relative to a subject or risk that is resident, located, or to be performed in Alaska, and to provide for the payment of fees for the administrative cost of the registration process. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090

3 AAC 24.310. FILING OF REGISTRATION FORMS. Before transacting the business of insurance in this state, a purchasing group shall submit to the director

(1) a completed registration form that shall include the following information:

- (A) the state of domicile;
- (B) the dates of its incorporation and formation as a purchasing group;
- (C) the complete physical address and mailing address of
 - (i) its offices in its state of domicile;
 - (ii) its principal place of business;
 - (iii) its directors and principal officers;
 - (iv) all persons acting, or offering to act, as an agent, broker, or surplus lines broker for the purchasing group, including all types of licenses held by each person and the states in which each license is held;
- (D) all classes or lines of insurance the purchasing group intends to purchase;
- (E) the insurance company or risk retention group from which it intends to purchase insurance; and
- (F) such other information including information concerning its membership, that the director requires to establish its qualification and continuing qualification as a purchasing group;

(2) upon a form prescribed by the director, a statement appointing the director as the purchasing group's agent for the purpose of receiving service of legal documents or process (except where exempted by 15 U.S.C. 3903(e), as amended as of October 27, 1989). (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090

3 AAC 24.320. PAYMENT OF FEE. The initial registration fee set by 3 AAC 31.060(a)(16) must accompany the registration forms. The annual continuation fee set by 3 AAC 31.060(a)(17) must accompany each continuation application. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090
AS 21.06.250

3 AAC 24.330. EXISTING OPERATION; COMPLIANCE. A purchasing group transacting insurance before 8/23/89 on a risk or subject resident, located or to be performed in Alaska, has 30 days after that date in which to comply with 3 AAC 24.300 -- 3 AAC 24.590. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090

3 AAC 24.590. DEFINITIONS. As used in 3 AAC 24.300 -- 3 AAC 24.590,

(1) "purchasing group" means any entity meeting the definition of a purchasing group in 15 U.S.C. 3901 (a)(5), as amended as of October 27, 1986 (Liability Risk Retention Act of 1986);

(2) "transact" means the same as in AS 21.90.900.

(Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 485-2515

DATE: June 16, 1989

TO: All Admitted Insurers, Agents, Brokers,
Adjusters, Trainee Adjusters, Solicitors, General
Agents, Surplus Lines Brokers, and Surplus Lines
Insurers

FROM: Paul Roller
Director of Insurance

SUBJECT: Regulatory Orders 89-2 and 89-4

Both of the enclosed regulations are effective July 1, 1989.

Most of the changes incorporated in the regulations are self-explanatory. A couple of items, however, i.e., the new surplus lines fees and the new admitted company continuation fee, may cause some confusion.

The division will be preparing surplus lines white list registration forms for use prior to the next issuance of the white list. A certified financial statement will also be required if it is not already on file. Surplus lines companies will receive the new forms as soon as they are completed.

Admitted companies will be assessed the new continuation fee next March for the year beginning July 1, 1990. The \$10.00 appointment fee is still applicable until then.

Please contact the division if you have any questions regarding these regulations.

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061589a

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

DIVISION OF INSURANCE

ORDER 89-2

ORDER REPEALING AND ADOPTING REGULATIONS OF THE DIVISION OF INSURANCE

The attached one page of regulations, which repeals a statutorily superceded regulation regarding the license requirements for producing general agents, which establishes that examination scores are valid for one year from the test date and if licensure is not obtained within that one-year period the applicant must retest and which requires reexamination of applicants who were previously licensed by the division and whose license was revoked for any reason is hereby adopted and certified to be a correct copy of the regulations that the Division of Insurance adopts under authority vested by AS 21.06.090 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor, as provided in AS 44.62.180.

DATE: March 21, 1989
Juneau, Alaska

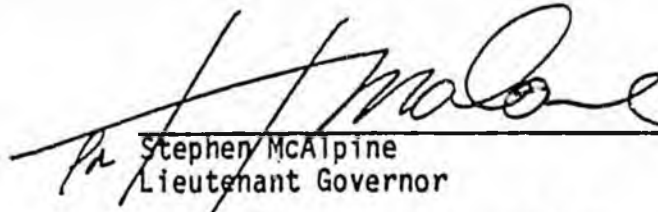


Paul Rötter
Director of Insurance

FILING CERTIFICATION

Hugh Malone for

I, Stephen McAlpine, Lieutenant Governor for the State of Alaska, certify that on June 1, 1989, at 9:00 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.



Stephen McAlpine
Lieutenant Governor

PR/djd9839W-1
032189c
Attachment

EFFECTIVE: July 1, 1989
REGISTER: 110, July 1989

STATE OF ALASKA
LIEUTENANT GOVERNOR
JUNEAU

CERTIFICATE

FOR DELEGATION OF LIEUTENANT GOVERNOR'S AUTHORITY

I, STEPHEN McALPINE, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, as authorized by AS 44.19.026, designate Hugh Malone, Commissioner of the Department of Revenue, as temporary custodian of the State Seal and as the officer to perform the Administrative Procedure Act filing functions and the authenticating functions of the Lieutenant Governor during such time as I succeed to the office of Governor, act as Governor, am absent from the state, or am otherwise unavailable at the state capital to perform these functions.

In the absence of Commissioner Malone, I designate Jim Sampson, Commissioner of the Department of Labor, to perform the functions stated above.

In the absence of Commissioner Sampson, I designate David Hoffmar, Commissioner of the Department of Community and Regional Affairs, to perform the functions stated above.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
hereto the Seal of the State of Alaska, at Juneau, the Capital,
This 20th day of October
A.D. 1958

Stephen McAlpine
LIEUTENANT GOVERNOR

Chapter 23.
AGENTS, BROKERS, SOLICITORS AND ADJUSTERS

3 AAC 23.050 is repealed.

3 AAC 23.050. PRODUCING GENERAL AGENTS. Repealed 7/1/89.

3 AAC 23 is amended by adding new sections to read:

3 AAC 23.070. EXAMINATION SCORES VALID FOR ONE YEAR. (a) An examination score is valid for one year after the date of the examination for a license applicant who has not completed the application process and who has not obtained licensure.

(b) After one year from the date of the examination, an applicant described in (a) of this section must retake the required examination. (Eff. 7/1/89, Register 110)

Authority: AS 21.06.090
AS 21.27.060

3 AAC 23.080. REEXAMINATION REQUIRED. An applicant for licensure who previously held a license issued by the director which was revoked for any reason must take any required examination for the type of license for which the applicant has applied as the director does not consider the applicant to be fully qualified and competent. (Eff. 7/1/89, Register 110)

Authority: AS 21.06.090
AS 21.27.060

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

P. O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

DIVISION OF INSURANCE

ORDER 89-4 ADOPTING REGULATIONS OF THE DIVISION OF INSURANCE

The attached four pages of regulations, dealing with the repeal and reenactment of 3 AAC 31.050, Insurer Fees and 3 AAC 31.060, Miscellaneous Fees is hereby adopted and certified to be a correct copy of the regulations that the Division of Insurance adopts under authority vested by AS 21.06.090 and after compliance with the Administrative Procedures Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor, as provided in AS 44.62.180.

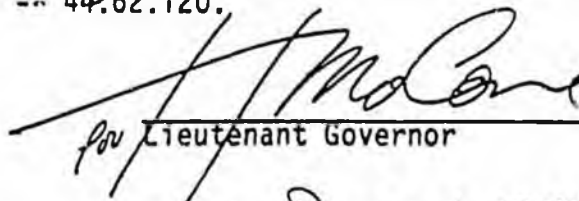
DATE: MAY 9, 1989
Juneau, Alaska



Paul Roller
Director of Insurance

FILING CERTIFICATION

Hugh Malone PV
I, Stephen McAlpine, Lieutenant Governor for the State of Alaska, certify that on June 1, 1989, at 9:00 a.m., I filed the attached regulations according to the provisions of AS 44.62.040 -- 44.62.120.



for Lieutenant Governor

EFFECTIVE: July 1, 1989
REGISTER: 110 July 1989

STATE OF ALASKA
LIEUTENANT GOVERNOR
JUNEAU

CERTIFICATE

FOR DELEGATION OF LIEUTENANT GOVERNOR'S AUTHORITY

I, STEPHEN McALPINE, LIEUTENANT GOVERNOR OF THE STATE OF ALASKA, as authorized by AS 44.19.026, designate Hugh Malone, Commissioner of the Department of Revenue, as temporary custodian of the State Seal and as the officer to perform the Administrative Procedure Act filing functions and the authenticating functions of the Lieutenant Governor during such time as I succeed to the office of Governor, act as Governor, am absent from the state, or am otherwise unavailable at the state capital to perform these functions.

In the absence of Commissioner Malone, I designate Jim Sampson, Commissioner of the Department of Labor, to perform the functions stated above.

In the absence of Commissioner Sampson, I designate David Hoffman, Commissioner of the Department of Community and Regional Affairs, to perform the functions stated above.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed hereto the Seal of the State of Alaska, at Juneau, the Capital,

This 20th day of October
A.D. 1958


LIEUTENANT GOVERNOR

CHAPTER 31.

MISCELLANEOUS.

Section

50. Insurer fees

60. Miscellaneous fees

3 AAC 31.050 is repealed and readopted to read:

3 AAC 31.050. INSURER FEES. The following fees are established for insurers:

(1) application for a certificate of authority, including a solicitation permit and issuance of the certificate, if issued, a one-time fee of \$1,000;

(2) annual continuation of a certificate of authority, \$500;

(3) amendment to a certificate of authority, \$100;

(4) amendment to the articles of incorporation, \$100;

(5) revised bylaws or amendment to bylaws, \$100;

(6) filing an annual statement, \$100;

(7) solicitation permit for subsequent financing, for domestic insurers, \$100;

(8) reinstatement of a certificate of authority, \$500. (Eff. 6/2/88, Register 106; am 7/1/89, Register 110)

Authority: AS 21.06.090

AS 21.06.250

3 AAC 31.060 is repealed and readopted to read:

3 AAC 31.060. MISCELLANEOUS FEES. (a) The following fees are established:

(1) application for an original resident solicitor license, including issuance of the license, if issued, for an individual soliciting on behalf of a licensed individual or firm, \$70;

(2) annual continuation of a resident solicitor license for an individual soliciting on behalf of a licensed individual or firm, \$50;

(3) amendment to an insurance license, \$20;

(4) insurance vending machine license, each machine, each year, \$70;

(5) issuance of a certification, \$25;

(6) acceptance of service of process, \$25;

(7) copy of an insurance report, \$25;

(8) three-year rating bureau license, \$300; and

(9) with respect to a license other than surplus lines broker, which has not been revoked, a surcharge for late payment of an annual license continuation fee, if payment is overdue by

(A) 1 to 60 days, \$100; or

(B) over 60 days, \$200;

(10) with respect to an application to reinstate a revoked license, if received within six months after the revocation, the application fee plus a reinstatement fee of \$500;

(11) filing of a certified annual financial statement by surplus lines insurer, \$100;

(12) application for registration of a surplus lines insurer on the division's "white list," \$500;

- (13) annual renewal of "white list" registration, \$300;
- (14) initial registration of a risk retention group,
\$1,000;
- (15) annual continuation of a risk retention group,
\$200;
- (16) initial registration of a risk purchasing group,
\$500; and
- (17) annual continuation of a risk purchasing group,
\$200.

(b) For any printed material furnished by the director and not otherwise described in this section, at the director's discretion, the director will charge the actual cost of printing plus handling and postage.

(c) For photocopies, \$.25 per page if copied by division staff, otherwise \$.15 per page. (Eff. 6/2/88, Register 106; am 7/1/89, Register 110)

Authority: AS 21.06.090
AS 21.06.250

State of Alaska
Department of Commerce
& Economic Development
Division of Insurance
P.O. Box D
Juneau, Alaska 99811-0800

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IMPORTANT INSURANCE INFORMATION

The Risk Retention Reporter

RECEIVED

FEB 20 1990

Volume 3, No.11

A Publication of Insurance Communications Department of Commerce and Economic Development February 15, 1990 Division of Insurance

Laramie Insurance Company Under Wyoming Seizure Order

Purchasing group insurers continue to experience difficulties. In Wyoming, Laramie Insurance Co. was placed under a Seizure Order and Injunction issued January 23 by a Wyoming District Court. Under the Order, which freezes all books, records and assets of the carrier, Laramie cannot write any new or renewal business or pay any claims. The Wyoming Acting Insurance Commissioner, Ralph E. Thomas, has also requested an order for receivership. Laramie has twenty days to consent to or contest such request. If Laramie contests it, there will be a hearing. If it does not, the receivership order will be entered by default. Laramie's intentions were unknown at press time.

According to John McBride, attorney with the Wyoming Department of Insurance, the Seizure Order was requested after conducting an examination of Laramie's books and records which showed that the Wyoming-domiciled carrier was deficient in the \$4 million of capital and surplus required by Wyoming law for a multi-line carrier. McBride declined to say by how much it was deficient, but said it was "substantial."

Laramie's problems follow close on the heels of the recent difficulties of Commercial General and Oxford Indemnity, also Wyoming carriers, both placed in receivership and ordered liquidated in the last several months (see RRRs, Sept., Oct., Dec. 1989). For more information, contact John McBride, Wyoming DOI, at (307)777-6896.

American Insurance & Indemnity Co. Placed In Rehabilitation

American Insurance & Indemnity Co. (AIIC), previously under a Seizure Order issued by a Kentucky Court (see RRR, Jan.'90) has now been placed in rehabilitation. Under the rehabilitation order, all officers of the company have been relieved of their duties, effective January 18 while policies remain in force and effect pending a final determination on whether the carrier can be rehabilitated or will be liquidated.

The Order for Rehabilitation is based upon grounds asserted in the Petition filed by Kentucky Insurance Commis-

sioner, Leroy Morgan. Among the grounds alleged are the wrongful diversion of AIIC assets in the amount of \$1,499,116 to AIIC's holding company. In addition, the Petition states that AIIC "is or is about to become insolvent," and cites a negative surplus as regards policyholders in the amount of \$1,165,780 as reported on AIIC's financial statement for the third quarter of 1989. Among other allegations included in the Petition are failure to produce books and records by the requested date and failure to produce adequate records to examine the transaction of its business as required by Kentucky law.

Although AIIC officials agreed to the Order of Rehabilitation, they did not admit to the allegations of the Petition. For further information, contact Patrick Watts, attorney, Kentucky DOI at (502)564-6032.

Georgia Requires RRGs To Comply With Its Unauthorized Insurers Act

The Georgia Insurance Department recently notified all risk retention groups providing coverage to members in Georgia that compliance with the Georgia Unauthorized Insurers Act is required, including provisions specifying the minimum capital and surplus for an eligible surplus lines insurer as well as those requiring all risks be placed through a Georgia surplus lines broker.

The National Risk Retention Association, in a letter written by its Legislative Counsel, Michael J. Mullen of Crowell & Moring in Washington, D.C., challenged the authority of the Georgia DOI to take such action. Asserting that the Risk Retention Act clearly preempts a risk retention group from state surplus lines laws, Mullen cites the Report of the Senate Committee on Commerce, Science and Transportation in support of NRRRA's position, which says that, "Whether a group is in a hazardous financial condition is to be determined in accordance with the general actuarial principles ... and not the capital and surplus requirements of a particular state."

Under the Georgia directive, all risk retention groups must meet the requirements of its Unauthorized Insurers Act within 30 days or cease doing business in Georgia. NRRRA asserts that this position is incorrect because, under the supremacy clause of the Constitution, federal rules for a risk retention

group preempt the application of the requirements of the Georgia Unauthorized Insurers Act.

Out-Of-State RRGs To Pay Vermont Registration Fees Effective Feb. 1

Effective February 1, out-of-state risk retention groups will be required to pay a one-time, non-refundable \$200 registration fee upon submitting their feasibility study or plan of operation to the Vermont Dept. of Banking and Insurance. If the RRG is placed on the Vermont list, the RRG will then be required to pay an additional \$300 annual listing fee. Also required is a \$100 annual statement filing fee. Thus, non-domiciled RRGs, after paying the initial \$200 fee, will be required to pay \$400 annually to comply with the new requirement.

There is, however, a retaliatory aspect to the measure which permits fees in excess of those set forth. According to Carol Carbo, spokesperson for the Vermont Department, if a state charges Vermont-domiciled RRGs more than Vermont charges for out-of-state RRGs, then Vermont will adjust its fees to parallel what the other state charges Vermont RRGs.

Risk Retention Roundup

Following a holiday lull, risk retention activity has picked up. This month, 11 new purchasing groups and one new risk retention group were added to *RRR* listings, bringing the total number of purchasing groups to 405 and the total number of risk retention groups to 67.

Included in the types of risks for which these new purchasing groups are providing liability coverage are wholesalers, title agents, escrow agents and abstractors, bankruptcy and commercial lawyers, nurse anesthetists, and members of the oil and natural gas industry.

At least two of the purchasing groups were formed out of existing associations — Colorado Oil and Gas Association, a Risk PG (CO) and Bankruptcy and Commercial Lawyers PG, Inc. (IL).

Colorado Oil and Gas Assn., a Risk PG was formed from Denver-based Colorado Oil and Gas Assn. (COGA), a trade association serving those engaged in exploration, development and production of oil and natural gas in Colorado. Although members of the purchasing group reside in Colorado where most of the risks are located, some risks are also found in other states. A similar purchasing group was formed for the Kansas Oil and Gas Association. In both cases, Insurance Management Association Inc., (IMA) with offices in Colorado and Kansas, provides safety engineering, risk management and

educational programs for members. While there are no immediate plans to form a risk retention group, Robert Cohen, based in IMA's Denver office, says that formation of an RRG in the future is a possibility. Lloyd's underwriters and London & Hull Maritime Insurance Co. (Eng.) are providing commercial general liability, umbrella and excess coverage for the purchasing group. For more information on COGA contact Robert Cohen at (303) 293-8888.

Bankruptcy and Commercial Lawyers, PG, Inc. (IL) was formed from an old, established association — the Commercial Law League of America. One of the motivations in forming the purchasing group was the desire to capitalize on the more favorable loss experience of bankruptcy and commercial lawyers as compared to higher risk specialties. Massachusetts-domiciled New England Insurance Co. is providing professional liability for the purchasing group. For more information contact David Webster at (617) 482-3100.

State by State Analysis of Purchasing Group Requirements in PROFILE

Drafters of the Risk Retention Act hoped the legislation would bring uniformity to states in regulating risk retention groups and purchasing groups, but the reality has been different — particularly for purchasing groups and their insurers. As purchasing group organizers have discovered, purchasing groups are subject to varying, and often conflicting, regulatory requirements, depending upon the state with which the entity is dealing.

In this month's Profile, Beth Kravetz, a Washington, D.C.-based attorney specializing in insurance and risk retention, makes a comprehensive state-by-state analysis of regulatory requirements for purchasing groups. Kravetz' in-depth article also discusses practical issues involved in forming purchasing groups as well as how to shepherd them through the state regulatory process. (See page 4.)

New RRG For Hospitals Formed

A new Vermont-domiciled risk retention group providing hospital professional liability has been licensed. Formed by a group of nine Florida hospitals and Edgewater Management Services Co., Inc., a subsidiary of the South Florida Hospital Association, Hospital Liability Risk Retention Group, Inc., will be available nationwide. According to Fran Everett, President of Florida-based Frank B. Hall Health Care Risk, Inc., which provides marketing, underwriting, claims and data administration for the RRG, a strong risk management program, called

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