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STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

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March 5, 1990

RECEIVED

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JAN FAIKS
SENATE OFFICE

Honorable Jan Faiks
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Faiks:

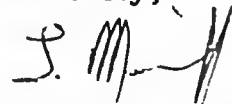
SB 212, relating to insurer solvency, passed out of the Senate Labor and Commerce Committee on February 28 and is now in the Senate Judiciary Committee.

As you were present during Labor and Commerce Committee hearings on the bill, I am sure you realize that this piece of legislation is very important to the department in carrying out its responsibility of protecting the consumer from the insolvency or impairment of an insurer. Recent events in this state and others convince me all the more of the critical need for this legislation.

In addition, the statutes in the Alaska Insurance Code which provide basic public protection mechanisms were adopted in 1966 and are largely unchanged since that time. These statutes need to be updated, upgraded and clarified.

I would like to request that you schedule SB 212 for a hearing in the Senate Judiciary Committee as soon as possible. Please feel free to contact me or my staff if you have any questions or desire additional information on the bill.

Sincerely,



Larry Mercurieff
Commissioner

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030590a

cc: David J. Walsh, Director
Division of Insurance

CSSB 212

Section 14 of CSSB 212 should be replaced with a new Section 14 to read:

* Sec. 14. AS 21.09.080(a) is repealed and reenacted to read:

(a) In order for a domestic insurer to renew and continue the insurer's certificate of authority after June 30, 1991, the insurer must possess at least the basic capital, basic guarantee surplus, and additional maintained surplus required under AS 21.09.070(a), or the additional maintained surplus and that amount of basic capital or basic surplus, the sum of which equals the insurer's annual net earned premium. In no event, however, shall the capital and surplus for an insurer be less than was required when that insurer was first granted its certificate of authority.

CSSB 212 (L&C)
AN ACT RELATING TO INSURANCE

Sectional Analysis by the
Department of Commerce and Economic Development,
Division of Insurance

OVERVIEW

The business of insurance is a dynamic, constantly changing business. The business of insurance is interstate commerce, however, unlike other forms of interstate commerce, it is regulated by the individual states. The most important concern of the individual states is that the consumer, both individual and business, be protected from an insolvency or impairment of an insurer. The concern with solvency is critical because insurance is an intangible product. It is concerned with whether the insurance company will be able to meet its obligations.

The statutes in the Alaska Insurance Code that provide this public protection mechanism were adopted in 1966 and are basically unchanged since that time. Events have occurred in this state and others which highlight the need to update, to upgrade and to clarify those laws. SB 212 is intended to accomplish that aim. The proposed changes have been substantially developed and adopted by the National Association of Insurance Commissioners.

In the Governor's transmittal letter for SB 212, six main points were listed. These were:

1. The minimum amount of capital and surplus required of an insurer wishing to do business has been increased. Capital and surplus provide the minimum amount of capitalization required to be an insurance company. This appears in several places throughout the bill and applies to admitted as well as non-admitted insurers. Minimum capital and surplus provides a tangible minimum floor on which to base solvency. When that floor is too low, it is considerably more difficult to detect problems in time to avoid loss to the public.
2. Reserving and reinsurance manipulations are a serious concern. The proposed changes strengthen our ability to determine whether adequate reinsurance or some other financial arrangement exists.
3. The investment chapter has been modernized to assure that the insurer's capital is not placed in weak or fraudulent investments.
4. Reporting requirements are strengthened. Quarterly reports and electronic media reporting is enabled. The examination expense recovery provisions have been clarified, which will make it possible to examine more companies and more often.

5. Some insurers and licensee have used civil lawsuits as a means to deter insurance regulators from carrying out their duties. The bill extends immunity for civil liability to division of insurance personnel for carrying out their duties.
6. During a recent insurer insolvency, Alaska's delinquency proceeding statutes proved inadequate. This has been remedied in SB 212.

SB 212 is very lengthy and in some areas it is complex. It is very important that our regulatory mechanism be kept as up to date as possible. SB 212 does that.

DIRECTOR OF INSURANCE.

(Sections 1-7)

These sections pertain primarily to the director's ability to examine insurers and surplus lines brokers. The director may contract with independent examiners and may order the insurer or surplus lines broker to make direct payment to the contract examiner for the cost of examination. Formerly licensed insurers and surplus lines brokers may also be examined.

Participation is allowed by Alaska examiners in NAIC association examination of insurers that conduct the business of insurance in Alaska and other states. Civil immunity is provided to division personnel, agents of the division, regulators of other states, and NAIC staff in regard to the publication of and documentation of reports and in the exchange of regulatory information.

Section 1. AS 21.06.120(a). Examination of Insurers Page 1, lines 12-22.

This section clarifies the director's ability to examine formerly licensed insurers and surplus lines brokers. Insurance contracts issued while the person was licensed many times continue to be in force after the person's license has terminated.

Section 2. AS 21.06.120. Examination of Insurers Page 1, lines 23-29.

These new subsections specifically allow the division to participate along with insurance regulators from other states in the examination of an insurer located outside of Alaska. The director is also permitted to utilize contract examiners. Both of these functions have been assumed to exist under current statute but the clarification will avoid conflict with a differing opinion.

Section 3. AS 21.06.140(b). Conduct of Examination
Page 2, lines 1-9.

This section clarifies the director's ability to require that photocopies of documents requested during an examination be produced.

Section 4. AS 21.06.150(e). Examination Reports
Page 2, lines 10-16.

Changes in this section are primarily editorial in nature and provide that the director may withhold from public inspection any materials gathered as part of an examination if necessary for the protection of any person from unwarranted injury or if it is in the public's best interest.

Section 5. AS 21.06.160. Examination Expense
Page 2, line 17 to page 3 line 19.

Changes in this section make it clear that insurers are required to bear all costs of examinations and that the director can order an insurer to pay a contract examiner directly for its examination charges.

Section 6. AS 21.06.165. Immunity for Director and Others
Page 3, line 20 to page 4, line 2.

This is a new subsection that provides civil immunity for all division staff and insurance regulators in other states in regards to information and reports which are shared. However, immunity is not provided if there is reckless, willful, or intentional misconduct. This new section follows a National Association of Insurance Commissioners Model Immunity Act.

Section 7. AS 21.06.250. Fees and Licenses
Page 4, lines 3-12.

This change is editorial in nature. It is intended to avoid conflict with AS 21.06.160 which has been modified in Section 5.

AUTHORIZATION OF INSURERS. (Sections 8-19)

The format for insurer's financial statements is established to conform with the format adopted by the National Association of Insurance Commissioners (NAIC). The director may require that an insurer, in addition to the required annual financial reporting, file quarterly financial statements.

Foreign and alien admitted insurers are required to maintain the same financial requirements (capital and surplus) as Alaska domestic insurers. Minimum financial requirements (capital and surplus) for Alaska incorporated insurers are established if they wish to assume reinsurance (\$10,000,000 at 12/31/90, \$15,000,000 at 12/31/91, and \$20,000,000 at 12/31/92). Domestic property or casualty insurers are prohibited from issuing life insurance or annuity contracts.

Section 8. AS 21.09.020(3). Exception. Certificate of Authority Requirement
Page 4. lines 13-28.

This change is editorial in nature. It is to provide the correct cross reference, AS 21.34.

Section 9. AS 21.09.060. Combinations of Insuring Power in One Insurer
Page 4. line 29 to page 5. line 14.

A life and annuity insurer is barred from transacting a property or casualty business. The changes in this section clarify the reverse situation, that a property or casualty insurer is precluded from transacting life insurance or from issuing annuities.

Section 10. AS 21.09.070(a). Capital Funds Required of Foreign Insurers and New Domestic Insurers
Page 5. line 15 to page 7. line 5.

The amendments to this section are intended to provide for more stringent financial criteria for an insurer to become and remain licensed. The additional surplus required to be maintained when first licensed is required to be maintained beyond initial licensure. Under existing law, the additional surplus could be siphoned off the day after the original certificate of authority was issued. The minimum amounts of capital and surplus have been increased.

Section 11. AS 21.09.070(b).
Page 7. lines 6-16.

This section allows the director to issue an order following a hearing, requiring an insurer to maintain funds required in AS 21.09.070(a) (see Section 10). Failure to maintain the ordered funds would be grounds for suspension or revocation of the certificate of authority.

Section 12. AS 21.09.070 (c).
Page 7, lines 17-21.

The repeal and reenactment of this section requires foreign or alien admitted insurers to maintain the currently required capital and surplus amounts. Under existing law, a foreign or alien admitted insurer need only maintain the amount required when first licensed even if that insurer was first licensed 25 years ago when the amounts required were substantially lower. Alaska domestic insurers have been required to meet the higher standards as adopted over the years. So, in effect, this amendment provides for equitable treatment both domestic and foreign or alien insurers.

Section 13. AS 21.09.070(f)
Page 6, line 22 to page 7, line 4.

This is a new section that establishes that a domestic insurer must possess policyholder surplus in adequate amounts in order to assume reinsurance. Policyholder surplus required is \$10,000,000 at 12/31/90, \$15,000,000 at 12/31/91 and \$20,000,000 at 12/31/92. This requirement does not apply to intracompany pooling arrangements between affiliated insurers. A stronger financial position is required for a domestic insurer to get into the reinsurance business.

Section 14. AS 21.09.080 (a).
Page 8 lines 5-9.

The repeal and reenactment of this section requires domestic insurers to maintain the currently required capital and surplus amounts.

Section 15. AS 21.09.110(3). Application for Certificate of Authority
Page 7, lines 10-15.

This section is amended to include the requirement that quarterly financial statements as required by the director be attested to by at least two officers of the insurer or certified by the regulatory official of the insurer's state of domicile.

Section 16. AS 21.09.140(a). Mandatory Revocation. Suspension of Certificate
Page 8, lines 16-25.

Amendment to this section is necessary due to the change in AS 21.09.070(c) (see Section 12) requiring foreign insurers to maintain the current levels of policyholder surplus. Also, the more correct terms of "impaired" and "insolvent" have been substituted for "deficiency of assets". This section

generally pertains to mandatory revocation or suspension of an insurer's license.

Section 17. AS 21.09.200(a). Annual Statement
Page 8, line 26 to page 9, line 13.

This section pertains to the format of the annual financial statement required by each licensed insurer. Amendment to this section provides for the adoption of the National Association of Insurance Commissioners (NAIC) format, which has been utilized historically. This promotes consistency in financial reporting in all states. Additionally, this section has been amended to allow the director to require that the financial statement be filed via electronic media (e.g. on computer disc).

Section 18. AS 21.09.200(f)
Page 9, lines 14-22.

This section requires all domestic insurers to also file their annual financial statements with the NAIC and to pay the appropriate fee to the NAIC. The purpose of this is that the NAIC has developed a data base for all insurers and provides analytical services to the various states. (Each state is linked by computer to the NAIC data base.) Eventually, it is expected that only one filing of the financial statement via electronic media will be filed with the NAIC. This would eliminate the need of a "hard copy" annual financial statement being filed in each state in which an insurer is licensed. This will be an expense savings. Also, it will provide for a more timely analysis of each financial statement.

Section 19. AS 21.09.205. Quarterly Statement
Page 9, line 23, to page 10, line 3.

This new section allows the director to require that quarterly financial statements be filed with the division. A means is provided for more closely monitoring the financial well being of an insurer. Quarterly statements, when required, are due to be filed within 60 days after the end of a calendar quarter and a penalty of \$100 per day for late filing is imposed.

KINDS OF INSURANCE, LIMITS OF RISK, AND REINSURANCE.
(Sections 20-21)

In order to limit risk to meet with statutory requirements and sound business practices, insurers transfer risk to other insurers via reinsurance contracts. These sections provide the guidelines and parameters for an Alaska domestic

insurer reinsuring its insurance contracts with reinsurers. Credit (reduced liabilities) is allowed in the financial statement for reinsurance ceded if done in accordance with the guidelines. The term "reinsurance" is defined.

Section 20. AS 21.12.020. Reinsurance Credit Allowed a Domestic Ceding Insurer

Page 10, line 4 to page 15, line 14.

In order to help protect their financial integrity and to meet the requirements that no more risk be retained in any one subject than 10% of its policyholders surplus, most insurers reinsure the insurance contracts they have underwritten. By appropriately passing this risk to a reinsurer, an insurer is allowed to reduce the liabilities for claim payments it is required to exhibit in its financial statement by an amount commensurate with the risk reinsured.

If a reinsurer becomes insolvent, all of the risk previously transferred falls back to the insurer. For that reason, it is important that standards exist for reinsurers that domestic insurers may transfer risk to and receive credit for the risk transferred in the form of reduced claim liabilities. The repeal and reenactment of this section provides the criteria for the reinsurers that domestic insurers may use and receive credit for in their financial statements.

Generally credit is allowed for reinsurance ceded by a domestic insurer to a reinsurer if:

1. the reinsurer is licensed in this state as an insurer;
2. the reinsurer is an accredited reinsurer in the state;
3. the reinsurer is domiciled in a state that employs standards for reinsurance substantially the same as Alaska and submits to examination by the division;
4. the reinsurer is an alien reinsurer that trustees specified amounts of funds in the United States and the trustees provide an annual accounting of the funds trustee, and provides certification of its solvency by an independent auditor and the domestic regulator; or
5. the reinsurer does not meet any of the criteria in 1. through 4. above, then credit is allowed only if funds are trustee in a form (cash, approved securities, or acceptable letters of credit) and for amounts corresponding to only the amount of funds trustee.

This section also maintains the existing law requirement that no credit for reinsurance is allowed if the reinsurance contract does not contain the classic "insolvency provision". The "insolvency provision" essentially provides that reinsurance will continue to be paid if due even if the ceding insurer were to become insolvent.

The director is also given the discretionary authority to require an insurer to provide information in regards to any material change in its reinsurance transactions.

Section 21. AS 21.12.120. Reinsurance Defined

Page 15, lines 15-19.

The term "reinsurance" is defined in this new section. This term was not previously defined in Title 21. The definition is intended to convey that a transfer of risk directly flowing from the underlying insurance contract is required to meet with this definition. It is necessary to define this term as other contractual arrangements between insurers have been reported as reinsurance when in fact the transactions are other financial arrangements having nothing to do with the transfer of the risk of the underlying insurance contract. Many such arrangements have been utilized due to recent changes in the federal income tax schema for insurers.

ASSETS AND LIABILITIES.

(Sections 22-27)

These sections pertain to the basics in determining an insurer's solvency. It includes amended rules for determining which assets may be included and those which are specifically excluded in determining the asset base for an insurer. Requirements for the establishment of liabilities for the contractual obligations of an insurer are included. A material change requiring title insurers to establish an unearned premium reserve is included. Also, the director may require a surety insurer to establish a special reserve for bail bonds or other single premium bonds that do not have a definite expiration date.

Section 22. AS 21.18.010. Allowable Assets

Page 15, line 20 to page 21, line 27.

This section has a number of general changes in defining the types of assets allowed in the determination of the insurer's ability to pay its liabilities.

Paragraph (1) is essentially the same as the existing Paragraph (1). The allowance of deposits in solvent savings and loan associations has been added. This adds alternative financial institutions to those already listed in the current law, such as banks and trust companies.

Paragraphs (2)(A)-(C) remain the same as the current law.

Paragraph (2)(D) essentially the same as the existing Paragraph (2)(D). The allowance of interest due or accrued on deposits in solvent savings and loan

associations to complete its inclusion as an allowed depository above has been added .

Paragraph (2)(E) further defines allowable interest due or accrued as that earned on real estate mortgage loans which are allowed in the investments section of this title. Also changed is the exception that, when the interest or any taxes are overdue more than three months, none of the interest due or accrued may be allowed on that loan. This changes the exception in the current law from interest overdue 18 months to interest overdue for three months and includes the exception when taxes are overdue for three months. These modifications ensure that interest on only mortgages acceptable per this chapter are allowed and the exception eliminates those interest amounts not yet paid that may not be forthcoming.

Paragraph (2)(F) has been changed. It adds the requirement that, when collateral is accepted to guarantee the payment of rent more than three months overdue, the collateral must have a current market value that is at least 75% of the amount of total rent due. With this addition, when the current market value is less than 75% of the total rent due, the due and accrued rent cannot be allowed as an asset. This applies only when rent is more than three months overdue. All other due and accrued rent less than three months overdue is allowed as an asset without collateral as defined in current law.

Paragraph (2)(G) remains the same as the current law.

Paragraph (3) remains the same as the current law.

Paragraph (4) has been added to allow as an asset bills receivable for premiums and installment premiums for other than life insurance policies when the total of the receivable is not more than the unearned premium held for the policy and only when the payments are current.

This allows the insurance company to record premium receivable only when past payments have been made thereby showing a good chance that future payment will be received. The receivable is limited in that it cannot be more than the unearned premium held on the individual policy which ensures this is an ongoing policy that has some premium in reserve for future policy periods.

Old Paragraph (4) has been renumbered (5) and remains the same as the current law..

Old Paragraph (5) has been renumbered (6) and reformatted to add Subparagraph (A). To Subparagraph (A) has been added two subparagraph. These are regarding exemption from the limitation of allowing as assets only three months of premium in course of collection (less commissions) per policy.

Paragraph (6)(B) exempts reinsurance premiums from reinsurers authorized to do business in this state from this three-month limitation.

Paragraph (6)(C) allows as an asset more than three months of reinsurance premiums receivable from reinsurers when a corresponding liability is recorded by the reinsurance company but not when the amount due more than 90 days is more than 10% of the total assets reported in the last financial statement filed with the director. This helps to ensure the receivables are recognized by the reinsurer and the reinsurer has the ability to pay.

Paragraph (7) deals with premiums receivable less commissions payable from a person controlled by or controlling the insurer. This control is through ownership or by contract and when the person owes more than 50% of the insurer's premium in course of collection as reported in the financial statement.

In (7)(A), the premiums collected by the controlled or controlling person must be held in a trust account at a bank approved by the division. These funds must be kept separate from all other funds and paid only to the insurer or the insured. The investment income from the account can be allocated as the parties wish. All premiums collected by the controlled or controlling person must be deposited in the trust account within 5 working days. This ensures the receipt of premiums receivable by the insurer and reinforces the person's fiduciary responsibilities.

In (7)(B), the controlled or controlling person must provide a clean, unexpired irrevocable and unconditional letter of credit payable to the insurer for a term of at least one year which meets or exceeds the amount of the premiums payable to the insurer at any time. The letter of credit must have an automatic extension for one year unless the insurer has received 30 days prior to expiration written notice that the letter will not be renewed. The letter of credit must be issued by a Federal Reserve Bank and satisfactory to the division. This subsection is meant to ensure that premiums collected by a person controlled by or controlling an insurer will be available and paid to the insurer when due and, therefore, can be reported as an asset.

In (7)(C), the controlled or controlling person must provide a financial guaranty bond payable to the insurer for a term of at least one year which meets or exceeds the amount of the premiums payable to the insurer at any time. The guarantee bond must be of a continuous term and cancelable only when the insurer receives a 30 day written notice of termination with the bond continuing to cover any acts committed prior to the termination. The financial guaranty bond must be issued by an insurer authorized to transact business in Alaska, who is not related to the insurer or the purchaser of the bond and be satisfactory to the division. This subsection is meant to ensure that premiums collected by a person controlled by or controlling an insurer will be available and paid to the insurer when due and, therefore, can be reported as an asset.

In (7)(D), the premiums receivable from a controlled or controlling person can be allowed as an asset when a financial evaluation shows the person is solvent and able to pay. This financial evaluation can be called by the director and would be based on a review of books and records of the person.

Paragraph (8) is the same as Paragraph (7) of the existing law.

Paragraph (9) is the same as Paragraph (8) of the existing law.

Current law allows as an asset, amounts receivable by an assuming insurer when a solvent ceding insurer withholds funds under a reinsurance treaty. Paragraph (10), which is similar to Paragraph (9) of the existing law, has been amended to require the amount allowed as an asset not to exceed the amounts recorded as a liability by the assuming insurer for unpaid losses and reserves under the reinsurance treaty. This subsection requires that, when a ceding insurer withholds funds under a reinsurance treaty to guarantee the payment of amounts due, the assuming reinsurer may report these amounts withheld as an asset when they also have reported the payable as a liability. Any excess withheld over the liability may not be reported as an asset by the assuming insurer.

Paragraph (11) is the same as Paragraph (10) of the existing law.

Paragraph (12) defines the EDP equipment that is allowable as an asset. The asset can only be electronic data processing and related equipment and operating software that is a data processing, record keeping, or accounting system. The system must cost \$50,000 or more and the cost must be depreciated fully (periodically charged to expense) over ten calendar years or less. The current law allows a system of \$25,000 or more in cost, but the proposed law has increased this to \$50,000 to ensure only true data processing systems are allowed as assets. The ten-year period for depreciation has not changed.

Paragraph (13) has been added to allow as an asset, receivables which arise from income tax allocations between organizations. These assets must stem from a tax allocation agreement which meets IRS regulations, describes the method of allocation, and sets a reasonable time for settling the balances receivable after filing of the tax return. The receivable must be due from a solvent organization that is not in default on its obligations and must meet all other requirements for admitted assets. The receivable must also have a related liability established by other organizations participating in the agreement. This Paragraph defines the requirements which must be met before a receivable based on a tax allocation can be allowed as an asset.

Paragraph (14) has been added to allow as an asset the effect of the excess of assets over liabilities on conversion to U.S. currency when the items are reported in foreign currencies. By way of explanation, if each of the asset and liability items is reported in foreign currency, this entry would convert the net total to U.S. dollars. If each individual line item is converted to U.S. dollars,

the resultant gain or loss in foreign exchange rates is recorded on the statement of operations.

Paragraph (15) is added to allow as an asset only the unsecured receivable from a solvent affiliate that is not more than six months past due and where a related liability has been reported by the affiliates. This ensures that the receivable is recognized as a payable by the affiliate and payment will be made within six months.

Paragraph (16) allows as an asset, a receivable from a wholly or partially uninsured accident and health plan. This would arise from a self-insurance plan of the insurer.

Paragraph (17) is substantially similar to Paragraph (12) of the existing law, but revises the process that requires the approval of the director as necessary for the reporting of assets not specifically listed in this chapter of statutes. It is replaced with an allowance for those assets included in the annual statement form and consistent with instructions published by the NAIC (as approved by the director).

Paragraph (18) is the same as Paragraph (13) of the existing law.

Section 23. AS 21.18.030. Assets Not Allowed
Page 21. line 28 to page 23. line 13.

Subsections (a)(1)-(3) remain the same as the current law.

Subsection (a)(4) is amended to specifically exclude from assets tangible personal property, including but not limited to that listed in the current law. It is also amended to remove the broad exception that allows property permitted under AS 21.21 (Investments) but retains the exemption in 21.21.270 regarding acquisitions of property through the foreclosure of chattel mortgages. These amendments add a broad definition of the types of property that cannot be held and limits the exceptions included in AS 21.21.

Subsection (a)(5) remains the same as the current law.

Subsection (a)(6) excludes bonds and notes which are secured by mortgages or deeds or trust which are in default.

Subsection (a)(7) is added to exclude the payments of Alternative Minimum Tax or other tax refunds receivable from U.S. or state taxing authorities which are in dispute. This eliminates the recording as an asset of long-term tax receivables in dispute and noncollectible.

Subsection (a)(8) is added to exclude the amount of committed commissions where the present value of future commissions is paid in advance to agents.

Subsection (a)(9) is added to exclude as assets the forwarding of commissions and fees before the earning of these amounts by agents. These subsections exclude what would be a prepayment amount to agents that would be highly uncollectible for the payment of liabilities.

Subsection (a)(10) excludes unsecured loans from outside sources since these are unknown collection risks.

Subsection (b) requires that all assets which are not allowed because of doubtful value or character be deducted from the gross assets unless the director permits a reserve (liability) instead. This section requires a full reporting of assets held and deducting assets with questionable value to determine an insurer's ability to meet its contractual obligations.

Section 24. AS 21.18.060(a). Unearned Premium Reserve
Page 23, lines 14-18 .

This subsection has been amended only to reflect editorial changes. No change in the existing law or intent has been undertaken.

Section 25. AS 21.18.060(b). Unearned Premium Reserve
Page 23, line 19 to page 24, line 16.

This subsection has been amended only to reflect editorial changes. No change in the existing law or intent has been undertaken.

Section 26. AS 21.18.073. Unearned Premium Reserve for Title Insurance
Page 24, line 17 to page 25, line 28.

This section is added to require reserves in addition to those required to pay losses for Title insurance. This is to take the form of a guaranty fund or unearned premium reserve and such funds cannot be used for general purposes. Investment of these funds is allowed and interest can be included in the insurer's general income. This reserve shall be calculated for: (1) policies issued after January 1, 1991 as 10% of premiums written in the calendar year which will be reduced by 5% for each of the next 20 years; and (2) policies issued before January 1, 1991 as \$.30 per \$1,000 face amount of all policies issued in the last ten years. No additional reserve of this type is required for policies issued more than ten years ago. This ensures sufficient assets to pay claims.

Section 26. AS 21.18.075. Bail Bond Reserve
Page 25. line 29 to page 26. line 7.

The director may require a reserve for bail bonds or other single premium bonds that are without an expiration date and furnished in judicial proceedings in the amount of 25% of total consideration charged for those bonds outstanding. This ensures sufficient reserves to pay claims and is in place of the unearned premium reserve required by AS 21.18.050.

Section 27. AS 21.18.120. Valuation of Bonds
Page 26. lines 8-27.

This section, in general, sets out the valuation of bonds that are allowed to be purchased and how they are to be recorded. It is amended to require the bonds be issued by a solvent entity and requires amortization of bond premium or discount.

Section 28. AS 21.18.900. Definitions
Page 26. line 28 to page 27. line 22.

A new section has been added to define terms used in AS 21.18.

INVESTMENTS.

(Sections 29-50)

The investment of an insurer's assets in appropriate and safe investments is important for continuing solvency. These sections extensively expand on the kind, quality, and amounts of investments allowed to be made by an insurer of its assets. The types of equities and investments have changed significantly in the last twenty years and the amendments bring recognition of these new investments and the rules for an insurer desiring to invest its assets in them.

Section 29. AS 21.21.020(c). Eligible Investments
Page 27. lines 23-26.

Changes simplify the language and delete the grandfathering necessary for the 1966 major redrafting of this chapter but which now, after 22 years, is not required.

Section 30. AS 21.21.030(c). General Qualifications
Page 27. line 27 to page 28. line 7.

Editorial changes in this Section accommodate changes made in Section 27.

Section 31. AS 21.21.030(d)-(e). General Qualifications
Page 28, line 8-18.

These modifications close a loophole in the law. Insurers can acquire otherwise ineligible assets by accepting these assets as payment under a contract of reinsurance. The new section requires the prior written approval of the director concerning a reinsurance contract being purchased substantially with ineligible assets. Should such a transaction have occurred without the prior approval of the director, the director is given a range of options for dealing with either the ineligible assets or the contract of reinsurance.

Section 32. AS 21.21.050. Diversification of Investments
Page 28, line 19 to page 30, line 29.

These changes exempt a new class of securities from the general prohibition of lending based upon the credit of or investing in any one person or category of risk more than five percent of an insurer's assets. The new category is the general obligation of a state of the United States of America not insolvent and whose securities are not then in default. These securities are judged to be a safe and prudent investments with the change allowing larger investments by Alaskan insurers in the securities of the State of Alaska.

An investment limitation designed to add to the safety and soundness of Alaska's domestic insurance industry is increased. Current law requires a dollar figure equal to a domestic insurer's minimum required capital to be invested in specified assets having a minimum of associated risk. The changes modify the minimum dollar amount to the higher of the previously specified minimum capital or one-half of the insurer's reported capital as shown on its most recent statement of financial condition filed with the director. The specified "minimum risk" assets are modified to require bank deposits to be fully insured or collateralized, and real estate mortgage loans are eliminated as a "minimum risk" asset.

Finally, the director is given the authority to consent to an insurer investing more than ten percent of its assets in common stocks which is the same authority granted the director in Subsections (5) and (7) which deal with corporate obligations and miscellaneous assets.

Section 33. AS 21.21.080. State, County, Municipal and School Obligations
Page 31, lines 1-13.

The amendments to this section require that more conservative investment choices be made by insurers in respect to investment in the obligations of the political subdivisions of a state or province. They eliminate, as an eligible investment, the obligations secured by a pledge or assignment of specific revenues of a political subdivision. This parallels the recent tightening done

by the federal government with respect to tax exemption for the interest from industrial revenue bonds. Bonds which are payable only from a specific revenue source may carry the patina of safety associated with the political subdivision by whom they are issued but, in fact, are not required to be paid should the source of revenue fall, as would be the case, with a subdivision's general obligation bond. Revenue bonds of states and provinces and political subdivisions thereof continue as eligible investments under this chapter.

These changes further require that for obligations of states and political subdivisions to be eligible for investment, the associated state or province be:

- (1) solvent;
- (2) have the power to levy taxes for prompt payment; and
- (3) not be in default on its obligations.

Section 34. AS 21.21.130. Inter-American Development Bank
Page 31, lines 14-20.

This change adds the African and Asian Development Banks to the eligible list of development banks into which investments can be placed. Provisions regarding solvency and nondefault status are also added for eligibility. This section is contained in SB 353 by Senator Kelly which is in the House Labor and Commerce Committee.

Section 35. AS 21.21.140(a). Corporate Bond and Debentures
Page 31, line 21 to page 32, line 9.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 36. AS 21.21.140(b). Corporate Bond and Debentures
Page 32, lines 10-21.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 37. AS 21.21.140(c). Corporate Bond and Debentures
Page 32, line 22 to page 33, line 4.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 38. AS 21.21.140(d). Corporate Bond and Debentures
Page 33, lines 5-8.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 39. AS 21.21.150. Preferred or Guaranteed Stocks
Page 33, line 9 to page 34, line 1.

The changes to this section tighten up the eligible preferred or guaranteed stock investments by adding a nondefault requirement. Changes for the purpose of clarification are made with respect to the final year measurement of dividends during the immediate preceding two fiscal years.

Section 40. AS 21.21.160. Common Stocks
Page 34, lines 2-17.

This change tightens up the eligible common stock requirement by adding a nondefault requirement.

Section 41. AS 21.21.170(a). Insurance Stocks
Page 34, lines 18-22.

This change tightens up the eligible insurance stock requirement by adding a nondefault requirement.

Section 42. AS 21.21.190. Equipment Trust Certificates
Page 34, line 23 to page 35, line 1.

These changes are editorial only.

Section 43. AS 21.21.245. Pooled Investments
Page 35, lines 2-16.

Prior statute language was written before the advent of mutual funds, investment trusts, unit investment trusts and similar popular investment vehicles. This new section provides a statutory method for allowing and controlling a domestic insurer's use of these investment mechanisms by establishing a category titled "Pooled Investments" into which investment will be authorized by an insurer only if the pooled investment appears on a list of eligible pooled investment entities to be maintained by the director. This approach is similar to the treatment used to manage pooled investments by credit union regulators and makes use of definitions established under the Investment Company Act of 1940 and the Internal Revenue Code of 1986.

It may be argued that any "pooled investment" that contains eligible securities should also be eligible for investment by insurers. This, however, is an extremely dangerous assumption which is best illustrated by example.

U S. Government Securities are generally held to be the standard for a safe and sound conservative investment. Most U.S. government mutual funds also allow use of options and interest rate future's contracts which can either be highly speculative or income protecting ledger depending on their use. Thus, depending on the ranking of priorities in the pooled investment's investment objectives, the experience of the fund manager and other intent language in the registration documents, a pooled investment can on the surface appear to be conservative while, in practice, it is managed in a manner which puts the pooled investment at the opposite end of the safety and soundness spectrum, a result which would frustrate the legislative intent of this title.

Insurers should be allowed the use of pooled investment techniques because they lower risk through diversification and provide another source of professional funds management. This section's approach provides that opportunity with a mechanism to avoid the risk of speculation and which "piggybacks" on the work of other regulators. Other changes dealing with how insurers will be measured with reference to adherence to the investment diversification and concentration prohibitions of this chapter and a method for treating currently held pooled investments after adoption of this section are also included.

Section 44. AS 21.21.250(c). Miscellaneous Investments

Page 35. lines 17-22.

A new subsection is added that permits an insurer to invest in obligations of the life and disability guarantee fund when established.

Section 45. AS 21.21.270(b). Chattel Mortgages

Page 35. lines 23-29.

The change provided in this section pertains to an insurer's chattel mortgages and requires that appraisers hired to value an insurer's interest in a property must be independent of the insurer.

Section 46. AS 21.21.270(c). Chattel Mortgages

Page 35. lines 23-29.

The changes provided in this section pertains to an insurer's chattel mortgages and enhances an insurer's ability to place liens on personal property for the improvement of that insurer's collection efforts even when that lien is a property interest in what otherwise may be an ineligible investment.

Section 47. AS 21.21.280. Real Estate
Page 36, line 9 to page 39, line 25.

The first change in this section dealing with insurer-owned real estate clarifies how the maximum allowable investment will be measured.

Other changes enhance and clarify an insurer's authority to own real estate in excess of that which was previously allowed. Ownership of excess space for rent to others is newly authorized if such space is reasonably anticipated to be required for future expansion or in order to have a building that will be an economic unit. A provision is also made for insurers, under certain conditions, to hold real estate for the production of income with the prior approval of the director and only up to a maximum limit of five percent of the insurer's assets.

Section 48. AS 21.21.310(a). Failure to Dispose of Real Estate, Property or Securities

Page 39, line 26 to page 40, line 2.

This change, made for the purposes of clarification, specifies that assets required to be disposed of may not be allowed as an "admitted" asset for the purpose of determining an insurer's financial solvency.

Section 49. AS 21.21.350. Investment Transactions with Affiliated or Controlling Persons

Page 40, line 3 to page 41, line 11.

This new section provides for prudent rules for insurers to deal with investment transactions with affiliated or controlling persons. Before purchasing or selling an otherwise permissible investment issued by, due from or through the use of a broker who is an affiliated or controlling person or purchasing or selling either to or from same, an insurer must first disclose the facts and circumstances of the relationship fully to its board of directors. Once the insurer's board has the facts, they then are required to specifically authorize the transaction. Investments or loans are required to be at current market transfer prices or at commercially reasonable rates with the board being required to make that determination. Exceptions are provided for the board to rely on independent third party experts and to ignore transactions where the financial interest is nominal.

Section 49. AS 21.21.355. Certain Deposits Not Prohibited

Page 41, lines 12-21.

This addition clarifies that nothing in this chapter prohibits an insurer from making a deposit of its securities for the purposes of protecting the interests of its policyholders, or where it is necessary to secure permission to transact

business or as collateral for the securing of any bond for the business of the insurer. These purposes generally are designed to protect the interests of the insurance consuming public and this change is an attempt to avoid inadvertently frustrating that objective.

Section 49. AS 21.21.360. Options and Futures Contracts

Page 41, line 22 to page 45, line 10.

Over the last decade, the U.S. financial markets have developed organized options and future contract markets. Proper use of these financial instruments when undertaken under a policy of hedging, as approved by an insurer's board of directors and prudently executed, can be an important part of reducing an insurer's overall investment risk. Reduction of investment risk increases the safety and soundness of insurers and, thus, protects Alaska's insurance consuming public. There currently exists no mechanism under Alaska's Insurance Law which provides our domestic insurers with the opportunity to utilize options and future contracts.

This new section specifies that options and future contracts may be entered into by a domestic insurer if done under a policy of hedging an insurer's risk from market fluctuations approved by both the insurer's board of directors and the director.

With regard to valuation and accounting on the insurer's financial statements, this new section closely follows the model rule adopted by the National Association of Insurance Commissioners, Securities Valuation Office. Put options, call options, other stock options, stock purchase warrants and financial future contracts are all treated in some detail. Conservative valuation requirements, specified accounting treatments and consistency requirements are intended to mandate prudence.

Section 50. AS 21.21.600. Definitions

Page 45, line 11 to page 47, line 18.

This definitional section is highly expanded to clarify the technical terms utilized in AS 21.21. When possible, we have specified that certain definitions are to be consistently applied between this and other chapters of this title. An attempt has been made to rely on regulatory structures supervised by the federal government or the National Association of Insurance Commissioners where those regulatory structures have become the standards for the insurance industry and closely parallel the regulatory intent of this title.

SURPLUS LINES INSURANCE.**(Section 51)**

This section recognizes mutual protection and indemnity associations as nonadmitted insurers that may be classified as eligible surplus lines insurers. The financial requirements for an insurer to be included on the "white list" of eligible surplus lines insurers have been increased. The capital and surplus requirements are increased as well as the amount of assets required to be trusted in the United States by alien insurers.

Section 51. AS 21.34.04(c). Eligible Surplus Lines Insurers Required
Page 47, line 19 to page 49, line 17.

The changes in this section generally are for the purpose of strengthening the financial requirements for a nonadmitted insurer to be declared an eligible insurer for the purposes of the lawful underwriting of surplus lines insurance under AS21.34. The policyholder surplus requirement for foreign insurers is increased to \$6,000,000 at 12/31/90, \$10,000,000 at 12/31/91, \$12,500,000 at 12/31/92, and \$15,000,000 at 12/31/93. The policyholder surplus requirements for alien insurers is the same as those above for foreign insurers. The amount of trusted assets required in the United States for an alien stock or mutual insurer has been increased from \$1,500,000 to \$2,500,000. Additionally, the policyholder surplus requirement for an "insurance exchange" domiciled in another state has been increased from \$15,000,000 to \$50,000,000.

TRADE PRACTICES AND FRAUDS.**(Section 52)**

This section provides for civil immunity for a person that provides information to law enforcement officials, the NAIC, the Division of Insurance, or other states' insurance regulators pertaining to fraudulent insurance acts.

Section 52. AS 21.36.430. Immunity for Reports on Fraud
Page 49, lines 18-29.

This new section provides for civil immunity for any person reporting information covering suggested, anticipated, or completed fraudulent acts as long as the reporting does not entail reckless, willful, or intentional misconduct.

TITLE INSURANCE COMPANIES. (Sections 53-57)

The amendments found in these sections are to provide for the same treatment of title insurers as for other types of insurers in financial reporting and examination by the director. (The amendments mirror those found in Sections 5, and 17-19 of this Act which pertains to insurers other than title insurers.)

Section 53. AS 21.66.080. Annual Statement
Page 50, lines 1-20.

Amendments to this section prescribe that title insurers file the required annual financial statement in the format consistent with that adopted by the NAIC and approved by the director. The director may require that the annual financial statement be filed via electronic media. These amendments place the title insurers on the same financial reporting basis as other types of insurers noted in Section 17 of this Act.

Section 54. AS 21.66.080(b). Annual Statement
Page 50, lines 21-23.

This Section requires Title insurers to file their annual financial statements with NAIC. This amendment is the same required of other types of insurers in Section 18 of this Act.

Section 55. AS 21.66.085. Quarterly Statement
Page 50, line 24 to page 51, line 4.

This new subsection allows the director to require that title insurers file quarterly financial statements on the same basis as for other types of insurers noted in Section 19 of this Act.

Section 56. AS 21.66.090(b). Application for Certificate of Authority
Page 51, lines 5-11.

Amendment to this subsection clarifies that title insurers are responsible to pay the examination costs associated with the director's examination of any title plant associated with a title insurer.

Section 57. AS 21.66.130. Expenses of Examination
Page 51. lines 12-15.

The repeal and reenactment of this section provides for the payment of examination expenses associated with the director's examination of any title insurer on the same basis as that used for other types of insurers as revised in Section 5 of this Act.

ORGANIZATION AND CORPORATE PROCEDURES. (Section 58)

This amendment is editorial in nature. It replaces extensive verbiage relating to the description of financial impairment of an Alaska insurer with the term "impaired" which has now been defined by the Act in AS 21.90.900 (Section 81).

Section 58. AS 21.69.530 (a). Impairment of Capital or Assets
Page 51. lines 16-25.

Amendment to this section is editorial in nature. The full description for what impairment of an insurer means is removed and replaced by the term "impaired" which is defined in AS 21.90.900 (see Section 81) but also applies to this chapter.

REHABILITATION AND LIQUIDATION. (Sections 59-80)

Although extensive amendment is proposed, the basic intent of the existing law (AS 21.78) in regard to conducting the affairs of a financially impaired or insolvent insurer is unchanged. The procedures, requirements, and guidelines have been expanded and clarified so that the affairs of a financially troubled insurer can be conducted in an orderly and equitable manner without undue litigation.

Section 59. AS 21.78.020. Commencement of Delinquency Proceedings
Page 51. line 26 to page 53. line 12.

Although substantial amendment to this section has been undertaken, the basic intent remains unchanged. This section is clarified to clearly indicate that the director is the only person that may commence what amounts to a bankruptcy proceeding (rehabilitation or liquidation) for a domestic insurer. Additionally, this section provides that the director be the court appointed receiver and describes the jurisdiction of the court in these proceedings.

Section 60. AS 21.78.030. Injunctions and Orders
Page 53, line 13 to page 54, line 14.

The intent of this amended section remains the same in allowing the director to seek, without bond, orders or injunctions to prevent hypothecation, waste, dissipation or other inappropriate transfer of assets of a bankrupt insurer. Amendment to this section further describes those situations in which these types of court orders may be sought.

Section 61. AS 21.78.040. Grounds for Rehabilitation
Page 54, line 15 to page 55, line 5.

In addition to the 10 grounds on which the director may seek an order of rehabilitation under AS 21.78, four new grounds are added by the amendments to this section. The new grounds are as follows:

1. an insurer fails to remove an officer found, after hearing, to be dishonest or untrustworthy;
2. if the insurer fails to make available records of its transactions for examination;
3. if an insurer has within four years willfully violated its charter or bylaws, any Alaska insurance law, or any valid order from the director; and
4. if an insurer has failed to file any required financial statement or report.

Because the grounds for liquidation found in AS 21.78.050 include, by reference to AS 21.78.040, the same grounds as are available for rehabilitation, the above new grounds are also established for commencing a liquidation proceeding.

Section 62. AS 21.78.040(b). Grounds for Rehabilitation
Page 55, lines 6-25.

In addition to the new grounds described in the last Section, additional grounds are added relating to criminal activities impacting the insurer. These are: on which the director may seek an order of rehabilitation under AS 21.78, four new grounds are added by the amendments to this section. The new grounds are as follows:

1. the occurrence of fraud which endangers the insurer's assets;
2. control of an insurer is by a person found, after hearing, to be untrustworthy; and,

3. if an officer has refused to be examined under oath concerning an examination of the insurer.

Because the grounds for liquidation found in AS 21.78.050 include, by reference to AS 21.78.040, the same grounds as are available for rehabilitation, the above new grounds are also established for commencing a liquidation proceeding.

Section 63. AS 21.78.090. Order of Rehabilitation
Page 55, line 26 to page 56, line 25.

Amendment to this section adds new subsections pertaining to an order of rehabilitation and its effect. An order of rehabilitation stops any legal proceeding against an insurer for 90 days and puts on hold any statute of limitation time limit for a legal action which an insurer might take for 60 days. This section now makes it clear that any guarantee association may intervene in a rehabilitation proceeding if the association is required to act the result of the entry of an order of rehabilitation. The receiver is required to provide periodic accountings to the court of the condition of the insurer in rehabilitation.

Section 64. AS 21.78.100. Order of Liquidation. Domestic Insurers
Page 56, line 26 to page 59, line 6.

New subsections pertaining to an order of liquidation and its effect are added to the section. Liquidation orders are required to call for specified periodic accountings to the court of the affairs of an insurer being liquidated. Orders of liquidation are required to contain provisions for the termination or continuation in force of all insurance contracts of the insurer according to the guidelines now set forth in this section. This section also contains the effects that an order of liquidation has on legal proceedings similar to those found pertaining to orders of rehabilitation. Also, this section now provides for any guarantee associations to intervene in a liquidation proceeding if the association is required to act as the result of the entry of an order of liquidation.

Section 65. AS 21.78.130. Conduct of Delinquency Proceedings Against Domestic and Alien Insurers.
Page 59, line 1 to page 60, line 23.

The new subsections added to this section augment the powers and authority of the receiver in a rehabilitation or liquidation. The receiver is allowed to pursue on behalf of the insurer all legal remedies from any person due to tortuous acts, breach of contract, or breach of fiduciary obligation.

If the receiver finds that reorganization, consolidation, merger, conversion or other transformation of an impaired or insolvent insurer is appropriate, the receiver is required to develop a plan for the appropriate action and submit the plan to the court for approval, disapproval or modification. A plan of this nature may include a moratorium on nonforfeiture benefits under contracts insured by an impaired or insolvent life insurer.

If an insolvent insurer's estate does not possess sufficient cash or other liquid assets to cover the costs of rehabilitation or liquidation, funds may be advanced by the Division of Insurance for that purpose. However, these funds are required to be repaid out of the first available money and take priority over all other claims against the estate.

The receiver is granted the authority to conduct examinations in conjunction with a delinquency proceeding with the same ability to subpoena, examine under oath, and review records as the director has in the examination of any insurer. The receiver is also granted the power to move records of the insurer to any location that would facilitate the rehabilitation or liquidation and to provide reasonable access to those records necessary to any guarantee association to carry out its lawful duties.

The receiver may also intervene in similar proceedings in other jurisdictions and act as a receiver or trustee in another jurisdiction if an appointment is offered. The receiver may enter into agreements with a receiver or other insurance regulatory official of another state which relates to a delinquency proceeding affecting an insurer that is or has conducted business in both states.

Section 66. AS 21.78.170. Form of Claim
Page 60. line 24 to page 61. line 2.

This section contains the provisions pertaining to claims filed against the estate of an insolvent insurer. Subsection (c) has been amended to require the receiver to notify a claimant if the claim has been denied in part or in whole in writing by first class mail. The claimant must raise any objection with this determination within 60 days of when the notice was mailed or is barred from any objection.

Section 67. AS 21.78.170. Form of Claim
Page 61. lines 3-9.

If the receiver receives an objection, the amendments to subsection (d) provide that the receiver request the court to conduct a hearing on the matter if the receiver does not change the original determination after such objection is made.

Section 68. AS 21.78.170. Form of Claim
Page 61, line 10 to page 62, line 1.

New subsections (e) through (h) have been added to provide further guidelines for claims made against an insurer in liquidation. A claim does not have to be considered or allowed if not all the required supporting documentation is provided or if the prescribed (and court ordered) claim form is not used. The receiver may at any time request that additional information be provided by any claimant and may take testimony under oath to obtain supplementary information. A judgement or an order against an insured or an insurer entered after the date of a liquidation order or a judgement or an order entered at any time by default or collusion need not be considered as support of evidence of liability or amount of damages in connection with a claim. A claim by any guarantee association against the estate of an insurer in liquidation must be in a form and contain support agreed to by the receiver and the guarantee association.

Section 69. AS 21.78.180(d). Priority of Certain Claims
Page 62, lines 2-15.

This section is amended to clarify certain circumstance involving claimants whose claims against the estate of an insurer in liquidation are secured. Amendment to subsection (d) provides the methodology for arriving at the value of the security and allows for the entire claim to be allowed if the security is surrendered to the receiver.

Section 70. AS 21.78.180(e). Priority of Certain Claims
Page 62, line 16 to page 63, line 1.

A new subsection (e) has been added to allow in certain circumstances for a person other than the secured creditor to file a claim with the estate of an insolvent insurer. That other person must be the person that provided the security via some undertaking and the secured creditor has failed to file and prove a claim. In such a circumstance, that person may file a claim in lieu of the secured creditor. However, the secured creditor will get any distributions from the estate of the insolvent insurer and the other person that made the claim will only be entitled to a portion of the distribution if the distribution and the amount paid on the undertaking exceed the entire amount of the secured creditor's claim. Any such excess must be held in trust by the secured creditor for the benefit of the other person who made the claim.

Section 71. AS 21.78.200(a). "Uniform insurers liquidation act."
Page 63, lines 2-5.

This is an editorial change to amend internal cross references. No substantive change.

Section 72. AS 21.78.250. Fraudulent Transfers Before Petition
Page 63. line 6 to page 64. line 26.

Currently AS 21.78.250 gives a broad outline as to how transfers of property made by or on behalf of an insurer before an order of rehabilitation or liquidation are treated when the transfer was accomplished with the intent to gain a preference or a greater percentage of the insurer's assets in a delinquency proceeding. In essence, the receiver may avoid or reverse these transactions unless the insurer received fair value for the asset transferred. This broad outline is repealed and replaced with a more detailed description of the acceptable transfers and unacceptable transactions which may be voided. The essential intent of current AS 21.78.250 is retained.

The reenacted AS 21.78.250 pertains to transfers occurring prior to a petition for rehabilitation or liquidation. This new section specifically recognizes transactions involving reinsurance contracts.

Section 73. AS 21.78.251. Fraudulent Transfer After Petition.
Page 64. line 27 to page 66. line 11.

New section AS 21.78.251 pertains to transfers and transactions occurring after a delinquency proceeding has been undertaken but before an order of rehabilitation or liquidation has been entered or before the receiver takes possession of the insurer's property.

Section 73. AS 21.78.252. Voidable Preferences and Liens.
Page 66. line 12 to page 71. line 16.

New section AS 21.78.252 provides the detailed guidelines for the voiding or reversing improper transfers of property. This section maintains the personal liability of any person, (including insurer employees, officers, or shareholders), acting on behalf of an insurer that knowingly participates in giving of a preference who knows or has a reasonable cause to believe that an insurer is or is about to become insolvent.

Section 73. AS 21.78.253. Claims of Holders of Void or Voidable Rights
Page 71. line 17 to page 72. line 5.

New section AS 21.78.253 outlines how claims of person who received a preference are to be treated. In general such claims are to be disallowed and not allowed to participate in any distribution of the insolvent insurers estate. However, a claim by such a creditor will be allowed as an "excused late claim" only if the transfer which provided for the preference is reversed.

Section 74. AS 21.78.260. Priority of Distribution
Page 72, line 6 to page 74, line 10.

The current law governing liquidations does not provide for a statutory priority for distribution of an insolvent insurer's estate. By interpretation, the administrative expenses to liquidate an insurer receive priority treatment. Currently, AS 21.78.260 provides a priority for wages owed employees up to \$500. The new version of AS 21.78.260 provides for a specific priority for the distribution of an insolvent insurer's estate. Additionally, a methodology is defined that calls for all claims in each class to be paid or sufficient funds set aside before any claims in the next lower priority class are paid. The order of distribution is as follows:

1. Class 1. The expenses and costs administration for the rehabilitation or liquidation;
2. Class 2. Wages for employees for up to two months pay but principal officers and directors are not allowed to benefit by this priority;
3. Class 3. All claims for losses incurred under insurance policies including third party liability claims and claims of any guarantee association;
4. Class 4. Claims for unearned premiums under nonaccessible insurance policies, other premiums refunds, and claims of general creditors including claims made by ceding or assessing reinsurers under contracts of reinsurance;
5. Class 5. Claims of federal, state, or local government other than claims made under Class 3;
6. Class 6. Claims filed late or any other claims other than those claims under Class 7 or Class 8;
7. Class 7. Surplus notes, contribution notes, or similar obligations, and premium refunds under assessable insurance policies; and
8. Class 8. Claims of shareholders or other owners in their capacity as shareholders or owners.

Section 75. AS 21.78.270. Setoffs and Counterclaims
Page 74, lines 11-29.

This section clarifies the requirement that mutual debts or credits between the impaired or insolvent insurer and any other person be netted out with a resultant single amount either paid to the insurer or paid by it.

Section 76. AS 21.78.271. Recovery of Premiums Owed

Page 75. lines 1-20.

This new section requires that any person, including licensed agents and brokers, responsible for the payment of premium to an insurer pay to the receiver the amount of premium due for the entire term of the policy at the time of the declaration of insolvency. The amounts are to include commissions. The director may impose a monetary penalty of up to \$1,000 for each violation of this section and may also suspend or revoke the agent's or broker's license.

Section 76. AS 21.78.272. Reinsurers Liability

Page 75. lines 21-28.

This new subsection pertains to a reinsurer's obligations to the estate of an insolvent or impaired insurer. Payments under a contract of reinsurance due an insurer in delinquency may not be reduced as a result of the rehabilitation or liquidation proceeding. Unless the reinsurance contract specifically provides for payment to a person other than the impaired or insolvent insurer, a payment to a person other than the impaired or insolvent insurer does not reduce the reinsurer's obligation to that insurer.

Section 77. AS 21.78.280. Special Claims.

Page 75. line 29 to page 76. line 25.

Currently AS 21.78.280 contains provisions pertaining to both contingent and unliquidated claims, and third party liability claims. This one section has now been divided into two separate sections with AS 21.78.280 pertaining to contingent and unliquidated claims and AS 21.78.281 pertaining to third party claims.

AS 21.78.280 provides that a contingent and unliquidated claim will be allowed to participate in a distribution of an insolvent insurer's estate only if, either the claim becomes absolute before the last day allowed for the filing of claims or a surplus of funds remains after all other claims are paid.

Section 78. AS 21.78.281. Special Provisions for Third-Party Claims.

Page 76. line 26 to page 78. line 14.

New section AS 21.78.281 provides the special guidelines for third party claims. It provides for either the third party or the insured of the insurer in liquidation to file a claim against the insolvent insurer's estate. The receiver is required to make recommendations to the court in regard to the allowance of a third party claim based on the receiver's consideration of the probable outcome of the pending action against the insured. If several third party claims against one insured are made which exceeds the policy limits, each

claim will be proportionately reduced so that the total paid does not exceed the policy limits. No separate third party claim is allowed if covered by any guarantee association.

Section 79. AS 21.78.290. Notice to Creditors and Others
Page 78, line 15 to page 79, line 14.

This section has been repealed and reenacted to provide for a more detailed outline of how the receiver is to provide notice to potential claimants and other persons affected by the liquidation of an insolvent insurer. Notice is required to be made by several different media.

The notice must be given by the receiver as soon as is possible after the entry of the order of liquidation and must specify the amount of time allowed for the filing of claims. The time allowed for the filing of claims must be at least six months after the date of the liquidation order is entered.

Section 80. AS 21.78.291. Duties of Agents
Page 79, line 15 to page 80, line 15.

This new section requires that each appointed, licensed agent of an insurer in liquidation provide written notice to each policyholder issued coverage through the agent of the liquidation order. This notice must be accomplished within 15 days from the date the agent receives notice under AS 21.78.290. The written notice must include the name and address of the agent, identification of the policy affected, and the nature of how the policy is affected such as termination under AS 21.78.100. The receiver may waive the notice required by this section if other appropriate notice has been given to policyholders.

Section 80. AS 21.78.292. Filing of Claims
Page 80, line 16 to page 81, line 20.

This new section requires that proof of a claim must be filed in the form required by AS 21.78.170. This section also provides for the guidelines under which late filed claims may participate in the distribution of the estate of the insolvent insurer.

Section 80. AS 21.78.293. Receiver's Recommendation to the Court
Page 81, line 21 to page 81, line 10.

This new section requires the receiver to report to the court the nature of each claim made to include the name and address of the claimant and amount of claim recommended. The court may approve, disapprove, or modify the report on the claims made. However, if the court takes no action on a report

within 60 days of the date of reporting, the claims will be considered to be allowed in the amount reported. In no event, will a claim under a policy of insurance be allowed in an amount in excess of the applicable policy limits. This report or reports as accepted by the court provide for the detail of the claims which will participate in the orderly distribution of the assets of an insolvent insurer.

Section 80. AS 21.78.294. Distribution of Assets

Page 82, lines 11-18.

This new section requires the receiver to accomplish the final distribution of funds to claimants under the court's supervision. The distribution plan must recognize the statutory priorities and provide for a reasonable balance of expediency with the protection of unliquidated and undetermined claims including third party claims.

Section 80. AS 21.78.295. Unclaimed and Withheld Money

Page 82, line 19 to page 83, line 11.

This new section provides that any unclaimed funds subject to distribution under a liquidation proceeding remaining when the court is going to end the receivership will inure to the state without going through any further proceedings.

Section 80. AS 21.78.296. Termination of Proceedings

Page 83, lines 12-20.

This new section provides for the receiver to apply to the court for discharge from the rehabilitation or liquidation proceedings when all claims have been performed. The court may grant the discharge and issue other orders it deems appropriate. It is anticipated that such orders will include an order dissolving the corporate existence of an insolvent and liquidated insurer.

This section allows any other person to apply to the court at any time for an order discharging a delinquency proceeding. However, if the application is denied, the applicant is required to pay the costs incurred by the receiver in resisting the application.

Section 80. AS 21.78.297. Reopening Liquidation

Page 83, lines 21-27.

For good cause including the discovery of additional assets, the director or any other person may petition the court to reopen a previously closed liquidation. If sufficiently justified, the court must reopen the liquidation.

Section 80. AS 21.78.298. Disposition of Records During and After Termination of Liquidation.

Page 83, line 28 to page 84, line 4.

This new section allows the director to recommend to the court and the court to order which records of a liquidated insurer should be retained and which should be destroyed.

OTHER. (Sections 81-89)

Section 81. AS 21.90.900. Definitions for Title

Page 84, lines 5-24.

This section is amended to provide definitions for the terms "impaired", "impairment", "insolvent", "insolvency", and "policyholder surplus". These terms are used in several chapters of Title 21.

Section 82. Repealer

Page 84, lines 25-26.

Sections repealed are:

AS 21.09.080(b). This repeal requires domestic insurers to maintain the currently required capital and surplus amounts.

AS 21.09.080(c). This repeal requires domestic insurers to maintain the currently required capital and surplus amounts.

AS 21.21.020(b). This repeal deletes the grandfathering necessary for the 1966 major redrafting of this chapter but which now, after 22 years, is not required.

AS 21.21.270(d). Moved to definition section AS 21.21.600(6).

AS 21.78.330(1). Definition of "ancillary state" removed.

Section 83. Change of Civil Rule 62(a)

Page 84, line 27 to page 85, line 1.

Section 84. Change of Civil Rule 65(c)

Page 85, lines 2-6.

Section 85. Change of Civil Rule 41

Page 85, lines 7-11.

Section 86. Change of Civil Rule 19
Page 85. lines 12-14.

Section 87. Effective date for Section 18 (should read 20)
Page 85. lines 15-17.

This section delays the effective application of the changes affecting reinsurance credit allowed a domestic ceding insurer.

Section 88. Effective date for certain applications of Section 43
Page 85. lines 18-24.

This section deals with the application of Section 43 dealing with the "pooled investments" list.

Section 89. Effective date of Act
Page 85. line 25.

The Act takes effect immediately.



SB 212

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 10, 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 insurer solvency. This bill makes numerous changes in the Alaska insurance code (AS 21) designed to strengthen the ability of the State of Alaska to protect the insurance consumer from insolvent or impaired insurance companies.

The insurance industry is the only financial industry that is primarily regulated by the states and not the federal government. If Alaska's public is to be protected, this very large responsibility must be carried out by the state's insurance regulator, the division of insurance in the Department of Commerce and Economic Development (DCED). At present, Alaska operates under an insurance code adopted in 1966, with few major changes since that time. Two successive audits have reported that in previous years the division of insurance has failed to adequately examine insurance companies licensed to do business in Alaska. In September 1988, the commissioner of DCED reported to me that the industry has exceeded the statutory ability of the state to regulate it. This bill will be a substantial step in remedying this situation by up-dating our insurance code. Most of the proposals are based on model legislation adopted by the National Association of Insurance Commissioners.

The bill addresses six main points.

1. The bill strengthens the capital and surplus required of insurers who do business in Alaska so that insolvency, or the inability to pay claims, will be avoided. Also, capital and surplus requirements at present apply differently to domestic and out-of-state insurers. Domestic

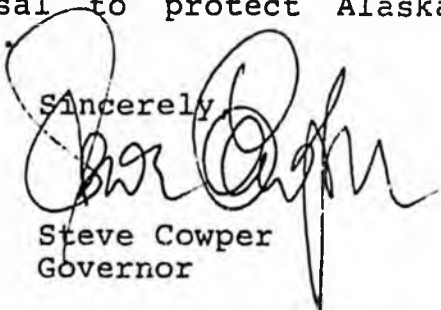
insurers have had to increase their requirements while out-of-state firms doing business here have not. This legislation would require out-of-state or alien insurers to maintain the same capital and surplus as domestic insurers.

2. The federal Tax Reform Act of 1986 has an impact on the insurance industry. Because that Act requires that claims and loss reserves be discounted to present value, the companies have been using arrangements termed "reinsurance" to put their statutory financial reporting on the same basis as their federal income tax reporting. Adequate reinsurance by insurance companies is important to the security of Alaskan policyholders. This proposal provides for a clear, workable definition of "reinsurance" and strengthens the ability of the division of insurance to determine whether adequate reinsurance or some other financial arrangement exists.
3. The bill modernizes Alaska's requirements on investments that may be made by insurance companies so that the state can be assured that a company's capital will not be lost in weak or fraudulent investments.
4. These additional requirements to ensure the financial stability of insurance companies will be effective only if the division of insurance has the regulatory tools to examine the affairs of these companies. This bill strengthens company reporting requirements so that the division will be alerted to potential problems. It also provides clear authority for companies to pay directly examiners hired by the state, and to compensate the state for its examination costs. This will make it possible to examine more companies more often.
5. The bill extends immunity for civil liability to division of insurance personnel, including the director, for carrying out their duties, so that they will not be deterred by the possibility of such suits. It also provides immunity for persons who provide information to the division, such as insurance regulators in other states. A number of state regulators have been sued over the exchange of information with other states. The bill ensures an exchange of needed information between the states.

6. Recent experience with insurance insolvencies in Alaska has demonstrated the inadequacies of our delinquency proceeding statutes. For example, at present our statutes do not provide for clear priorities among claims made on a company subjected to a delinquency proceeding. The bill proposes a new statute for such proceedings, based on a National Association of Insurance Commissioners model.

The division of insurance will provide a more detailed description of this proposal to protect Alaskans from insurance company insolvency.

Sincerely,



Steve Cowper
Governor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSB 212 (LAC)
PUBLISH DATE: 3/5/90

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act relating to insurer solvency BRU: Insurance

Sponsor: Rules Committee by request Components: Operations
Requester: of 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
---------	---	---	---	---	---	---

FUNDING: (Thousands of dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597
Division: Insurance Date: 3-6-89

Approved by Commissioner: Larry Mercurieff Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 3/6/89

Distribution (by preparer):

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

Changes in CSB 212 (LAC)
have no fiscal impact. This
fiscal note is appropriate.
Projections of no fiscal impact
would continue through 1996

page 1 of 1

3482D/030689a

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 212
PUBLISH DATE: 3/9/89

FISCAL NOTE

REQUEST:

Revision Date: _____ Agency Affected: Commerce & Economic Dev.
Title: An Act relating to insurer solvency BRU: Insurance

Sponsor: Rules Committee by request Components: Operations
Requester: XXXXXXX of 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
---------	---	---	---	---	---	---

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.)

Prepared by: Joan Brown, Administrative Off. Phone: 465-2597
Division: Insurance Date: 3-6-89

Approved by Commissioner: Larry Merculiero Phone: 465-2500
Agency: Department of Commerce & Economic Development Date: 3/6/89

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