SB

212

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 1/29/90
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER JUD

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035
3/10/89

DATE TURNED INTO OFFICE 3/5/90

Mr. President:

LABOR AND COMMERCE Committee considered SB 212

insurer solvency; changing Rule 62(a), Rules of Civil Procedure; efd

and recommended:

[✓] replace with CS SB 212 [ ] same title
[✓] new title

[ ] attached amendment(s) and

[ ] _____ letter of intent adopted

[ ] do pass

[ ] do not pass

[ ] no recommendation

[✓] individual recommendations

[ ] further referral to _____

FISCAL NOTE(S) attached [ ] zero [ ] fiscal impact
[ ] appropriation no FN attached [✓] Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

Jerry Tick No Rec
Patch Bodey no rec

Chairman signature and recommendation

[ ] Committee backup attached

STEVE COWPER
GOVERNOR

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, some 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
1990 LEGISLATIVE SESSION

BILL VERSION: SB 212
PUBLISH DATE:

FISCAL NOTE

REQUEST:

Revision Date:
Title: An Act relating to insurer solvency
Sponsor: Rules Committee
Requestor: Senate Labor & Commerce

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance
Components: Operations

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
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
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
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary) No fiscal impact in FY 90.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance
Phone: 465-2597
Date: 2/3/90

Approved by Commissioner: Larry Merculiefe
Agency: Department of Commerce & Economic Development
Date: 6 Feb 90

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

3482D/020590c

REMARKS ON SB 212

MR. PRESIDENT, I RISE TODAY TO SUPPORT SB 212. THIS BILL AND ITS COMPANION, SB 259, WHICH THIS BODY WILL CONSIDER NEXT, ADDRESS TWO OF THE MOST IMPORTANT CONCERNS THE PEOPLE OF THE STATE OF ALASKA HAVE TODAY: HOW CAN WE BE SURE THAT INSURANCE COMPANIES REMAIN SOLVENT, AND WHAT HAPPENS TO THE CONSUMER IF AN INSURANCE COMPANY BECOMES INSOLVENT. THESE BILLS GO ALONG WAY TOWARD ANSWERING THOSE QUESTIONS.

SB 212 UPDATES AND CLARIFIES ALASKA STATUTES DEALING WITH INSURER INSOLVENCY. THESE STATUTES WERE ADOPTED IN 1966 AND ARE BASICALLY UNCHANGED SINCE THAT TIME.

SPECIFICALLY, ~~====~~ Five AREAS OF THE LAW ARE STRENGTHENED:

1. THE MINIMUM AMOUNT OF CAPITAL AND SURPLUS REQUIRED OF AN INSURANCE COMPANY WISHING TO DO BUSINESS IN THE STATE OF ALASKA HAS BEEN INCREASED. THIS WILL INSURE THAT THE COMPANIES DOING BUSINESS IN THE STATE OF ALASKA ARE FINANCIALLY STRONG AND PROVIDE THE DIVISION OF INSURANCE WITH A FINANCIAL TOOL TO IDENTIFY PROBLEM COMPANIES BEFORE IT IS TOO LATE.

2. THE BILL STRENGTHENS THE STATE'S ABILITY TO DETERMINE WHETHER ADEQUATE REINSURANCE OR SOME OTHER FINANCIAL ARRANGEMENT EXISTS SO THAT THE CONSUMER IS PROTECTED. THIS WILL REDUCE THE ABILITY OF AN INSURANCE COMPANY TO MANIPULATE ITS FINANCIAL STATEMENT TO THE DETRIMENT OF THE ALASKA POLICYHOLDER.

3. THE INVESTMENT STATUTES HAVE BEEN MODERNIZED TO ASSURE THAT AN INSURANCE COMPANY'S CAPITAL IS NOT PLACED IN WEAK OR FRAUDULENT INVESTMENTS.

4. REPORTING REQUIREMENTS ARE STRENGTHENED. QUARTERLY REPORTS AND ELECTRONIC MEDIA REPORTING IS ENABLED.

5. THE DELINQUENCY PROCEEDING STATUTES HAVE BEEN STREAMLINED AND STRENGTHENED. THIS WILL CORRECT A DEFICIENCY IN THE LAW DISCOVERED DURING A RECENT INSURER INSOLVENCY.

THIS IS A LENGTHY AND COMPLEX BILL. HOWEVER, IT IS IMPORTANT THAT OUR REGULATORY LAWS BE KEPT AS UP-TO-DATE AS POSSIBLE. SB 212 DOES THAT AND PROVIDES AN IMPORTANT PROTECTION FOR THE THOUSANDS OF ALASKANS WHO PURCHASE INSURANCE AND RELY ON THE SOLVENCY OF THEIR COMPANY AS THEY CONDUCT THEIR BUSINESS, RAISE THEIR FAMILIES, AND PLAN THEIR RETIREMENT.

DW/WFD2391W42590A

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

MEMORANDUM February 6, 1990

SUBJECT: Insurance - CSSB 212 (L&C)

TO: Senator Dick Eliason

FROM: Michael F. Ford M.F.
Legislative Counsel

The attached draft contains numerous style and form changes, as well as the following substantive issues that need to be resolved:

1. I have added a new sec. 7 to resolve a conflict between AS 21.06.160 and 21.06.250.

2. In sections 13, 26, and 51, the dates that certain surplus and reserve requirements were to go into effect have been moved forward. This was done to avoid having the bill take effect retroactively. It was unclear whether the retroactive surplus and reserve requirements were inadvertent or intentional.

3. In AS 21.88.050(a)(3) there is a reference to AS 21.12.-020. AS 21.12.020 is repealed and reenacted in section 20 of the draft. I could not tell if the cross reference should be amended to reflect changes made in section 20.

4. In sec. 21.18.010(1), there is a reference to a definition of "trust company" in AS 21.21. I could not find a definition of this term in that chapter, including amendments to it made by this draft.

5. AS 21.21.290(b) has a cross reference to AS 21.21.280. AS 21.21.280 is amended in section 47 of the draft. Again, the cross reference may need to be amended.

6. You should note that the changes in surplus requirements in section 51 of the bill will also change the surplus requirements applicable to workers' compensation insurance under AS 21.34.030(d).

7. In section 53, AS 21.66.080(a) is amended and contains language excepting subsection (b) from the application of subsection (a). It is unclear whether the language in subsection (b) is a true exception to subsection (a). If so, the language in subsection (b) needs to be changed.

8. In section 63, AS 21.78.090 is amended by adding a new subsection (h). That section may allow a guaranty association or foreign guaranty association to intervene in a court proceeding. If this is the intent, this provision would amend Alaska Rule of Civil Procedure 19 and the change should be set out in the title and in a separate section.

9. In section 68, AS 21.78.170 is amended by adding a new subsection (g). That subsection may violate the requirement in the U.S Constitution that judgments in other states be given equal authority, or "full faith and credit."

10. In section 74, AS 21.78.260 is repealed and reenacted to provide a priority for distribution of claims. You should understand that these provisions will not override a federal law that gives priority to federal liens.

11. Finally, you should note that the bill title has been changed to reflect the content of the bill, and to indicate changes to additional court rules.

Please contact me if you have further questions.

MFF:lmb
L9/096

Enclosure

go0119sE

Ford
2/6/90

Original sponsor(s): Rules/Governor

IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE

CS FOR SENATE BILL NO. 212 (L&C)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to insurance; changing Alaska Rules of Civil Procedure 19, 41, 62(a), and 65(c); changing Alaska Rules of Appellate Procedure 205, 405, 511, 603, 606, and 611(d); and providing for an effective date."

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

* Section 1. AS 21.06.120(a) is amended to read:

(a) The director may examine the affairs, transactions, accounts, records, and assets of each <u>authorized and formerly</u> authorized insurer and each licensed <u>and formerly licensed</u> surplus lines broker as often as the director considers advisable. The director shall so examine each domestic insurer at least once every three years. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact to the extent that the transactions of the attorney-in-fact relate to the insurer.

* Sec. 2. AS 21.06.120 is amended by adding new subsections to read:

(d) The director may examine insurers in participation with the National Association of Insurance Commissioners.

(e) The director may use a contract examiner to carry out the functions of this section. The selection of a contract examiner and the award of a contract is subject to AS 36.30 (State Procurement Code).

* Sec. 3. AS 21.06.140(b) is amended to read:

(b) Every person being examined and its officers, employees, agents, and representatives shall produce and make freely available to the director the accounts, records, documents, files, information, assets, and matters in their possession or control relating to the subject of the examination, and shall facilitate and aid the examination as far as reasonably possible, including providing to the director, at the expense of the person being examined, a copy of any document requested during the examination.

* Sec. 4. AS 21.06.150(e) is amended to read:

(e) The director may withhold from public inspection documents, information, accounts, or records received during an examination or investigation, and an examination or investigation reports, [REPORT] for as long as the director finds [CONSIDERS] the withholding to be necessary for the protection of a person [THE PERSON EXAMINED] against unwarranted injury or to be in the public interest.

* Sec. 5. AS 21.06.160 is amended to read:

Sec. 21.06.160. EXAMINATION EXPENSE. (a) Each person examined, other than as to examinations under AS 21.06.130, shall pay all the costs of, and expenses incurred by division staff examiners, including salary and benefit costs, for time spent relating to the examination, and shall pay the compensation of a contract examiner, to be set at a reasonable customary rate, for conducting [ACTUAL TRAVEL EXPENSES, A REASONABLE LIVING EXPENSE ALLOWANCE, AND A PER DIEM AS COMPENSATION OF EXAMINERS, AS NECESSARILY INCURRED ON ACCOUNT OF] the examination [, ALL AT REASONABLE RATES CUSTOMARY THEREFOR AND AS ESTABLISHED OR ADOPTED BY THE DIRECTOR], upon presentation of a detailed account of the charges and expenses by the director or under an order [PURSUANT TO THE WRITTEN AUTHORIZATION] of the director. The accounting may

either be presented periodically during the course of the examination or at the termination of the examination. A person may not pay and an examiner may not accept additional compensation [EMOLUMENT] for an examination.

(b) The director shall pay into the general fund of the state all money received under (a) of this section. Instead [IN LIEU] of making a deposit into the general fund, the director may order [GIVE WRITTEN AUTHORIZATION FOR] the person examined to make direct payment to the contract examiner for all or part of the contract examiner's compensation. The contract between the state and a contract examiner who will receive direct payment under this subsection must require that the examiner provide the director with a copy of each billing for the examination [TRAVEL EXPENSES AND LIVING ALLOWANCE].

(c) In addition to other penalties provided by this title, if [IF] the person fails to pay the charges and expenses prescribed in (a) of this section, the amount may be recovered by suit by the attorney general on behalf of the state and restored to the general fund. The amount due shall be a first lien upon all of the assets and property of the person in this state.

* Sec. 6. AS 21.06 is amended by adding a new section to read:

Sec. 21.06.165. IMMUNITY FOR DIRECTOR AND OTHERS. (a) The director, employees or agents of the division, and the National Association of Insurance Commissioners and its employees, are not liable for civil damages for an act or omission in the execution of their authorized activities or duties under this title, or for the publication or dissemination of a report or bulletin related to their authorized activities or duties.

(b) This section does not abrogate or modify the common law or other statutory privilege or immunity.

(c) This section does not preclude liability for civil damages as a result of reckless, wilful, or intentional misconduct.

* Sec. 7. AS 21.06.250 is amended to read:

Sec. 21.06.250. FEES AND LICENSES. The director shall collect in advance a fee for each license and for services performed by the division of insurance. Fees may be collected for but are not limited to applications, [EXAMINATIONS,] licenses and license renewals, certificates of authority, service of process, printed or photocopied material, and postage. The director shall adopt regulations setting the fees in an amount the director determines to be sufficient to reimburse the state for the actual expense incurred in providing a service.

* Sec. 8. AS 21.09.020 is amended to read:

Sec. 21.09.020. EXCEPTIONS, CERTIFICATE OF AUTHORITY REQUIREMENT. A certificate of authority is not required of an insurer, not otherwise authorized in this state, in regard to

(1) transactions relative to its policies lawfully written in <u>the state</u> [ALASKA], or liquidation of assets and liabilities of the insurer (other than collection of new premiums), all as resulting from its former authorized operations in <u>the state</u> [ALASKA];

(2) <u>related</u> transactions [RELATIVE THERETO] subsequent to issuance of a policy covering only subjects of insurance not resident, located, or expressly to be performed in <u>the state</u> [ALASKA] at time of issuance, and which coverage was lawfully solicited, written, and delivered outside <u>the state</u> [ALASKA];

(3) transactions <u>under</u> [PURSUANT TO] surplus lines coverages lawfully written under <u>AS 21.34</u> [AS 21.33]; or

(4) reinsurance, except as to domestic reinsurers.

* Sec. 9. AS 21.09.060 is amended to read:

Sec. 21.09.060. COMBINATIONS OF INSURING POWERS IN ONE INSURER. An insurer that otherwise qualifies may be authorized to transact any one kind or combination of kinds of insurance as defined in AS 21.12, except that

(1) a life insurer may also grant annuities, but is not authorized to transact any other kind of insurance than disability; except that if the insurer is otherwise qualified, the director shall continue to authorize a life insurer that, immediately before July 1, 1966, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability;

(2) a reciprocal insurer may not transact life insurance;

(3) a title insurer must [SHALL] be a stock insurer;

(4) a property or casualty insurer may not transact life insurance and may not grant annuities.

* Sec. 10. AS 21.09.070(a) is amended to read:

(a) To qualify for authority to transact any one kind of insurance as defined in AS 21.12, or combination of kinds of insurance as shown below, a foreign insurer, or a domestic insurer applying for its original certificate of authority in this state, [OR AN INSURER REAPPLYING FOR A CERTIFICATE OF AUTHORITY IN THIS STATE] after having withdrawn from this state for any cause, shall possess and after that [THEREAFTER] maintain unimpaired basic paid-in capital stock, [(] if a stock insurer, [)] or unimpaired basic surplus, [(] if a foreign mutual insurer or foreign reciprocal insurer [)], that is unavailable for dividends of any kind, and shall possess when first so authorized, and maintain after that, additional money [FUNDS] in surplus, as follows:

Kind or Kinds of Insurance	Basic Capital or Basic	Additional Surplus When	Additional Maintained

	Guarantee Surplus	First Authorized	Surplus
Life	$1,000,000	$1,000,000	$750,000
	[$800,000]	[$800,000]	
Disability	1,000,000	1,000,000	750,000
	[800,000]	[800,000]	
Life and Disability	1,250,000	1,250,000	1,000,000
	[1,000,000]	[1,000,000]	
Property	1,000,000	1,000,000	750,000
	[600,000]	[600,000]	
Casualty excluding vehicle	1,000,000	1,000,000	750,000
Vehicle	1,000,000	1,000,000	750,000
	[800,000]	[800,000]	
Marine & transportation	1,000,000	1,000,000	750,000
Surety	1,000,000	1,000,000	750,000
Title	500,000	500,000	250,000
	[300,000]	[300,000]	
Any two or more of the following kinds of insurance: property, marine and transportation, vehicle, casualty excluding vehicle, surety and disability	3,000,000	3,000,000	2,250,000

	[1,500,000]	[1,500,000]	
Legal expenses	1,000,000	1,000,000	750,000
	[600,000]	[600,000]	
Mortgage Guarantee	1,000,000	1,000,000	750,000

* Sec. 11. AS 21.09.070(b) is amended to read:

(b) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in all areas in which it operates or proposes to operate, whether or not only a portion of the kinds of insurance are to be transacted in this state. After a hearing, the director may for the protection of the public require an insurer to maintain funds in excess of the amounts required under (a) of this section, due to the amount, kind, or combination of kinds of insurance transacted by the insurer. Failure of an insurer to maintain funds as ordered by the director is grounds for suspension or revocation of the insurer's certificate of authority.

* Sec. 12. AS 21.09.070(c) is repealed and reenacted to read:

(c) After June 30, 1991, an insurer may not renew and continue its certificate of authority unless the insurer possesses at least the basic capital or basic surplus, and additional surplus required under this section.

* Sec. 13. AS 21.09.070 is amended by adding a new subsection to read:

(f) On or after January 1, 1991, a domestic property or casualty insurer may assume reinsurance, either new or renewal, (1) only of the kinds of risks, and to retain risks, within the limits it is otherwise authorized to insure; and (2) only if, in the absence of prior written approval from the director, it maintains, notwithstanding (a) of this section, in policyholder surplus at least $10,000,000 as of December 31, 1990, $15,000,000 as of December 31, 1991, and

$20,000,000 as of December 31, 1992. This subsection does not apply to reinsurance that is required to be assumed by applicable law or regulation or is assumed under an intracompany pooling arrangement between affiliated insurers.

* 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).

* Sec. 15. AS 21.09.110(3) is amended to read:

(3) a copy of its financial statement as of the preceding December 31, and all subsequent quarterly financial statements, sworn to by at least two executive officers of the insurer, or certified by the public insurance supervisory official of the insurer's state of domicile or of entry into the United States;

* Sec. 16. AS 21.09.140(a) is amended to read:

(a) The director shall suspend or revoke an insurer's certificate of authority

(1) if the action is required by a provision of this title;

(2) if the insurer no longer meets the requirements for the authority [ORIGINALLY] granted, on account of the insurer becoming impaired or insolvent [DEFICIENCY OF ASSETS] or otherwise; or

(3) if the insurer's authority to transact insurance is suspended or revoked by its state of domicile, or state of entry into the United States if an alien insurer.

* Sec. 17. AS 21.09.200(a) is amended to read:

(a) Each authorized insurer shall annually, before March 2, file with the director a full and true statement of its financial condition, transactions, and affairs as of the preceding December 31. The

reporting format for a given year is the most recently approved National Association of Insurance Commissioners' annual financial statement blank form and instructions approved by the director, [THE STATEMENT SHALL BE IN THE GENERAL FORM AND CONTEXT ACCEPTABLE TO THE DIRECTOR, AND IN CURRENT USE FOR SIMILAR REPORTS TO STATES IN GENERAL WITH RESPECT TO THE TYPE OF INSURER AND KINDS OF INSURANCE TO BE REPORTED UPON, AND] supplemented for additional information as required by the director. The director may require the statement to be filed on electronic media. The statement shall be verified by the oath of the insurer's president or vice-president, and secretary, or, if a reciprocal insurer, by oath of the attorney-in-fact or its like offices if a corporation unless verification is waived by the director of insurance.

* Sec. 18. AS 21.09.200 is amended by adding a new subsection to read:

(f) In addition to the requirements of (a) of this section, a domestic insurer shall file its annual statement with the National Association of Insurance Commissioners by the due date established by the association, and shall pay the applicable filing fee. An insurer that fails to comply with this subsection is subject to the penalties specified in (e) of this section, calculated from the filing and fee due date established by the National Association of Insurance Commissioners.

* Sec. 19. AS 21.09 is amended by adding a new section to read:

Sec. 21.09.205. QUARTERLY STATEMENT. (a) The director may require an insurer to file quarterly financial statements. If required, the statements must follow the format specified in AS 21.09.200(a).

(b) A quarterly financial statement, if required, is due 60 days after the end of the quarter to which it applies.

(c) An insurer shall pay to the division $100 for each day the insurer fails to file the quarterly statement in the form required or within the time established in (b) of this section.

* Sec. 20. AS 21.12.020 is repealed and reenacted to read:

Sec. 21.12.020. REINSURANCE CREDIT ALLOWED A DOMESTIC CEDING INSURER. (a) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a deduction from liability on account of reinsurance ceded only if the reinsurance is ceded to an

(1) assuming insurer that is licensed to transact insurance or reinsurance in this state;

(2) assuming insurer that is accredited as a reinsurer in this state; an accredited reinsurer is one that

(A) submits to this state's jurisdiction, submits to this state's authority to examine its books and records, and is licensed to transact insurance or reinsurance in at least one state; or

(B) in the case of a United States branch of an alien assuming insurer, is entered through, and licensed to transact insurance or reinsurance in, at least one state, files annually with the director a copy of its annual financial statement that is filed with the insurance regulatory agency of its state of domicile, and maintains at least $20,000,000 in policyholder surplus;

(3) assuming insurer that is domiciled in a state, or in the case of a United States branch of an alien assuming insurer, is entered through a state that employs standards regarding credit for reinsurance ceded substantially similar to those applicable under (1) and (2) of this subsection, the assuming insurer maintains a policyholder surplus of at least $20,000,000, and the assuming insurer

submits to the authority of this state to examine its books and records;

(4) assuming alien insurer that

(A) maintains a trust fund in a qualified United States financial institution for the payment of the valid claims of its United States policyholders and ceding insurers, and their assigns and successors in interest, that conforms to the following requirements:

(i) the trust shall be established in a form approved by the director; the trust instrument must provide that contested claims are valid and enforceable upon the final order of any court of competent jurisdiction in the United States; the trust shall vest legal title to its assets in the trustees of the trust for its United States policyholders and ceding insurers, their assigns and successors in interest; the trust and the assuming insurer are subject to examination as determined by the director; the trust must remain in effect for so long as the assuming insurer has outstanding liabilities due under the reinsurance agreements subject to the trust;

(ii) on or before March 1 of each year the trustees shall report in writing to the director on the balance of the trust and list the trust's investments at the end of the preceding year, and shall certify the date of termination of the trust, if so planned, or certify that the trust does not expire before the following December 31;

(iii) in the case of a single assuming insurer, the trust shall consist of trust money representing the assuming insurer's liabilities attributable to business written in

the United States and, in addition, include a trust surplus of not less than $20,000,000; the single assuming insurer shall make available to the director an annual certification of the insurer's solvency by the insurer's domiciliary regulator and by an independent public accountant;

(iv) in the case of a group of individual unincorporated insurers, the trust shall consist of trust money representing the group's liabilities attributable to business written in the United States and, in addition, include a trust surplus not less than $100,000,000; the group shall make available to the director an annual certification of the solvency of each of the individual unincorporated insurers by the group's domiciliary regulator and by an independent public accountant; and

(B) reports annually to the director information substantially the same as that required to be reported on the National Association of Insurance Commissioners' annual statement form by licensed insurers to enable the director to determine the sufficiency of the trust fund;

(5) assuming insurer that does not meet the requirements of (1) - (4) of this subsection, but only with respect to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(b) If the assuming insurer is not licensed or accredited to transact insurance or reinsurance in this state, the credit permitted by (a)(1) - (4) of this section may not be allowed unless the assuming insurer agrees in the reinsurance agreements

(1) that in the event of the failure of the assuming insurer to perform its obligations under the terms of the reinsurance

agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of a court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction and will abide by the final decision of the court or of an appellate court in the event of an appeal; this provision is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if such an obligation is created in the reinsurance agreement; and

(2) to designate the director or an attorney resident in the United States as its true and lawful attorney upon whom may be served lawful process in an action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(c) A reduction from liability, for reinsurance ceded to an assuming insurer not meeting the requirements of (a) of this section, shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer. The reduction shall be equal to the amount of money held by or on behalf of the ceding insurer, including money held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations under it. If the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer, or in the case of a trust, held in a qualified United States financial institution, the security must be in the form of

(1) cash;

(2) securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners that qualify as admitted assets under AS 21.21;

(3) clean, irrevocable, unconditional letters of credit

issued or confirmed by a qualified United States financial institution; letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever occurs first; or

(4) other security acceptable to and approved in advance by the director.

(d) Notwithstanding the other provisions of this section, credit may not be allowed a domestic ceding insurer unless the reinsurance contract provides for payment by the assuming insurer on the basis of the liability of the ceding domestic insurer under the insurance contracts reinsured without diminution because of the insolvency of the ceding domestic insurer.

(e) Upon request of the director, an insurer shall promptly inform the director, in writing, of the cancellation or other material change in any of its reinsurance contracts or arrangements.

(f) In this section, "qualified United States financial institution" means an institution that,

(1) for the purposes of (c)(3) of this section,

(A) is organized or, in the case of a United States office of a foreign banking organization, is licensed under the laws of the United States or a state of the United States;

(B) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(C) has been determined by either the director or the Securities Valuation Office of the National Association of

Insurance Commissioners to meet the standards of financial condition and standing that are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit are acceptable to the director;

(2) for the purposes of the provisions of this section other than (c)(3) of this section, an institution that

(A) is organized or, in the case of a United States branch or agency office of a foreign banking organization, licensed under the laws of the United States or a state of the United States, and has been granted authority to operate with fiduciary powers; and

(B) is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies.

* Sec. 21. AS 21.12 is amended by adding a new section to read:

Sec. 21.12.120. REINSURANCE DEFINED. Reinsurance is a contract by which the assuming insurer agrees to indemnify the ceding insurer in whole or in part against liability that the ceding insurer might incur under a separate contract of insurance with its insured.

* Sec. 22. AS 21.18.010 is repealed and reenacted to read:

Sec. 21.18.010. ALLOWABLE ASSETS. In a determination of the financial condition of an insurer, only those assets that are owned by the insurer and that consist of the following are allowed:

(1) cash in the possession of the insurer, or in transit under its control, including the true balance of a deposit in a solvent bank, savings and loan association, or trust company as defined in AS 21.21;

(2) investments, securities, properties, and loans acquired or held under this title, and in connection with those assets, the

following items:

(A) interest due or accrued on a bond or evidence of indebtedness qualifying as an admitted asset that is not in default and that is not valued on a basis including accrued interest;

(B) declared and unpaid dividends on stock and shares, unless the amount has otherwise been allowed as an asset;

(C) interest due or accrued upon a collateral loan in an amount not to exceed one year's interest;

(D) interest due or accrued on deposits in solvent banks, savings and loan associations, and trust companies, and interest due or accrued on other assets, if the interest is, in the judgment of the director a collectible asset;

(E) interest due or accrued on a current real estate mortgage loan that is an admitted asset, in an amount not exceeding the value of the property over the unpaid loan principal less delinquent taxes on the property; however, if the interest is in default more than three months, or a tax or installment on the property is due and unpaid for more than three months, allowance may not be made for unpaid interest on the loan;

(F) rent due or accrued on real property if the rent is not in arrears for more than three months; rent more than three months in arrears is allowed if the payment of the rent is secured by property with a current market value not less than 75 percent of the total rent due, held in the name of the tenant and conveyed to the insurer as collateral;

(G) the unaccrued portion of taxes paid before the due date on real property;

(3) premium notes, policy loans, and other policy assets,

liens on policies, certificates of life insurance, annuity contracts, and accrued interest on them, in an amount not exceeding the legal reserve, and other policy liabilities carried on each individual policy;

(4) bills receivable for premiums, or installment premiums other than for life insurance, if the total amount does not exceed the unearned premium amount for the policy on which it is accepted and if all payment required is current;

(5) the net amount of uncollected and deferred premiums and annuity considerations in the case of a life insurer;

(6) premiums in the course of collection, other than for life insurance, not more than three months past due, less commissions payable on them, except that the three-month limitation of this paragraph does not apply to

(A) premiums payable directly or indirectly by the United States government or by any of its instrumentalities;

(B) reinsurance premiums payable by ceding insurers authorized to transact business in this state; or

(C) reinsurance premiums receivable that might be offset by amounts carried by the reinsurer as liabilities for amounts due to the insurer for unpaid losses or other mutual debts; however, reinsurance premiums more than 90 days past due may not be allowed in excess of 10 percent of the reinsurer's total admitted assets as shown on its most recent annual financial statement on file with the director;

(7) premiums, not more than three months past due, excluding commissions payable on them, due from a controlling or controlled person, to the extent that

(A) the premiums collected by the controlling or

controlled person and not remitted to the insurer are held in a trust account with a bank or other depository approved by the division and may not be commingled with other money of the controlling or controlled person; a disbursement from the trust account may be made only to the insurer, the insured, or, for the purpose of returning a premium, an entity who is entitled to returned premiums on behalf of the insured; however, the investment income derived from the trust may be allocated as the parties consider proper; a controlling or controlled person shall deposit premiums collected into the trust account within five working days after collection; the director shall disapprove a trust agreement that, in the director's judgment, does not assure the safety of the premiums collected;

(B) the controlling or controlled person has provided to the insurer, and the insurer has maintained in its possession, an unexpired, clean, irrevocable, and unconditional letter of credit, payable to the insurer, for a term of not less than one year with automatic extension for one year, unless the beneficiary has received in writing notification of intention not to renew 30 days before the original expiration date; the letter of credit must be issued in conformity with the requirements set out in this subparagraph, and the amount of the letter of credit must equal or exceed the liability of the controlling or controlled person to the insurer, at all times during the period that the letter of credit is in effect, for premiums collected by the controlling or controlled person; a letter of credit must be issued under arrangements satisfactory to the division and the letter must be issued by a banking institution that is a member of the Federal Reserve System and that has a financial standing

satisfactory to the department; the director shall disapprove a letter of credit that, in the director's judgment, does not assure the safety of the premiums;

(C) the controlling or controlled person has provided to the insurer, and the insurer has maintained in its possession, evidence that the controlling or controlled person has purchased and has currently in effect a financial guaranty bond, payable to the insurer, issued for a continuous term, cancelable only on 30-day written notice to the beneficiary of intention to terminate with the bond continuing in effect for acts committed before the date of termination, and that is in conformity with the requirements set out in (B) of this paragraph; the amount of the bond must equal or exceed the liability of the controlling or controlled person to the insurer, at all times during which the financial guaranty bond is in effect, for the premium collected by the controlling or controlled person; a financial guaranty bond must be issued under an arrangement satisfactory to the division, by an insurer that is authorized to transact business in the state, that has a financial standing satisfactory to the division and that is neither controlled nor controlling in relation to either the insurer or the person for whom the bond is purchased; and

(D) a financial examination indicates that the controlling or controlled person is solvent and has the ability to pay the premiums as they become due; the financial examination, as scheduled by the director, shall be based on a review of the books and records of the controlling or controlled person;

(8) notes and written obligations not past due, taken for premiums other than life insurance premiums, on policies permitted to

be issued on that basis and to the extent of the unearned premium reserves carried on the policies;

(9) the full amount of reinsurance that is recoverable by a ceding insurer from a solvent reinsurer and that is authorized under AS 21.12.020;

(10) amounts receivable by an assuming insurer representing money withheld by a solvent ceding insurer under a reinsurance treaty, not exceeding the amounts carried by the assuming insurer as liability for unpaid losses and reserves under the contract;

(11) deposits or equities recoverable from underwriting associations, syndicates, and reinsurance funds or from a suspended banking institution to the extent considered by the director available for the payment of losses and claims and at values to be determined by the director;

(12) electronic data processing and related equipment, and operating software constituting a data processing, record keeping, or an accounting system if the cost of the system, including subsequent additions to the original system, is $50,000 or more and if that cost is to be amortized in full over a period not to exceed 10 calendar years;

(13) intercompany transactions arising from income tax allocations among organizations participating in a consolidated tax return, if

(A) there is a written agreement that is in compliance with regulations adopted by the Internal Revenue Service and the agreement includes a

(i) description of the method of allocation and the manner in which intercompany balances will be settled; and

(ii) requirement that an intercompany balance will be settled within a reasonable time following the filing of the consolidated tax return;

(B) receivables arising out of the agreement are due from a solvent organization that is not in default on its obligations and that meets all other requirements for admitted assets; and

(C) liabilities that offset the related intercompany receivables are recorded in the financial statement of one or more of the other organizations participating in the agreement;

(14) the amount of foreign exchange differential on the excess of assets over liabilities recorded in foreign currencies;

(15) an unsecured receivables from a solvent affiliate, that is not more than six months past due, if a liability to offset the receivable is recorded in the affiliate's corresponding financial statement;

(16) receivables arising from wholly and partially uninsured accident and health plans;

(17) all assets, not inconsistent with the provisions of this section, that are allowed in the annual statement form and with the annual statement instructions most recently published by the National Association of Insurance Commissioners and approved by the director; or

(18) other assets, not inconsistent with the provisions of this section, considered by the director to be available for the payment of losses and claims, at values to be determined by the director.

* Sec. 23. AS 21.18.030 is repealed and reenacted to read:

Sec. 21.18.030. ASSETS NOT ALLOWED. (a) In addition to assets

excluded by the application of AS 21.18.010, the following are expressly not allowed as assets in a determination of the financial condition of an insurer:

(1) good will, trade names, and other similar intangible assets;

(2) advances to officers, other than policy loans, whether secured or not secured, and advances to employees, agents, and other persons on personal security only;

(3) stock of the insurer, owned by it, or any material equity in the stock or loans secured by the stock, or a material proportionate interest in the stock acquired or held through the ownership by the insurer of an interest in another firm, corporation, or business unit;

(4) tangible personal property, including furniture, fixtures, furnishings, safes, vehicles, libraries, stationery, literature, and supplies, other than electronic data processing machines authorized by AS 21.18.010, except property acquired through foreclosure of chattel mortgages acquired under AS 21.21.270, or property that is reasonably necessary for the maintenance and operation of real estate lawfully acquired and held by the insurer other than real estate used by the insurer for home office, branch office, and similar purposes;

(5) the amount, if any, by which the aggregate book value of investments as carried on th ledger assets of the insurer exceeds the aggregate value as determined under this title;

(6) bonds, notes, or other evidences of indebtedness that are secured by mortgages or deeds of trust that are in default;

(7) payments made under the Internal Revenue Code of 1986 for the alternative minimum tax, or refunds receivable that are in

dispute from a federal or state taxing authority;

(8) commuted commissions by which the present value of future commissions is paid in advance to agents;

(9) commissions and fees forwarded to agents before the earning of the commissions and fees by the agent;

(10) unsecured loans due from outside sources.

(b) All nonadmitted assets and all other assets of doubtful value or character included as ledger or nonledger assets in a statement by an insurer to the director, or in an examiner's report to the director, shall also be reported, to the extent of the value disallowed, as deductions from the gross assets of the insurer, unless the director permits a reserve to be carried among the liabilities of the insurer in place of a deduction.

* Sec. 24. AS 21.18.060(a) is repealed and reenacted to read:

(a) Except as otherwise provided in AS 21.18.070, an insurer shall maintain an unearned premium reserve on all policies in force against loss or damage to property, including loss or damage under general casualty or surety insurance.

* Sec. 25. AS 21.18.060(b) is amended to read:

(b) The director may require that the reserves be equal to the unearned portions of the gross premiums in force after deducting applicable reinsurance <u>in solvent</u> [INSOLVENT] insurers as computed on each respective risk from the policy's date of issue. <u>Except as required by</u> [IF] the director <u>under this subsection</u> [DOES NOT SO REQUIRE], the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve shall be computed according to the following table:

Term for Which Policy Was Written	Reserve for Unearned Premium

1 year or less	1/2
2 years	1st year 3/4
	2nd year 1/4
3 years	1st year 5/6
	2nd year 1/2
	3rd year 1/6
4 years	1st year 7/8
	2nd year 5/8
	3rd year 3/8
	4th year 1/8
5 years	1st year 9/10
	2nd year 7/10
	3rd year 1/2
	4th year 3/10
	5th year 1/10
Over 5 years	pro rata

* Sec. 26. AS 21.18 is amended by adding new sections to read:

Sec. 21.18.073. UNEARNED PREMIUM RESERVE FOR TITLE INSURANCE. In addition to an adequate reserve as to outstanding losses as required under AS 21.18.050, a title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as provided in this section. At all times and for all purposes, the sums required by this section to be reserved for unearned premiums on title guarantees and policies shall be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of the insurer in determining its financial condition. While the sums are reserved, they are withdrawn from the use of the insurer for its general purposes, constitute a trust in favor of the holders of title guarantees and policies, and must be held available for reinsurance of

the title guarantees and policies in the event of the insolvency of the insurer. This section does not preclude the insurer from investing the reserves in investments authorized by law for the insurer. The income from invested reserves may be included in the general income of the insurer to be used by the insurer for a lawful purpose. The unearned premium reserve required by this section consists of not less than the amount computed as follows with respect to a policy of title insurance issued by a title insurer after December 31, 1990:

(1) 10 percent of the total amount of risk premiums written in the calendar year for title insurance contracts must be assigned originally to the reserve;

(2) during each of the 20 years immediately following the year in which the title insurance contract was issued, the reserve applicable to the contract must be reduced by five percent of the original amount of the reserve; with respect to a policy of title insurance issued by a title insurer before January 1, 1991, the insurer shall maintain at all times a reserve of not less than $.30 for each $1,000 of the fee amount of all title guarantees and policies issued during the preceding 10 years; this reserve amount, required to be reserved for unearned premiums on title guarantees and policies, shall at all times and for all purposes be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of the insurer in determining its financial condition; that portion of the unearned premium reserve established with respect to a title guarantee or policy issued more than 10 years before January 1, 1991, shall be released, shall no longer constitute part of the unearned premium reserve, and may be used for any purpose by the insurer.

Sec. 21.18.075. BAIL BOND RESERVE. In place of the unearned

premium reserve required on surety bonds under AS 21.18.050, the department may require a surety insurer or limited surety insurer to set up and maintain a reserve on all bail bonds or other single premium bonds without a definite expiration date, furnished in judicial proceedings, equal to 25 percent of the total consideration charged for the bonds that are outstanding as of the date of a current financial statement of the insurer.

* Sec. 27. AS 21.18.120(a) is amended to read:

(a) All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if issued by a solvent entity [AMPLY SECURED] and not in default in principal or interest, be valued as follows:

(1) if purchased at par, at the par value;

(2) if purchased above or below par, on the basis of the purchase price with amortization of bond premium or discount [ADJUSTED] to bring the value to par at maturity and yield in the meantime the effective rate of interest at which the purchase was made, or instead [IN LIEU] of this method, according to another [AN] accepted method of valuation approved by the director;

(3) the purchase price may not [SHALL] in any [NO] case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of the securities;

(4) unless otherwise provided by valuation established or approved by the director, [NO] security may not [SHALL] be carried at or above the call price for the entire issue during any period within which the security may be called.

* Sec. 28. AS 21.18 is amended by adding a new section to read:

Sec. 21.18.900. DEFINITIONS. In this chapter

(1) "admitted asset" means an asset allowed by AS 21.18.010 to be included in the determination of the financial condition of a domestic or foreign insurer or the United States branch of an alien insurer;

(2) "affiliate" has the meaning given in AS 21.22.200.

(3) "controlling" or "controlled" has the meaning given in AS 21.22.200 and includes a person that individually, or in combination with other persons, owes to the insurer an amount that exceeds 50 percent of the insurer's total premiums in the course of collection as stated on the insurer's financial statement;

(4) "foreign currency" means the monetary denominations of a country other than the dollar used by the United States;

(5) "ledger asset" means an asset recorded on the general ledger of an insurer;

(6) "nonadmitted assets" means an asset recorded on the insurer's ledger that is not allowed by AS 21.18.010 to be included in the determination of the financial condition of a domestic or foreign insurer or the United States branch of an alien insurer;

(7) "nonledger asset" means an asset not recorded on the general ledger of an insurer;

(8) "solvent" means able to satisfy all current and future obligations and operate as an ongoing entity.

* Sec. 29. AS 21.21.020(c) is amended to read:

(c) Eligibility of an investment shall be determined as of the date of its making or acquisition [, EXCEPT AS STATED IN (b) OF THIS SECTION].

* Sec. 30. AS 21.21.030(c) is amended to read:

(c) This chapter does not prohibit the acquisition by an insurer of other or additional securities or property if received as a

dividend or as a lawful distribution of assets, or, subject to (d) of this section, under a lawful and bona fide agreement of bulk reinsurance, merger, or consolidation. An acquired investment [SO ACQUIRED] that is not otherwise eligible under this chapter or subject to (d) of this section shall be disposed of under AS 21.21.300, if personal property or securities, or under AS 21.21.290, if real property.

* Sec. 31. AS 21.21.030 is amended by adding new subsections to read:

(d) A bona fide agreement of bulk reinsurance, merger, or consolidation in which the consideration received is comprised of assets, 25 percent or more of which, as valued under AS 21.18, are ineligible under this chapter, requires the specific written approval of the director before the agreement is entered.

(e) The director may, at any time, order the immediate disposition of any or all of the ineligible assets received, or may order the reversal of the agreement of bulk reinsurance, merger, or consolidation, or may order other action that the director considers appropriate under the circumstances.

* Sec. 32. AS 21.21.050 is amended to read:

Sec. 21.21.050. DIVERSIFICATION OF INVESTMENTS. An insurer shall invest in or hold as admitted assets categories of investments only within applicable limits as follows:

(1) [ONE PERSON:] an insurer may not, except with the consent of the director, have [AT ANY ONE TIME] a combination of investments in or loans upon the security of the obligations, property, or securities of any one person, or insurer, aggregating an amount exceeding five percent of the insurer's assets; this restriction does not apply to

(A) general obligations of the United States; [OF

AMERICA] or

(B) general obligations of a state of the United States that is not insolvent and whose securities are not then in default; or

(C) [INCLUDE] policy loans made under AS 21.21.210;

(2) [VOTING STOCK:] an insurer may not invest in or hold at any one time more than 10 per cent of the outstanding voting stock of a corporation, except with the consent of the director given with respect to voting rights of preference stock during default of dividends; this paragraph [PROVISION] does not apply to stock of a wholly-owned subsidiary of the insurer or to controlling stock of an insurer acquired under AS 21.21.170;

(3) [MINIMUM CAPITAL:] an insurer, other than title insurer, shall invest and maintain invested funds in an amount not less [IN AMOUNT] than the higher of

(A) the minimum basic capital for stock insurers or basic guarantee surplus for mutual insurers and additional surplus for both stock and mutual insurers [PAID-IN CAPITAL STOCK] required under AS 21.09.070; or

(B) 50 percent of the total capital and surplus shown on the most recent statement of the insurer's financial condition as filed with the director under AS 21.09.200 [THIS TITLE OF A DOMESTIC STOCK INSURER TRANSACTING LIKE KINDS OF INSURANCE,] only in

(i) cash;

(ii) the fully insured portion of bank deposits when the insurance is provided by a solvent agency of the United States government or by collateral in the form of the securities provided for under AS 21.21.060 and 21.21.080; or

(iii) [AND] the securities provided for under AS 21.21.060 and [,] 21.21.080 [AND 21.21.260];

(4) [LIFE INSURANCE RESERVES:] a life insurer shall [ALSO] invest and keep invested its funds in an amount not less than the reserves under its life insurance policies and annuity contracts, other than variable annuities, in force, in cash or [AND/OR] the securities or investments provided for under this chapter;

(5) [CORPORATE OBLIGATIONS:] except with the director's written consent, an insurer may not have invested at any one time more than 20 per cent of its assets in the class of securities described in AS 21.21.140, exclusive of obligations of public utilities;

(6) [COMMON STOCKS:] an insurer may invest and have invested at any one time in aggregate amount not more than 10 per cent of its assets in all stocks under AS 21.21.160, 21.21.170, and 21.21.200, except with the director's written consent; determination of the amount that [WHICH] an insurer has invested in common stocks for the purposes of this paragraph is [SHALL BE] based on the cost of the stocks to the insurer; this paragraph does not apply to stock of a controlled or subsidiary insurance corporation or other corporation held under AS 21.21.170 and 21.21.180;

(7) [MISCELLANEOUS:] except with the director's written consent, an insurer may not have invested at any one time more than 10 percent of its assets in any one of the class of securities described in [ANY ONE OF THE FOLLOWING SECTIONS:] AS 21.21.100, 21.21.150, [AND] 21.21.190, or 21.21.250(c) [;

(8) OTHER SPECIFIC LIMITS: LIMITS IN INVESTMENTS IN THE CATEGORY OF REAL ESTATE ARE AS PROVIDED IN AS 21.21.280; AND OTHER SPECIFIC LIMITS APPLY AS STATED IN THE SECTIONS DEALING WITH OTHER RESPECTIVE KINDS OF INVESTMENTS].

* Sec 33. AS 21.21.080 is amended to read:

Sec. 21.21.080. STATE, COUNTY, MUNICIPAL, AND SCHOOL OBLIGATIONS. An insurer may invest in bonds or other evidences of indebtedness that are general obligations of [, OR ARE SECURED BY PLEDGE OR SPECIFIC REVENUES BY,] this state or of another state of the United States or of a province of Canada, or of a political subdivision or all other taxing districts of these states or provinces, if the state or province

(1) is not insolvent;

(2) has the power to levy taxes for the prompt payment of the principal and interest of the obligations; and

(3) is not in default in the payment of principal or interest on its direct, general obligations at the date of the investment.

* Sec. 34. AS 21.21.130 is amended to read:

Sec. 21.21.130. [INTER-AMERICAN] DEVELOPMENT BANKS [BANK]. An insurer may invest in obligations issued, assumed, or guaranteed by the Inter-American Development Bank, the African Development Bank, or the Asian Development Bank, if the bank is solvent and not in default in the payment of principal or interest on any of its direct, general obligations at the date of the investment.

* Sec. 35. AS 21.21.140(a) is amended to read:

(a) An insurer may invest in bonds, debentures, notes, and other evidences of indebtedness issued, assumed, or guaranteed by a solvent domestic debtor institution not in default in the payment of principal or interest on any of its direct, general obligations on the date of the investment, if the bond, debenture, note, or other evidence of indebtedness [EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA OR OF CANADA, OR OF A STATE OR PROVINCE, WHICH IS NOT IN DEFAULT AS TO PRINCIPAL OR INTEREST AND WHICH] is secured by adequate collateral and

bears fixed interest and if during each of any three, including either of the last two, of the five fiscal years preceding the date of acquisition by the insurer, the net earnings of the domestic debtor [ISSUING, ASSUMING OR GUARANTEEING] institution available for its fixed charges [, DEFINED IN (d) OF THIS SECTION,] have been not less than one and one-quarter times the total of its charges for that year. In determining the adequacy of collateral security, not more than one-third of the total value of the required collateral may consist of common stock.

* Sec. 36. AS 21.21.140(b) is amended to read:

(b) An insurer may invest in secured and unsecured obligations of domestic debtor [THESE] institutions, other than the obligations in (a) of this section, bearing interest at a fixed rate, with mandatory principal and interest due at specified times, if the net earnings of the domestic debtor [ISSUING, ASSUMING OR GUARANTEEING] institution available for its fixed charges for a period of five fiscal years immediately preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times its average annual fixed charges applicable to that period and if during either of the last two years of that period the net earnings have been not less than one and one-half times its fixed charges for the year.

* Sec. 37. AS 21.21.140(c) is amended to read:

(c) An insurer may invest in adjustment, income, or other contingent interest obligations of domestic debtor [THESE] institutions if the net earnings of the domestic debtor [ISSUING, ASSUMING OR GUARANTEEING] institution available for its fixed charges for a period of five fiscal years immediately preceding the date of acquisition by the insurer have averaged per year not less than one and one-half times the sum of its average annual fixed charges and its average

annual maximum contingent interest applicable to that period and if during either of the last two years of that period the net earnings have been not less than one and one-half times the sum of its fixed charges and maximum contingent interest for the year.

* Sec. 38. AS 21.21.140(d) is repealed and reenacted to read:

(d) In this section, "domestic debtor" means an institution existing under the laws of the United States or Canada, or a state of the United States or a province of Canada.

* Sec. 39. AS 21.21.150 is amended to read:

Sec. 21.21.150. PREFERRED OR GUARANTEED STOCK. An insurer may invest in preferred or guaranteed stocks or shares of a solvent institution, not in default on any of its obligations, existing under the laws of the United States [OF AMERICA] or [OF] Canada, or of a state of the United States or province of Canada [THEREOF], if all of the prior obligations and prior preferred stocks, if any, of the institution at the date of acquisition of the investment by the insurer are eligible as investments under this chapter and if the net earnings of the institution available for its fixed charges during each of the last two fiscal years immediately preceding the date of acquisition of the investment by the insurer have been, and during each of the last five fiscal years immediately preceding the date of acquisition of the investment by the insurer have averaged, not less than one and one-half times the sum of its average annual fixed charges, if any, its average annual maximum contingent interest, if any, and its average annual preferred dividend requirements whether the dividends are cumulative or noncumulative and whether paid or not. [FOR THE PURPOSES OF THIS SECTION THE COMPUTATION SHALL REFER TO THE FISCAL YEARS IMMEDIATELY PRECEDING THE DATE OF ACQUISITION OF THE INVESTMENT BY THE INSURER, AND THE TERM "PREFERRED DIVIDEND REQUIREMENT" MEANS

CUMULATIVE OR NONCUMULATIVE DIVIDENDS, WHETHER PAID OR NOT].

* Sec. 40. AS 21.21.160 is amended to read:

Sec. 21.21.160. COMMON STOCKS. An insurer may invest in nonassessable common stocks, other than insurance stocks, of a solvent corporation, not in default on any of its obligations, existing under the laws of the United States [OF AMERICA] or [OF] Canada, or a state of the United States or province of Canada [THEREOF], if cash or stock dividends have been earned and paid on its common stock in each of the five fiscal years preceding the acquisition; and if, [FURTHER,] all prior obligations or preference stock of the corporation, if any, are eligible for investment under this chapter. If the issuing corporation has not been in legal existence for the whole of the five preceding fiscal years but was formed as a consolidation or merger of two or more businesses, the test of eligibility for investment of its common stock under this section is [SHALL BE] be based upon consolidated [CONSOLIDATION] pro forma statements of the predecessor or constituent institutions.

* Sec. 41. AS 21.21.170(a) is amended to read:

(a) An insurer may invest in the stocks of another [OTHER] solvent insurer, not in default on any of its obligations, [INSURERS] formed under the laws of this or another state, if the [WHICH] stocks meet the applicable requirements of AS 21.21.150 and 21.21.160.

* Sec. 42. AS 21.21.190 is amended to read:

Sec. 21.21.190. EQUIPMENT TRUST CERTIFICATES. An insurer may invest in equipment trust obligations or [OF] certificates adequately secured and evidencing an interest in transportation equipment, wholly or in part within the United States, if the [OF AMERICA, WHICH] obligations or certificates carry the right to receive determined portions of rental, purchase, or other fixed obligatory payments to be made for

the use or purchase of the transportation equipment.

* Sec. 43. AS 21.21 is amended by adding a new section to read:

Sec. 21.21.245. POOLED INVESTMENTS. (a) An insurer may invest in the securities of eligible pooled investment companies, if 90 percent of the assets of the pooled investment companies would otherwise be eligible for investment under AS 21.21.060, 21.21.150, 21.21.160, 21.21.200, 21.21.225, or 21.21.230, if the investments were not held in a pooled investment format.

(b) In addition to meeting the requirements of (a) of this section, a pooled investment is eligible for initial investment by an insurer, and continued holding by an insurer, only if it appears on the most recent list of eligible pooled investment companies maintained by the director.

(c) In determining adherence to the limits established under AS 21.21.050, the pooled investments are measured as if the insurer held pro rata the investments of the pooled investment company.

* Sec. 44. AS 21.21.250 is amended by adding a new subsection to read:

(c) A domestic insurer may invest in notes or other evidence of indebtedness of the Alaska Life and Disability Insurance Guaranty Association, and the director may consider those notes, and other evidence of indebtedness, that are not in default, as admitted assets of the insurer.

* Sec. 45. AS 21.21.270(b) is amended to read:

(b) Before the acquisition of a chattel mortgage under this section, items of property to be included shall be separately appraised by a qualified <u>independent</u> appraiser and the fair market value determined. A chattel mortgage loan may not exceed in amount the same ratio of loan to the value of the property that is applicable to the companion loan on the real property.

* Sec. 46. AS 21.21.270(c) is amended to read:

(c) This section does not prohibit an insurer from taking liens on personal property

(1) as additional security for an investment otherwise eligible under this chapter; or

(2) to improve an insurer's collection efforts or security concerning an investment either eligible or ineligible under this chapter.

* Sec. 47. AS 21.21.280 is amended to read:

Sec. 21.21.280. REAL ESTATE. An insurer may invest in real estate only if used for the purposes or acquired in the manner and within the limits as follows:

(1) the land and the buildings on the land in which it has its principal office [,] and the other real estate that is required [REQUISITE] for its convenient accommodation in the transaction of its business; except that the aggregate investment under this paragraph may not exceed 10 percent of the insurer's admitted assets as shown on the insurer's most recent statement of financial condition as filed with the director under AS 21.09.200 unless otherwise authorized by the director;

(2) with the prior approval of the director, a parcel of real estate acquired under (1) of this section may include excess space for rent to others if it is reasonably anticipated that the excess is required in order to have a building that will be a viable economic unit;

(3) real estate acquired in satisfaction of loans, mortgages, liens, judgments, decrees, or debts previously owing to the insurer in the course of its business;

(4) [(3)] real estate acquired in part payment of the

consideration on the sale of other real estate owned by the insurer [IT], if the transaction does not increase the insurer's investment in real estate;

(5) [(4)] real estate acquired by gift or devise [,] or through merger, consolidation, or bulk reinsurance of another insurer under this title;

(6) [(5)] the seller's interest in real property subject to an agreement of purchase or sale, but the sum invested in a parcel of real estate may [SHALL] not exceed three-fourths of the market value of the parcel if [PROVIDED] it consists of one or two family residential property, or [AND] two-thirds of the market value of all other parcels of real estate;

(7) [(6)] real estate, or any interest in real estate acquired or held by purchase, lease, or otherwise, other than real estate to be used primarily for agricultural purposes, ranching, [RANCH] mining, development of oil or mineral resources, or recreational, amusement, or club purposes, [ACQUIRED AS AN INVESTMENT] for the production of income, and other than real estate described in (1) of this section, that is situated in any state of the United States, and the construction of improvements upon it, on the following conditions:

(A) the prior approval of the director has been obtained; the director shall give approval on a showing by the insurer that

(i) the insurer has adequate assets available for the long-term investment and the interests of the insurer's policyholders will not be jeopardized by it;

(ii) the investment will not exceed the reasonable value of the property or of the interest in it that the

insurer proposes to acquire;

(iii) there is a reasonable probability of occupancy of the property sufficient to make the investment profitable; and

(iv) there is reasonable cause to believe that the insurer will be in compliance with the provisions of this subparagraph over the entire period that the insurer owns the property;

(B) the insurer must own the entire property, except that it may share ownership with one or more insurers authorized to do business in the state under agreements that will assure concerted action in management and control of the property in case of the insolvency of a participating insurer, and if each investment made under this subparagraph by the insurer and by each participating insurer is not less than $250,000 unless prior written approval is obtained from the director;

(C) the insurer, alone or in conjunction with participants qualified under (B) of this paragraph, may let contracts for construction and pay costs of construction and leasing, hold, maintain, lease, and manage the property, collect rents and other income from it, and sell the property in whole or in part;

(D) the property may be encumbered by leases to tenants and by rights-of-way, easements, mineral reservations, building restrictions, and restrictive covenants, if

(i) the encumbrances do not interfere substantially with the use of the property or result in a forfeiture of the property; or

(ii) a policy of title insurance, equal in amount to the cost of the property, issued by a responsible title

insurer qualified to do business in the state in which the property is located, insures the insurer against loss or damage arising from such encumbrances or reversionary rights;

(E) [OR ACQUIRED TO BE IMPROVED OR DEVELOPED FOR SUCH INVESTMENT PURPOSES UNDER AN EXISTING PROGRAM; THE INSURER MAY HOLD, IMPROVE, DEVELOP, MAINTAIN, MANAGE, LEASE, SELL, AND CONVEY REAL ESTATE ACQUIRED BY IT UNDER THIS PARAGRAPH;] an insurer may not, except with the director's written consent, have at any one time invested in real estate [UNDER THIS PARAGRAPH] an amount exceeding five percent of its admitted assets;

(8) [(7)] additional real estate and equipment incident to real estate, if necessary or convenient for the purpose of enhancing the sale or other value of real estate previously acquired or held by the insurer under (3) - (5) or (7) [(2) - (4), OR (6)] of this section; the real estate and equipment shall be included together with the real estate that is enhanced [FOR THE ENHANCEMENT OF WHICH IT WAS ACQUIRED], for the purpose of applicable investment limits, and are [SHALL BE] subject to disposal at the same time and under the same conditions as those applying to the enhanced real estate under AS 21.-21.290;

(9) [(8)] except with the director's consent, all real estate owned by the insurer [UNDER THIS SECTION], except the seller's interest specified in (6) [(5)] of this section, may not at any one time exceed 15 percent of the insurer's assets.

* Sec. 48. AS 21.21.310(a) is amended to read:

(a) Real estate, personal property, or securities lawfully acquired and held by an insurer after expiration of the period for disposal of them or any extension of the period granted by the

director, as provided in AS 21.21.290 and 21.21.300, may not be allowed as an admitted asset of the insurer.

* Sec. 49. AS 21.21 is amended by adding new sections to read:

Sec. 21.21.350. INVESTMENT TRANSACTIONS WITH AFFILIATED OR CONTROLLING PERSONS. (a) Except as provided in this section or AS 21.21.180, an insurer may not

(1) invest in or dispose of otherwise eligible investments issued by or due from affiliated parties;

(2) purchase from an affiliated party an otherwise eligible investment; or

(3) use the services of a broker or commissioned sales agent who is an affiliated or controlling person in securing an otherwise eligible investment without first fulfilling the obligations imposed under this section.

(b) Before completing investment activities with or through affiliated or controlling persons, an insurer shall fully disclose and document in writing to its board of directors and the committee authorized by the board and charged with the supervision or making of the investment or loan involved, the material facts concerning the affiliation or circumstances of control. An insurer may not complete an investment activity with or through affiliated or controlling persons, unless the board of directors by specific board action, authorizes the transaction and concludes that the transaction complies with (c) and (d) of this section. The vote of the board authorizing the transaction must be recorded in the minutes, on a member-by-member basis, and must indicate each vote approving, disapproving, or abstaining on the transaction.

(c) Investments or loans with affiliated or controlling persons shall be consummated at current market transfer prices and under a fee

structure and at interest or discount rates that are commercially reasonable in the area in which the transaction occurs.

(d) The insurer's board of directors is responsible for determining that the transfer prices are at current market and determining the commercial reasonableness of the transactions with affiliated or controlling persons. The board of directors may rely on independent third-party experts in making its determination.

(e) This section does not apply to policy loans or in circumstances in which the financial interest of the affiliated or controlling party is only nominal or so remote as not to give rise to a conflict of interest.

Sec. 21.21.355. CERTAIN DEPOSITS NOT PROHIBITED. This chapter does not prevent the board of directors of an insurer from depositing securities

(1) with a committee appointed for the purpose of protecting the interests of policyholders;

(2) with the authorities of a state or country in which it is necessary to do so in order to secure permission to transact its appropriate business; or

(3) as collateral for the securing of a bond required for the business of the insurer.

Sec. 21.21.360. OPTIONS AND FUTURES CONTRACTS. (a) With the prior written approval of the director of a policy of hedging undertaken to reduce an insurer's risk from market fluctuations or the effect of inflation, and adoption in writing of the policy by an insurer's board of directors, an insurer may invest in options and futures contracts.

(b) Put and call options traded on a regulated exchange are valued as follows:

(1) for hedges of items carried at amortized cost:

(A) options owned are valued at the premium paid to purchase the option;

(B) options sold must have the proceeds reserved at full value until the option either expires, is exercised, or a closing transaction has been effected;

(C) if, during the life of the option, the option is no longer effective as a hedge, valuation at cost ceases and the option owned or proceeds reserved is valued at its current market value;

(D) unrealized gains or losses over the life of the option are deferred until the ultimate disposition occurs; at disposition, if the hedge was effective, the gain or loss is recognized as an adjustment to the basis of the hedged item acquired and amortized into income over the remaining life of the hedged item, or deducted from the consideration received for the security sold; if the hedge was not effective and the option expires or is terminated through a closing transaction, the gain or loss is recognized on the date of expiration or termination;

(E) for effective hedges, that are impractical to match against specific hedged assets or liabilities, an insurer not wishing to use the accounting specified in (D) of this paragraph may, at its discretion, recognize the gain or loss of the option upon its disposition;

(2) for hedges of items carried at market value:

(A) options owned are valued at the current market price and changes are treated as unrealized gains or losses;

(B) options sold must have the proceeds credited to a liability reserve that is marked to market, and the changes

treated as unrealized gains or losses;

(C) if the option is exercised, the premium is added to the cost of the security acquired or deducted from the consideration received for the security sold;

(3) for options acquired or sold not involving a hedging transaction, the cost or other carrying value is not allowed as an admitted asset.

(c) Stock options and purchase warrants that are transferable into securities that are not restricted as to transferability are valued as follows, whether or not physically attached to any other security:

(1) publicly traded warrants and options, other than exchange traded, are valued at market value;

(2) a warrant or option having no public market that is currently transferable into shares of common stock that have no public market is valued at the difference resulting from the subtraction from the analytically determined value of the stock of the transfer price for the warrant or option;

(3) a warrant or option having no public market that is currently transferable into shares of common stock that have a counterpart public market but that are themselves restricted is valued at $1; the warrant or option is not allowed as an admitted asset;

(4) a warrant or option that has no public market and for which the first transfer date is subsequent to the date of the statement has no value for statement purposes.

(d) An insurer's investment in financial futures contracts is valued as follows:

(1) positions in futures contracts are initially valued at the amount of a cash deposit, if any, placed with a broker;

(2) gains or losses on futures contracts that insurers are permitted to defer are to be added, in the case of losses, or deducted, in the case of gains, to the basis of the contract;

(3) for hedges of items carried at amortized cost,

(A) gains or losses may be deferred until the earliest of the completion of the hedging transaction or the determination that the anticipated transaction will no longer take place;

(B) if, during the life of the hedge, the futures contract is no longer effective as a hedge, deferral accounting ceases and a gain or loss is recognized to the extent that the futures results have not been offset by the effects of price or interest rate changes on the hedged item;

(C) if the anticipated transaction will no longer take place, hedge accounting ceases and the total gain or loss on the futures contract since inception is recognized;

(D) upon completion of the hedging transaction, the deferred gains or losses are added to the basis of the hedged item;

(E) upon completion of the hedging transaction, if it is impractical to match gains or losses to specific hedged assets or liabilities, an insurer not wishing to use the accounting method specified in (D) of this paragraph may recognize the previously deferred gains or losses upon completion of the hedging transaction;

(4) for hedges of items carried at market, the gains or losses on futures contracts are recognized currently;

(5) for futures contracts not involved hedging transactions, gains or losses are recognized currently.

(e) The cost of or other carrying value of warrants or options

exercisable into securities that are restricted as to transferability, and the restricted securities into which they are transferable, are not allowed as admitted assets.

(f) Without the express, written permission of the director before a change, the alternative methods of adjusting the hedged item or recognizing gains or losses at disposition as described in this section must be consistently applied from period-to-period for a particular type of hedging program. Appropriate disclosures shall be made as to whether one or both methods are used and the basis for determining the method or methods used.

* Sec. 50. AS 21.21.600 is amended to read:

Sec. 21.21.600. DEFINITIONS [DEFINITION OF DOMESTIC INSURER]. In this chapter, unless the context requires otherwise,

(1) "affiliated" has the meaning given in AS 21.22.200;

(2) "assets" means assets that are allowable assets under AS 21.18.010;

(3) "bank" means an organization organized under the laws of a state requiring the permission of either the United States Comptroller of the Currency or the state of domicile director of banking or equivalent state officer, to both accept deposits of individuals and businesses and make commercial loans, and whose deposits are insured by the Federal Deposit Insurance Corporation;

(4) "control" and "controlling" have the meaning given in AS 21.22.200;

(5) "domestic insurer" has the meaning given in AS 21.90.-900 and, in addition, for the purposes of this chapter, includes an insurer that [WHICH] has been authorized to do business in this state and that [WHICH], during its three preceding fiscal years taken together, or during any lesser period of time if it has been licensed to

transact its business in this state [THE STATE OF ALASKA] only for such lesser periods of time, has written an average of more gross premiums in this state [THE STATE OF ALASKA] than it has written in its state of domicile during the same period, and the gross premiums written constitute 33 percent or more of its total gross premiums written everywhere in the United States for the three year or lesser period, as reported in its three most recent annual statements;

(6) "durable equipment" means only mechanical refrigerators, air conditioning equipment, mechanical laundering machines, heating and cooking stoves and ranges; in the case of apartment houses, motels, and hotels, "durable equipment" includes room furniture and furnishings;

(7) "fixed charges" includes interest on funded and unfunded debt, amortization of debt discount, and rental for leased properties;

(8) "independent" means not affiliated or not controlled;

(9) "most recent statement of financial condition" means the annual report or quarterly report most recently filed under AS 21.09.200 and 21.09.205;

(10) "net earnings available for fixed charges" means net income after deducting operating and maintenance expenses, taxes other than federal income taxes, depreciation, and depletion, excluding extraordinary nonrecurring items of income or expenses appearing in the regular financial statement of an issuing, assuming, or guaranteeing institution;

(11) "options and futures contracts" means a put or call option on underlying common stocks, debt instruments, and stock indices, other stock options, purchase warrants, and financial futures contracts;

(12) "pooled investments" means a management-type investment company or investment trust, or unit investment trust, or similar investment vehicle, registered with the Securities and Exchange Commission under 15 U.S.C. 80a - 81 (Investment Company Act of 1940) and qualifying under 26 U.S.C. 851 (Internal Revenue Code of 1986;

(13) "preferred dividend requirement" means cumulative or noncumulative dividends, whether paid or not;

(14) "savings and loan" means an organization organized under the laws of a state that has qualified for the insurance protection provided by the Federal Savings and Loan Insurance Corporation;

(15) "solvent agency of the United States government" means an agency of the government of the United States whose assets exceed its liabilities, and that has not been defined as insolvent by the director for purposes of administering this chapter;

(16) "solvent institution or person or company" means an institution, person, or company whose assets exceed its liabilities and that has not been defined as insolvent by the director for purposes of administering this chapter.

* Sec. 51. AS 21.34.040(c) is amended to read:

(c) A nonadmitted insurer may be eligible to provide coverage in this state if it qualifies under one of the following:

(1) a foreign but nonalien stock insurer may qualify under this subsection if it has the [A] minimum unimpaired basic capital and additional surplus equal to that required in its domiciliary jurisdiction, or maintains [$1,500,000 ON SEPTEMBER 18, 1984, $2,500,000 ON JUNE 20, 1985, $3,500,000 ON JUNE 20, 1986, AND] $5,000,000 as of [ON] June 20, 1987, $6,000,000 as of December 31, 1990, $10,000,000 as of December 31, 1991, $12,500,000 as of December 31, 1992, and $15,000,000 as of December 31, 1993, whichever is greater;

(2) a foreign but nonalien mutual insurer, a reciprocal insurer, or a mutual protection and indemnity association may qualify under this subsection if it has the minimum unimpaired basic surplus and additional surplus equal to that required in its domiciliary jurisdiction or maintains $6,000,000 as of December 31, 1990, $10,000,000 as of December 31, 1991, $12,500,000 as of December 31, 1992, and $15,000,000 as of December 31, 1993, whichever is greater;

(3) an alien insurer may qualify under this subsection if it meets the minimum [CAPITAL AND SURPLUS] requirements in (1) or (2) of this subsection and maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System [SYSTEM], in an amount not less than $2,500,000, as security to the full amount [$1,500,000], for the protection of all its policyholders and creditors of each member of the mutual insurer, reciprocal insurer, or mutual protection and indemnity association in the United States; the trust fund must consist of instruments of substantially the same character and quality as those that are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state or of irrevocable, clean, and unconditional letters of credit; the trust fund must have an expiration [EXPIRY] date that at no time is less than five years;

(4) [(3)] a Lloyd's or other similar unincorporated group of alien individual insurers may qualify if it maintains a trust fund in an amount not less than $50,000,000, as security to the full amount, for the protection of all its policy holders and creditors of each member of the group in the United States; the trust fund must consist of instruments of substantially the same character and quality as those that are eligible investments for the capital and statutory

reserves of admitted insurers authorized to write like kinds of insurance in this state or of irrevocable, clean, and unconditional letters of credit; the trust fund must have an expiration date that at no time is less than five years;

(5) [OF NOT LESS THAN $50,000,000 AS SECURITY TO THE FULL AMOUNT, FOR ALL POLICY HOLDERS AND CREDITORS IN THE UNITED STATES, OF EACH MEMBER OF THE GROUP; (4)] an "insurance exchange" created by the laws of individual states may qualify if it maintains capital and surplus, or the substantial equivalent, of not less than $50,000,000 [$15,000,000] in the aggregate; for insurance exchanges that maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent, of not less than $3,000,000; in the event the insurance exchange does not maintain funds for the protection of all its policyholders, each individual syndicate shall meet the minimum [CAPITAL AND SURPLUS] requirements of (1) or (2) of this subsection.

* Sec. 52. AS 21.36 is amended by adding a new section to read:

Sec. 21.36.365. IMMUNITY FOR REPORTS ON FRAUD. (a) A person is not liable for civil damages for filing a report with or furnishing other information whether written or oral, concerning suspected, anticipated, or completed fraudulent acts to

(1) law enforcement officials, their agents and employees;

(2) the National Association of Insurance Commissioners, the division of insurance, an agency in a state that regulates insurance, or an organization established to detect and prevent fraudulent insurance acts, their agents, employees, or designees.

(b) This section does not preclude liability for civil damages as a result of reckless, wilful, or intentional misconduct.

* Sec. 53. AS 21.66.080 is amended to read:

Sec. 21.66.080. ANNUAL STATEMENT. Except as provided in (b) of this section, every [EVERY] corporation, on or before March 1 [MARCH 2] of each year, shall furnish the director a sworn statement of assets and liabilities, and of all title premiums received by it during the preceding calendar year, setting out among other things that three percent of all gross premiums on title insurance policies issued by it during the year, covering property in this state, have been set aside and held by it in an account known as the Title Insurance Unearned Premium Reserve Fund, as provided in this chapter. The reporting format for a given year is the most recently approved National Association of Insurance Commissioners' Annual Financial Statement blank form and instructions approved by the director, supplemented for additional information as required by the director. The director may require the statement to be filed on electronic media. The statement must [SHALL] also show [IN THE FORM WHICH MAY BE PRESCRIBED BY THE DIRECTOR] all unpaid losses and claims upon title insurance policies of which the corporation has received due notice in writing from or on behalf of the insured. With the filing of the statement the corporation shall pay a filing fee set under AS 21.06.250.

* Sec. 54. AS 21.66.080 is amended by adding a new subsection to read:

(b) A domestic title insurance company shall comply with AS 21.09.200(f).

* Sec. 55. AS 21.66 is amended by adding a new section to read:

Sec. 21.66.085. QUARTERLY STATEMENT. (a) The director may require an insurer to file quarterly financial statements. If required, the statements must follow the format specified in AS 21.66.080(a).

(b) A quarterly financial statement, if required, is due 60 days

after the end of the quarter to which it applies.

(c) An insurer shall pay to the division $100 for each day the insurer fails to file the quarterly statement in the form required or within the time established in (b) of this section.

* Sec. 56. AS 21.66.090(b) is amended to read:

(b) With the filing of the application, the corporation shall pay a fee set under AS 21.06.250 and, in addition, shall pay all [TRAVELING] expenses [OF THE DIRECTOR OR AN AUTHORIZED REPRESENTATIVE OF THE DIRECTOR AND PER DIEM AT THE CURRENT LEVEL FOR STATE EMPLOYEES AT THE LOCATION OF THE EXAMINATION] incurred in examining the applicant's title plant or plants, as required by AS 21.06.160.

* Sec. 57. AS 21.66.130 is repealed and reenacted to read:

Sec. 21.66.130. EXPENSES OF EXAMINATION. Expenses incurred due to an examination of the company shall be paid as required by AS 21.06.160.

* Sec. 58. AS 21.69.530(a) is amended to read:

(a) If an insurer becomes impaired [A STOCK INSURER'S CAPITAL, AS REPRESENTED BY THE AGGREGATE PAR VALUE OF ITS OUTSTANDING CAPITAL STOCK, BECOMES IMPAIRED, OR THE ASSETS OF A MUTUAL INSURER ARE LESS THAN ITS LIABILITIES AND THE MINIMUM AMOUNT OF SURPLUS REQUIRED TO BE MAINTAINED BY IT UNDER AS 21.69.220 OR 21.69.270 FOR AUTHORITY TO TRANSACT THE KINDS OF INSURANCE BEING TRANSACTED], the director shall [AT ONCE] determine the amount of deficiency and serve notice upon the insurer to make good the deficiency within 60 days after service of the notice.

* Sec. 59. AS 21.78.020 is repealed and reenacted to read:

Sec. 21.78.020. COMMENCEMENT OF DELINQUENCY PROCEEDINGS. (a) A delinquency proceeding may not be commenced under this chapter, unless commenced by the director. A court does not have jurisdiction to

entertain, hear, or determine a delinquency proceeding commenced by a person other than the director.

(b) The director shall commence the proceedings by application to the court for an order directing the insurer to show cause why the director should not have the relief requested. On the return of the order to show cause, and after a full hearing, the court shall either deny the application or grant the application, together with other relief that the nature of the case and the interest of the policyholders, creditors, stockholders, members, subscribers, or the public might require.

(c) A court does not have jurisdiction to entertain, hear, or determine a complaint asking for an injunction or restraining order or other relief concerning the dissolution, liquidation, rehabilitation, sequestration, conservation, or receivership of an insurer, other than as provided under this chapter.

(d) In addition to other grounds for jurisdiction provided by the laws of this state, a court having jurisdiction of the subject matter has jurisdiction over a person served under the Alaska Rules of Civil Procedure or other applicable provisions of law in an action brought by the receiver of a domestic insurer or an alien insurer domiciled in this state if the person

(1) served is obligated to the insurer in any way as an incident to an agency or brokerage arrangement that might exist or has existed between the insurer and the agent or broker, in a action on or incident to the obligation;

(2) served is a reinsurer who has at any time written a policy of reinsurance for an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, or is an agent or broker of or for the reinsurer, in any action or incident

related to the reinsurance contract; or

(3) is or has been an officer, manager, trustee, organizer, promoter, or person in a position of comparable authority or influence in an insurer against which a rehabilitation or liquidation order is in effect when the action is commenced, in any action resulting from such a relationship with the insurer.

(e) If the court, on motion of a party, finds that an action should, as a matter of substantial justice, be tried in a forum outside this state, the court may enter an appropriate order to stay further proceedings on the action in this state.

(f) The court shall appoint the director as the receiver in all actions taken under this chapter.

* Sec. 10. AS 21.78.030 is repealed and reenacted to read:

Sec. 21.78.030. INJUNCTIONS AND ORDERS. (a) A receiver appointed in a proceeding under this chapter may at any time apply for, and a court may grant, a restraining order, preliminary or permanent injunction, or other order considered necessary to prevent

(1) the transaction of further business;

(2) the transfer of property;

(3) interference with the receiver or with a proceeding under this chapter;

(4) waste of the insurer's assets;

(5) dissipation and transfer of bank accounts;

(6) the institution or further prosecution of any actions or proceedings;

(7) the obtaining of preferences, judgments, attachments, garnishments, or liens against the insurer, its assets, or its policyholders;

(8) the levying of execution against the insurer, its

assets, or its policyholders;

(9) the making of a sale or deed for nonpayment of taxes or assessments that would lessen the value of the assets of the insurer;

(10) the withholding from the receiver of books, accounts, documents, or other records relating to the business of the insurer; or

(11) any other threatened or contemplated action that might lessen the value of the insurer's assets or prejudice the rights of policyholders, creditors, or shareholders, or the administration of a proceeding under this chapter.

(b) The receiver may apply to a court outside of the state for the relief described in (a) of this section.

(c) A bond may not be required of the director as a prerequisite to issuing an injunction or restraining order under this section.

* Sec. 61. AS 21.78.040 is amended by adding new paragraphs to read:

(11) has failed to remove a person who, in fact, has executive authority in the insurer, whether an officer, manager, general agent, employee, or other person, if the person has been found after notice and hearing by the director to be dishonest or untrustworthy in a way affecting the insurer's business;

(12) after demand by the director under AS 21.06.120 or under this chapter, has failed to promptly make available for examination its own property, books, accounts, documents, or other records, or those of a subsidiary or related company within the control of the insurer, or those of a person having executive authority in the insurer so far as they pertain to the insurer;

(13) has, within the previous four years, wilfully violated its charter or articles of incorporation, its bylaws, an insurance law of this state, or a valid order of the director issued under this

title; or

(14) has failed to file, within the time allowed by law, its annual report or other financial report required by statute and, after written demand by the director, has failed to give an immediate and adequate explanation.

* Sec. 62. AS 21.78.040 is amended by adding a new subsection to read:

(b) The director may apply to the court for an order appointing the director as receiver of a domestic insurer, and directing the director to rehabilitate the insurer if

(1) there is reasonable cause to believe that there has been embezzlement from the insurer, wrongful sequestration or diversion of the insurer's assets, forgery or fraud affecting the insurer, or other illegal conduct in, by, or with respect to the insurer that, if established, would endanger assets in an amount threatening the solvency of the insurer;

(2) control of the insurer, whether by stock ownership or otherwise, and whether direct or indirect, is in a person or persons found after notice and hearing to be untrustworthy;

(3) a person who, in fact, has executive authority in the insurer, whether an officer, manager, general agent, director or trustee, employee, or other person, has refused to be examined under oath by the director concerning the insurer's affairs, whether in this state or elsewhere, and after reasonable notice of the fact the insurer has failed to promptly and effectively terminate the employment and status of the person and the person's influence on management.

* Sec. 63. AS 21.78.090 is amended by adding new subsections to read:

(d) An order issued under this section must require an accounting to the court by the receiver. Accountings must be at the intervals that the court specifies in its order.

(e) Entry of an order of rehabilitation does not constitute an anticipatory breach of contracts of the issuer.

(f) A court in this state before which an action or proceeding is pending in which the insurer is a party or in which the insurer is obligated to defend a party, shall stay the action or proceeding when a rehabilitation order against the insurer is entered. The stay shall be imposed for that period of time necessary for the receiver to obtain proper representation and prepare for further proceedings. The receiver shall take action respecting the pending litigation that the receiver considers necessary in the interests of justice and for the protection of creditors, policyholders, and the public. The receiver shall immediately consider all litigation pending outside this state, and shall petition the courts having jurisdiction over that litigation for stays if necessary to protect the estate of the insurer.

(g) A statute of limitations or defense of laches does not run with respect to an action by or against an insurer between the filing of a petition for appointment of a receiver for the insurer and the order granting or denying that petition. An action by or against the insurer that might have been commenced when the petition was filed may be commenced for at least 60 days after the order of rehabilitation is entered or the petition is denied.

(h) A guaranty association or foreign guaranty association has standing to appear in a court proceeding concerning the rehabilitation of a domestic insurer if the association is or might become liable to act as a result of the rehabilitation.

* Sec. 64. AS 21.78.100 is amended by adding new subsections to read:

(c) An order issued under this section must require an accounting to the court by the receiver. Accountings must be at the intervals that the court specifies in its order.

(d) Policies, other than life or health insurance or annuities, in effect at the time of issuance of an order of liquidation continue in force only for the lesser of

(1) a period of 30 days after the date of entry of the liquidation order;

(2) the expiration of the policy coverage;

(3) the date on which the insured replaces the insurance coverage with equivalent insurance in another insurer or otherwise terminates the policy; or

(4) the date on which the receiver effects a transfer of the policy obligation to a solvent assuming insurer.

(e) For purposes of any other provision of law, an order of liquidation terminates policy coverage at the time specified in (d) of this section.

(f) A policy of life, health insurance, or annuities, in effect at the time an order of liquidation is issued, continues in force for the period and under the terms provided for by an applicable guaranty association or foreign guaranty association.

(g) A policy of life, health insurance, or annuities, and any period of coverage not covered by a guaranty association or foreign guaranty association terminates as provided in (d) and (e) of this section.

(h) Upon issuance of an order appointing a receiver of a domestic insurer or of an alien insurer domiciled in this state, an action may not be brought against the insurer or receiver, whether in this state or elsewhere, and an existing action may not be maintained or further presented after issuance of an order. A court of this state shall give full faith and credit to an injunction against the receiver or the company, or against the continuation of an existing action

against the receiver or the company, if an injunction is included in an order to liquidate an insurer that is issued under corresponding provisions in another state. If, in the receiver's judgment, protection of the estate of the insurer necessitates intervention in an action against the insurer that is pending outside this state, the receiver may intervene in the action. The receiver may defend an action in which the receiver intervenes under this section at the expense of the estate of the insurer.

(i) The receiver may, within two years after an order for liquidation, or within the additional time that applicable law permits, institute an action or proceeding on behalf of the estate of the insurer if the period of limitation applicable to the action or proceeding fixed by law has not expired at the time of the filing of the petition upon which the liquidation order is entered. If, by agreement, a period of limitation is fixed for instituting a suit or proceeding upon a claim, or for filing a claim, proof of claim, proof of loss, demand, or notice, or if in a judicial or other proceeding a period of limitation is fixed, either in the proceeding or by applicable law, for taking an action, filing a claim or pleading, or doing an act, and if the period had not expired as of the date of the filing of the petition for liquidation, the receiver may, for the benefit of the estate, take an action or do an act, required of or permitted to the insurer, within a period of 180 days after the entry of an order for liquidation, or within a longer period that is shown to the satisfaction of the court not to be unfairly prejudicial to the other party.

(j) A statute of limitations or defense of laches does not run with respect to an action against an insurer between the filing of a petition for liquidation against an insurer and the denial of the petition. An action against the insurer that might have been

commenced when the petition was filed may be commenced for at least 60 days after the petition is denied.

(k) A guaranty association or foreign guaranty association has standing to appear in a court proceeding concerning the liquidation of an insurer if the association is, or might become, liable to act as a result of the liquidation.

* Sec. 65. AS 21.78.130 is amended by adding new subsections to read:

(g) If it appears to the receiver that there has been a violation of civil or criminal law, or breach of a contractual or fiduciary obligation detrimental to the insurer by an officer, manager, agent, broker, employee, or other person, the receiver may pursue all appropriate legal remedies on behalf of the insurer.

(h) If the receiver determines that reorganization, consolidation, conversion, reinsurance, merger, or other transformation of the insurer is appropriate, the receiver shall prepare a plan to implement the changes. Upon application of the receiver for approval of the plan, and after the notice and hearings that the court prescribes, the court may either approve or disapprove the plan proposed, or may modify it and approve it as modified. A plan approved under this section must be, in the judgment of the court, fair and equitable to all parties concerned. If the plan is approved, the receiver shall carry out the plan. In the case of a life insurer, the plan proposed may include the imposition of liens upon the policies of the company, if all rights of shareholders are first relinquished. A plan for a life insurer may also propose imposition of a moratorium upon loan and cash surrender rights under policies, for the period, and to the extent, considered necessary.

(i) If the property of the insurer does not contain sufficient cash or liquid assets to defray the costs incurred, the director may

advance the costs incurred out of an appropriation to the division for that purpose. Amounts advanced for expenses of administration must be repaid to the state out of the first available money of the insurer.

(j) The receiver may

(1) hold hearings, subpoena witnesses to compel their attendance, administer oaths, examine a person under oath, and compel a person to subscribe to the person's testimony after it has been correctly reduced to writing, and may require the production of books, papers, records, or other documents that the receiver determines are relevant to the inquiry;

(2) remove records and property of the insurer to the offices of the director or to another place that is convenient for the purposes of efficient and orderly execution of the liquidation; a guaranty association or a foreign guaranty association shall be allowed reasonable access to the records of the insurer that is necessary for the association to carry out its statutory obligations;

(3) intervene in a proceeding, wherever instituted, that might lead to the appointment of a receiver or trustee, and may act as the receiver or trustee if the appointment is offered;

(4) enter into agreements with a receiver or commissioner of another state relating to the rehabilitation, liquidation, conservation, or dissolution of an insurer doing business in both this state and the other state.

* Sec. 66. AS 21.78.170(c) is repealed and reenacted to read:

(c) If a claim is denied in whole or in part by the receiver, written notice of the determination shall be given to the claimant or the claimant's attorney by first class mail at the address shown in the proof of claim. An objection by the claimant must be filed with the receiver within 60 days after the date of mailing of the notice.

If an objection is not filed, the claimant may not object to the determination.

* Sec. 67. AS 21.78.170(d) is repealed and reenacted to read:

(d) If an objection is filed with the receiver and the receiver does not alter the denial of the claim as a result of the objection, the receiver shall ask the court for a hearing as soon as practicable and give notice of the hearing by first class mail to the claimant or the claimant's attorney and to any other person directly affected, not less than 10 nor more than 30 days before the date of the hearing.

* Sec. 68. AS 21.78.170 is amended by adding new subsections to read:

(e) A claim need not be considered or allowed if it does not contain all the information in (a) of this section that might be applicable. The receiver may require that a prescribed form be used and may require that other information and documents be included.

(f) At any time, the receiver may request the claimant to present information or evidence supplementary to that required under (a) of this section, and may take testimony under oath, require production of affidavits or depositions, or otherwise obtain additional information or evidence.

(g) A judgment or order against an insured or the insurer entered after the date of filing of a successful petition for liquidation, and a judgment or order against an insured or the insurer entered at any time by default or by collusion, need not be considered as evidence of liability or the amount of damages. A judgment or order against an insured or the insurer entered within the four months before the filing of the petition need not be considered evidence of liability or of the amount of damages.

(h) A claim of a guaranty association or foreign guaranty association shall be in the form and contain the substantiation agreed to

by the association and the receiver.

* Sec. 69. AS 21.78.180(d) is repealed and reenacted to read:

(d) The determination of the value of a security held by a secured creditor shall be under the supervision and control of the court, with due regard for recommendations made by the receiver. The value determined must be credited upon the secured claim, and a deficiency must be treated as an unsecured claim. If the claimant surrenders the security to the receiver, the entire claim shall be allowed as if unsecured. The value of a security held by a secured creditor must be determined in one of the following ways, as the court directs:

(1) by converting the security into money according to the terms of the agreement under which the security was delivered to the creditor; or

(2) by agreement, arbitration, compromise, or litigation between the creditor and the receiver.

* Sec. 70. AS 21.78.180 is amended by adding a new subsection to read:

(e) If a creditor, whose claim against an insurer is secured in whole or in part by the undertaking of another person, fails to prove and file that claim, the other person may do so in the creditor's name, and is subrogated to the rights of the creditor, whether the claim was filed by the creditor or by the other person in the creditor's name, to the extent that the other person discharges the undertaking. In the absence of an agreement with the creditor, the other person is not entitled to a distribution until the amount paid to the creditor on the undertaking plus the distributions paid on the claim from the insurer's estate to the creditor equals the amount of the entire claim of the creditor. Any excess received by the creditor shall be held by the creditor in trust for the other person. In this subsection, "other person" does not include a guaranty association or

foreign guaranty association.

* Sec. 71. AS 21.78.200(a) is amended to read:

(a) AS 21.78.020, 21.78.030, 21.78.130 - 21.78.190 and AS 21.-78.330(2) - (5) [21.78.330(1) - (5)] and (7) - (13) constitute and may be referred to as the Uniform Insurers Liquidation Act.

* Sec. 72. AS 21.78.250 is repealed and reenacted to read:

Sec. 21.78.250. FRAUDULENT TRANSFERS BEFORE PETITION. (a) A transfer made, or an obligation incurred, by an insurer within one year before the filing of a successful petition for rehabilitation or liquidation under this chapter is fraudulent as to then existing and future creditors if made or incurred without fair consideration, or with actual intent to hinder, delay, or defraud either existing or future creditors. A transfer made, or an obligation incurred, by an insurer ordered to be rehabilitated or liquidated under this chapter that is fraudulent under this section, may be avoided by the receiver, unless the transfer or obligation was to a person who in good faith is a purchaser, lienor, or obligee for a present fair equivalent value. A purchaser, lienor, or obligee, who in good faith has given a consideration less than fair for the transfer, lien, or obligation may retain the property, lien, or obligation as security for repayment. The court may, on due notice, order a transfer or obligation to be preserved for the benefit of the estate, and in that event, the receiver shall succeed to and may enforce the rights of the purchaser, lienor, or obligee.

(b) A transfer

(1) of property other than real property is considered to be made when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a simple contract could become superior to the rights of the transferee under

AS 21.78.252;

(2) of real property is considered to be made when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee;

(3) that creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created;

(4) not perfected before the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(c) The provisions of (b) of this section apply whether or not there is or was a creditor who might have obtained a lien or a person who might have become a bona fide purchaser.

(d) A transaction of the insurer with a reinsurer is considered fraudulent and may be avoided by the receiver under (a) of this section if

(1) the transaction consists of the termination, adjustment, or settlement of a reinsurance contract in which the reinsurer is released from a part of its duty to pay the originally specified share of losses that occurred before the time of the transaction, unless the reinsurer gives a present fair equivalent value for the release; and

(2) a part of the transaction took place within one year before the date of filing of the petition through which the receivership was commenced.

* Sec. 73. AS 21.78 is amended by adding new sections to read:

Sec. 21.78.251. FRAUDULENT TRANSFER AFTER PETITION. (a) After a petition for rehabilitation or liquidation has been filed, a

transfer of the real property of the insurer made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value, or, if not made for a present fair equivalent value, then to the extent of the present consideration actually paid, for which amount the transferee has a lien on the property transferred. The commencement of a proceeding in rehabilitation or liquidation is constructive notice upon the recording of a copy of the petition for, or order of, rehabilitation or liquidation with the recorder of deeds in the jurisdiction where the real property in question is located. The exercise by a court of the United States, or any state or jurisdiction, to authorize or effect a judicial sale of real property of the insurer in any county or borough in any state is not impaired by the pendency of a proceeding unless the copy is recorded in the county or borough before the consummation of the judicial sale.

(b) After a petition for rehabilitation or liquidation has been filed, and before either the receiver takes possession of the property of the insurer or an order of rehabilitation or liquidation is granted,

(1) a transfer of any of the property of the insurer, other than real property, made to a person acting in good faith is valid against the receiver if made for a present fair equivalent value, or, if not made for a fair equivalent value, then to the extent of the present consideration actually paid, for which amount the transferee has a lien on the property transferred;

(2) a person indebted to the insurer or holding property of the insurer may, if acting in good faith, pay the indebtedness or deliver the property, or any part of it, to the insurer or upon the insurer's order, with the same effect as if the petition were not pending;

(3) a person having actual knowledge of the pending rehabilitation or liquidation is considered not to have acted in good faith;

(4) a person asserting the validity of a transfer under this section has the burden of proof.

(c) Except as otherwise provided in this section, a transfer by or on behalf of the insurer after the date of the petition for liquidation by a person other than the receiver is not valid against the receiver.

(d) Nothing in this section impairs the negotiability of currency or negotiable instruments.

Sec. 21.78.252. VOIDABLE PREFERENCES AND LIENS. (a) A transfer of property of an insurer to or for the benefit of a creditor, for or on account of an antecedent debt, made by the insurer within one year before the filing of a successful petition for liquidation under this chapter, the effect of which might be to enable the creditor to obtain a greater percentage of the debt than another creditor of the same class would receive is considered a preference. If a liquidation order is entered while the insurer is already subject to a rehabilitation order, then a transfer is considered a preference if it is made within one year before the filing of the successful petition for rehabilitation, or within two years before the filing of the successful petition for liquidation, whichever time is shorter.

(b) A preference may be avoided by the receiver if

(1) the insurer was insolvent at the time of the transfer;

(2) the transfer was made within the four months before the filing of the petition;

(3) the creditor receiving it or to be benefited by it or the creditor's agent had, at the time the transfer was made,

reasonable cause to believe that the insurer was insolvent or was about to become insolvent; or

(4) the creditor receiving it was an officer, or was an employee, attorney, or other person who acted in that capacity whether or not the creditor held such a position, or was a shareholder holding directly or indirectly more than five percent of a class of an equity security issued by the insurer, or was another person, firm, corporation, association, or group of persons with whom the insurer did not deal at arm's length.

(c) If a preference is voidable, the receiver may recover the property or, if it has been converted, the value of the property, from a person who has received or converted the property, except that if a bona fide purchaser or lienor has given less than fair equivalent value, the person has a lien upon the property to the extent of the consideration actually given by the person. If a preference by way of lien or security title is voidable, the court may, after notice, order the lien or title to be preserved for the benefit of the estate, in event the lien or title passes to the receiver.

(d) The provisions of this subsection apply whether or not there are or were creditors who might have obtained liens or persons who might have become bona fide purchasers. A transfer

(1) of property other than real property is considered to be made when it becomes so far perfected that no subsequent lien obtainable by legal or equitable proceedings on a contract could become superior to the rights of the transferee;

(2) of real property is considered to be made when it becomes so far perfected that no subsequent bona fide purchaser from the insurer could obtain rights superior to the rights of the transferee;

(3) that creates an equitable lien is not considered to be perfected if there are available means by which a legal lien could be created; or

(4) not perfected before the filing of a petition for liquidation is considered to be made immediately before the filing of the successful petition.

(e) A lien obtainable by legal or equitable proceedings

(1) upon a contract is one arising in the ordinary course of a proceeding upon the entry or docketing of a judgment or decree, or upon attachment, garnishment, execution, or like process, whether before, upon, or after judgment or decree and whether before or upon levy; it does not include a lien that, under applicable law, is given a special priority over other liens that are prior in time; or

(2) could become superior to the rights of a transferee, or a purchaser could obtain rights superior to the rights of a transferee within the meaning of (d) of this section, if the consequences would follow only from the lien or purchase itself, or from the lien or purchase followed by a step completely within the control of the respective lienholder or purchaser, with or without the aid of ministerial action by public officials; a lien could not, however, become superior and a person could not create superior rights for the purpose of (d) of this section through acts subsequent to the obtaining of a lien or subsequent to a purchase that requires the agreement or concurrence of a third party or that requires further judicial action or ruling.

(f) A transfer of property for or on account of a new and contemporaneous consideration that is considered under (d) of this section to be made after the transfer because of delay in perfecting it, does not become a transfer for or on account of an antecedent debt if

acts required by the applicable law to be performed in order to perfect the transfer against a lien or bona fide purchaser's rights are performed within 21 days, or a period expressly allowed by the law, whichever is less. A transfer to secure a future loan, if a loan is actually made, or a transfer that becomes security for a future loan, has the same effect as a transfer for or on account of a new and contemporaneous consideration.

(g) If a lien that is considered voidable under (b) of this section has been dissolved by the furnishing of a bond or other obligation, and the bond or other obligation has been indemnified directly or indirectly by the transfer or creation of a lien upon property of an insurer before the filing of a petition under this chapter that results in a liquidation order, the indemnifying transfer or lien is also considered voidable.

(h) The property affected by a lien that is considered voidable under (b) and (g) of this section shall be discharged from the lien, and that property and the indemnifying property transferred to or for the benefit of a surety shall be transferred to the receiver, except that the court may order a lien to be preserved for the benefit of the estate, and the court may direct that a conveyance be executed as is proper or adequate to evidence the title of the receiver.

(i) The court has jurisdiction of a proceeding by the receiver to hear and determine the rights of parties under this section. Reasonable notice of a hearing in the proceeding shall be given to all parties in interest, including the obligee of a releasing bond or other like obligation. If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, the court, upon application of a party in interest, shall in the same proceeding determine the value of the property or lien, and if

the value of the property is less than the amount of the indemnity or the amount of the lien, the transferee or lienholder may elect to retain the property or lien upon payment of its value, as determined by the court, to the receiver, within the time that the court fixes.

(j) The liability of a surety under a releasing bond or other obligation shall be discharged to the extent of the value of the indemnifying property recovered or the indemnifying lien avoided by the receiver, or, if the property is retained under (i) of this section, to the extent of the amount paid to the receiver.

(k) If a creditor has been preferred, and afterward in good faith gives the insurer further credit without security of any kind, for property that becomes a part of the insurer's estate, the amount of the new credit remaining unpaid at the time of the petition may be set off against the preference that would otherwise be recoverable from the creditor.

(l) If an insurer, directly or indirectly, within four months before the filing of a successful petition for liquidation under this chapter or at any time in contemplation of a proceeding to liquidate it, pays money or transfers property to an attorney for services rendered or to be rendered, the transaction may be examined by the court on its own motion or shall be examined by the court on petition of the receiver. The transaction may be held valid only to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the receiver for the benefit of the estate, except that if the attorney is in a position of influence in the insurer or an affiliate, payment of money or the transfer of property to the attorney for services rendered or to be rendered is governed by (b)(4) of this section.

(m) An officer, manager, employee, shareholder, member

subscriber, attorney, or other person acting on behalf of an insurer, who knowingly participates in giving a preference even though the person has reasonable cause to believe that the insurer is, or is about to become, insolvent at the time of the preference, is personally liable to the receiver for the amount of the preference. It is a rebuttable presumption that a preference was given with reasonable cause to believe the insurer is or is about to become insolvent if the transfer was made within four months before the filing of a successful petition for liquidation.

(n) If a person receives property from the insurer, or the benefit of the property, and the preference for the property is found voidable under (b) of this section, the person is personally liable for the value of the property and shall account to the receiver for it.

(o) Nothing in (m) or (n) of this section affects any other claim by the receiver against any person.

Sec. 21.78.253. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS. (a) A claim of a creditor who has received or acquired a preference, lien, conveyance, transfer, assignment, or encumbrance that is voidable under this chapter, may not be allowed unless the creditor surrenders the preference, lien, conveyance, transfer, assignment, or encumbrance. If the avoidance is affected by a proceeding in which a final judgment has been entered, the claim may not be allowed unless the money is paid or the property is delivered to the receiver within 30 days after the date of the entering of the final judgment, except that the court having jurisdiction over the liquidation may allow further time if there is an appeal or other continuation of the proceeding.

(b) A claim allowable under (a) of this section by reason of

avoidance, whether voluntary or involuntary, or a preference, lien, conveyance, transfer, assignment, or encumbrance, may be filed as an excused late filing under AS 21.78.290 if filed within 30 days after the date of avoidance, or within the further time allowed by the court under (a) of this section.

* Sec. 74. AS 21.78.260 is repealed and reenacted to read:

Sec. 21.78.260. PRIORITY OF DISTRIBUTION. The priority of distribution of claims from an insurer's estate is in accordance with the order in which each class of claims is set out in this section. Every claim in each class must be paid in full, or adequate money retained for payment, before the members of the next class may receive payment. A subclass may not be established within a class. The order of distribution of claims is:

(1) class 1: the costs and expenses of administration during rehabilitation and liquidation, including the following:

(A) the actual and necessary costs preserving or recovering the assets of the insurer;

(B) compensation for all services rendered in the rehabilitation and liquidation;

(C) any necessary filing fees;

(D) the fees and mileage payable to witnesses;

(E) reasonable attorney's fees and other professional services rendered in the rehabilitation and liquidation;

(F) the reasonable expenses of a guaranty association or foreign guaranty association that is handling claims;

(2) class 2: reasonable compensation to employees for services performed, to the extent that the claim does not exceed two months of monetary compensation and represents payment for services performed within one year before the filing of the petition for

liquidation or, if rehabilitation preceded liquidation, within one year before the filing of the petition for rehabilitation; principal officers and directors of the insurer are not entitled to the benefit of this priority except as otherwise approved by the receiver and the court; the priority in this paragraph is in place of any other similar priority that might be authorized by law as to wages or compensation of employees;

(3) class 3: all claims under policies, including claims of the federal, or a state or local government, for losses incurred, including third-party claims, and [illegible] of a guaranty association or foreign guaranty association [illegible]laims under life insurance and annuity policies, whether f[illegible]h proceeds, annuity proceeds, or investment values, shall be [illegible]ed as loss claims; that portion of a loss for which indemnificati[illegible]s provided by other benefits or advantages recovered by the clai[illegible]t, may not be included in this class, other than benefits or adv[illegible]ntages recovered or recoverable in discharge of familial obligations or support, or by way of succession at death, or as proceeds of life insurance, or as gratuities; payment by an employer to an employee may not be treated as a gratuity;

(4) class 4: claims under nonassessable policies for unearned premium or other premium refunds and claims of general creditors, including claims of ceding and assuming companies under contracts of reinsurance;

(5) class 5: claims of the federal, or a state or local government, other than claims under (3) of this section; claims, including those of a government body for a penalty or forfeiture, shall be allowed in this class only to the extent of the pecuniary loss sustained from the act, transaction, or proceeding out of which the penalty or forfeiture arose, along with reasonable and actual

costs attributable to it; the remaining portion of the claims are in the class of claims set out in (8) of this section;

(6) class 6: claims filed late, or any other claims other than claims under (7) and (8) of this section;

(7) class 7: surplus or contribution notes, or similar obligations, and premium refunds on assessable policies; payments to members of domestic mutual insurance companies shall be limited in accordance with law;

(8) class 8: the claims of shareholders or other owners, in their capacity as shareholders.

* Sec. 75. AS 21.78.270 is repealed and reenacted to read:

Sec. 21.78.270. SETOFFS AND COUNTERCLAIMS. (a) Except as provided in (b) of this section and in AS 21.78.271, a mutual debt or mutual credit between an insurer and another person in connection with an action or proceeding under this chapter shall be set off, and only the balance may be allowed or paid.

(b) A setoff or counterclaim may not be allowed in favor of a person if the obligation of the

(1) insurer to the person would not, at the date of the filing of a petition for liquidation, entitle the person to share as a claimant in the assets of the insurer;

(2) insurer to the person was purchased by or transferred to the person with a view to its being used as a setoff;

(3) person is to pay an assessment levied against the members or subscribers of the insurer, or is to pay a balance upon a subscription to the capital stock of the insurer, or is in any other way in the nature of a capital contribution; or

(4) person is to pay premiums, whether earned or unearned, to the insurer.

* Sec. 76. AS 21.78 is amended by adding new sections to read:

Sec. 21.78.271. RECOVERY OF PREMIUMS OWED. (a) An

(1) agent, broker, premium finance company, or any other person, other than the insured, responsible for the payment of a premium is obligated to pay an unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer; neither a credit nor a setoff is allowed to an agent, broker, or premium finance company for an amount advanced to the insurer by the agent, broker, or premium finance company on behalf of, but in the absence of a payment by, the insured;

(2) insured is obligated to pay an unpaid earned premium due the insurer at the time of the declaration of insolvency, as shown on the records of the insurer.

(b) If there are grounds for believing that a person has violated this section, the director may initiate proceedings under AS 21.06.170 - 21.06.230.

(c) Upon a finding of a violation of this section, the director may order a penalty of not more than $1,000 for each act in violation of this section and may suspend or revoke the person's license issued under this title.

Sec. 21.78.272. REINSURER'S LIABILITY. The amount recoverable by the receiver from reinsurers may not be reduced as a result of delinquency proceedings, regardless of a provision in the reinsurance contract or other agreement. Payment made directly to an insured or other creditor does not diminish the reinsurer's obligation to the insurer's estate unless the reinsurance contract provided for direct coverage of a named insured and the payment was made in discharge of that obligation.

* Sec. 77. AS 21.78.280 is repealed and reenacted to read:

Sec. 21.78.280. SPECIAL CLAIMS. (a) A contingent and unliquidated claim may not share in a distribution of the assets of an insurer that has been adjudicated to be insolvent by an order made under this chapter, except that the claim shall be considered, if properly presented, and may be allowed to share if

(1) the claim becomes absolute against the insurer on or before the last day for filing claims against the assets of the insurer; or

(2) there is a surplus and the liquidation is, after that, conducted upon the basis that the insurer is solvent.

(b) The claim of a third party, that is contingent only on the third party claimant first obtaining a judgment against the insured, shall be considered and allowed as if there were not a contingency.

(c) A claim may be allowed even if contingent, if it is filed under AS 21.78.292. It may be allowed and may participate in all distributions declared after it is filed to the extent that it does not prejudice the orderly administration of the liquidation.

(d) A claim that is due except for the passage of time shall be treated as an absolute claim is treated, except that the claim may be discounted at the legal rate of interest.

(e) A claim made under an employment contract by a director, principal officer, or person in fact performing similar functions or having similar powers, is limited to payment for services rendered before the issuance of an order of rehabilitation or liquidation under this chapter.

* Sec. 78. AS 21.78 is amended by adding a new section to read:

Sec. 21.78.281. SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS. (a) If a third party asserts a cause of action against an insured of an insurer in liquidation, the third party may file a claim with the

receiver.

(b) Whether or not the third party files a claim, the insured may file a claim on the insured's own behalf in the liquidation. If the insured fails to file a claim by the date for filing claims specified in the order of liquidation or within 60 days after mailing of the notice required by AS 21.78.290, whichever is later, the insured is an unexcused late filer.

(c) The receiver shall make a recommendation to the court under AS 21.78.260 for the allowance of an insured's claim under (b) of this section after consideration of the probable outcome of a pending action against the insured on which the claim is based, the probable damages recoverable in the action, and the probable costs and expenses of defense. After allowance by the court, the receiver shall withhold from the undistributed assets of the insurer as a reserve the amounts payable on the claim, pending the outcome of litigation and negotiation with the insured. If appropriate, the receiver may reconsider the claim on the basis of additional information and may amend recommendations made to the court. The insured shall be afforded the same notice and opportunity to be heard on all changes in the recommendations as in its initial determination. The court may amend its allowance. As claims against the insured are settled or barred, the insured shall be paid from the amount withheld the same percentage as was paid on other claims of like property, based on the lesser of (1) the amount actually recovered from the insured by action or paid by agreement plus the reasonable costs and expenses of defense, or (2) the amount allowed on the claims by the court. After all claims are settled or barred, any sum remaining from the amount withheld reverts to the undistributed assets of the insurer. Delay in final payment under this subsection is not a reason for unreasonable delay of the

final distribution and discharge of the receiver.

(d) If several claims founded upon one policy are filed, whether by third parties or as claims by the insured under this section, and the aggregate allowed amount of the claims to which the same limit of liability in the policy is applicable exceeds that limit, each claim as allowed shall be reduced in the same proportion so that the total amount of the claims equals the policy limit. Claims by the insured shall be evaluated as in (c) of this section. If an insured's claim is subsequently reduced under (c) of this section, the amount available shall be apportioned ratably among the claims that have been reduced under this subsection.

(e) A claim may not be presented under this section if it is or might be covered by a guaranty association or foreign guaranty association.

* Sec. 79. AS 21.78.290 is repealed and reenacted to read:

Sec. 21.78.290. NOTICE TO CREDITORS AND OTHERS. (a) Unless the court directs otherwise, the receiver shall give or cause to be given notice of the liquidation order as soon as possible after the date of the entry of the order of liquidation

(1) by first class mail and either by telegram or telephone, to the insurance director, commissioner, or superintendent of each jurisdiction in which the insurer is doing business;

(2) by first class mail to a guaranty association or a foreign guaranty association that is or that might become obligated as a result of the liquidation;

(3) by first class mail to all insurance agents of the insurer;

(4) by first class mail to all persons known or reasonably expected to have claims against the insurer, including all

policyholders, at the person's last known address as indicated by the records of the insurer; and

(5) by publication in a newspaper of general circulation in the locale in which the insurer has its principal place of business and in other locations that the receiver considers appropriate.

(b) Notice to potential claimants under (a) of this section must state that a claimant shall file a claim with the receiver, along with the information required by AS 21.78.170(a), on or before the date specified in the notice. The time specified in the notice may not be less than six months after the date the liquidation order was entered. The liquidation need not require a person claiming a cash surrender value or other investment value in life insurance and annuities to file a claim. A claimant has a duty to keep the receiver informed of a change of address.

* Sec. 80. AS 21.78 is amended by adding new sections to read:

Sec. 21.78.291. DUTIES OF AGENTS. (a) A person who receives notice in the form prescribed in AS 21.78.290 that an insurer that the person represents as an agent is the subject of a liquidation order, shall, within 15 days after receipt of that notice, give written notice of the liquidation order as provided in this section. The notice shall be in writing and shall be sent by first class mail to each policyholder or other person named in a policy issued through the agent by the insurer, at the last address contained in the agent's records. A policy is considered to be issued through an agent if the agent has a property interest in the expiration of the policy, or if the agent has had in the agent's possession a copy of the declarations of the policy at any time during the life of the policy, unless the ownership of the expiration of the policy has been transferred to another. The written notice issued under this section must include

the name and address of the insurer, the name and address of the agent, identification of the policy impaired and the nature of the impairment, including termination of coverage as specified in AS 21.-78.100(d) - (g). Notice under this section by a general agent satisfies the notice requirement for an agent under contract to the general agent. Each agent obligated to give notice under this section shall file a report of compliance with the receiver.

(b) An agent failing to give notice or file a report of compliance as required in (a) of this section is, after a proceeding under AS 21.06.070 - 21.06.240, subject to a penalty of not more than $1,000 and suspension or revocation of the agent's license issued under this title.

(c) The receiver may waive the duties imposed by this section if the receiver determines that other notice to policyholders of the insurer under liquidation is adequate.

Sec. 21.78.292. FILING OF CLAIMS. (a) Proof of a claim shall be filed with the receiver, in the form required by AS 21.78.170, on or before the last day for filing specified in the notice required under this chapter, except that proof of a claim for cash surrender value or other investment value in life insurance and annuities need not be filed unless expressly [illegible] by the receiver.

(b) The receiver may, under the following circumstances, permit a claimant who makes a late filing to share in distributions, whether past or future, as if the claim was not late, to the extent that a payment does not prejudice the orderly administration of the liquidation:

(1) the existence of the claim was not known to the claimant and the claim was filed as promptly as was reasonably possible after learning of it;

(2) a transfer to a creditor was avoided under this chapter, or was voluntarily surrendered under this chapter, and the filing satisfies the conditions of AS 21.78.253; or

(3) the valuation under AS 21.78.180(d), of security held by a secured creditor, shows a deficiency, a claim for which is filed within 30 days after the valuation.

(c) The receiver shall permit late-filed claims to share in distributions, whether past or future, as if they were not late, if the claims are claims of a guaranty association or foreign guaranty association for reimbursement of covered claims paid or expenses incurred, or both, after the last day for filing, and if the payments were made and expenses were incurred as provided by law.

(d) The receiver may consider a claim that is filed late and that is not covered by (b) of this section, and may permit it to receive distributions that are subsequently declared on any claims of the same or lower priority, if the payment does not prejudice the orderly administration of the liquidation. The late-filing claimant shall receive, at each distribution, the same percentage of the amount allowed on the claim as is then being paid to claimants of a lower priority, until the claim has been paid in full.

Sec. 21.78.293. RECEIVER'S RECOMMENDATION TO THE COURT. (a) The receiver shall review all claims filed in the liquidation and shall make further investigation that the receiver considers necessary. The receiver may compound, compromise, or negotiate the amount for which a claim will be recommended to the court, unless the receiver is required by law to accept a claim as settled by a person or organization, including a guaranty association or foreign guaranty association. As soon as practicable, the receiver shall present to the court a report of the claims against the insurer, along with the

receiver's recommendations. The report must include the name and address of each claimant and the amount of the claim finally recommended, if any. If the insurer has issued annuities or life insurance policies, the receiver shall report the persons to whom, according to the records of the insurer, amounts are owed as cash surrender values or other investment values, and the amounts owed.

(b) The court may approve, disapprove, or modify the receiver's report on claims. Claims in a report that are not modified by the court within a period of 60 days following submission by the receiver shall be treated by the receiver as allowed claims.

Sec. 21.78.294. DISTRIBUTION OF ASSETS. Under the direction of the court, the receiver shall distribute assets in a manner that will assure the proper recognition of priorities and a reasonable balance between the expeditious completion of the liquidation and the protection of unliquidated and undetermined claims, including third-party claims. Distribution of assets in kind may be made at valuations set by agreement between the receiver and the creditor, and approved by the court.

Sec. 21.78.295. UNCLAIMED AND WITHHELD MONEY. (a) All unclaimed money that is subject to distribution and remains in the receiver's hands when the receiver is ready to apply to the court for discharge, including the amount distributable to a creditor, shareholder, member, or other person who is unknown and cannot be found, shall be deposited with the Department of Revenue, and shall be paid, without interest, to the person entitled to receive it or to the person's legal representative upon proof satisfactory to the Department of Revenue of the person's right to it. Notwithstanding the provisions of AS 34.45, an amount on deposit with the Department of Revenue that is not claimed within six years after the discharge of

the receiver, is considered to be abandoned, and shall, without further proceedings, be deposited in the general fund.

(b) All money retained for claims described in AS 21.78.280 and not distributed, shall, upon discharge of the receiver, be deposited with the Department of Revenue and paid in accordance with AS 21.78.-260. Any amount remaining that, under AS 21.78.260, would revert to the undistributed assets of the insurer, shall be transferred to the Department of Revenue. Remaining amounts become the property of the state under (a) of this section, unless the director, in the director's discretion, petitions the court to reopen the liquidation under AS 21.78.297.

Sec. 21.78.296. TERMINATION OF PROCEEDINGS. (a) When all assets justifying the expense of collection and distribution have been collected and distributed under this chapter, the receiver shall apply to the court for discharge. The court may grant the discharge and make additional orders the court considers appropriate.

(b) Any other person may apply to the court at any time for an order under (a) of this section. If the application is denied, the applicant shall pay the receiver's costs and expenses incurred in resisting the application, including a reasonable attorney's fee.

Sec. 21.78.297. REOPENING LIQUIDATION. After the liquidation proceeding has been terminated and the receiver discharged, the director or an interested party may at any time petition the court to reopen the proceedings for good cause, including the discovery of additional assets. If the court is satisfied that there is justification for reopening, it shall order the liquidation proceeding reopened.

Sec. 21.78.298. DISPOSITION OF RECORDS DURING AND AFTER TERMINATION OF LIQUIDATION. If it appears to the director that the records

of an insurer that is in the process of liquidation, or is completely liquidated, are no longer useful, the director may recommend to the court, and the court shall direct, which records should be retained for future reference and which should be destroyed.

* Sec. 81. AS 21.90.900 is amended by adding new paragraphs to read:

(24) "impaired" or "impairment" means that

(A) an insurer's policyholder surplus is greater than zero but less than that required by AS 21.09.070 for the authority to transact the kinds of insurance being transacted; or

(B) an insurer is being operated in a manner that has caused or might cause irreparable loss and injury to the insurer or to the public;

(25) "insolvent" or "insolvency" means that an insurer's policyholder surplus is less than or equal to zero;

(26) "policyholder surplus" means

(A) for a stock insurer, the sum of its capital, as represented by the aggregate par value to its outstanding capital stock, and its surplus, if any;

(B) for a mutual insurer, its surplus, both basic guaranteed and additional, if any;

(C) for an insurer other than a stock or mutual insurer, the net worth of the insurer, calculated as its recorded assets less its liabilities, as determined by the accounting criteria set out in this title.

* Sec. 82. AS 21.09.080(b), 21.09.080(c); AS 21.21.020(b), 21.21.-270(d); and AS 21.78.330(1) are repealed.

* Sec. 83. AS 21.78.090(f) added by sec. 63 of this Act, has the effect of changing Alaska Rule of Civil Procedure 62(a), and Alaska Rules of Appellate Procedure 205, 405, 603, and 611(d), by providing for an

automatic stay of action in a rehabilitation proceeding.

* Sec. 84. AS 21.78.030(c), as repealed and reenacted by sec. 60 of this Act, has the effect of changing Alaska Rule of Civil Procedure 65(c), by providing that a bond may not be required of the director of the division of insurance as a prerequisite to the court's issuing an injunction or restraining order.

* Sec. 85. AS 21.78.100(h), added by sec. 64 of this Act, has the effect of changing Alaska Rule of Civil Procedure 41, and Alaska Rules of Appellate Procedure 511 and 606, by providing that an action may not be brought against the insurer or receiver, and existing actions may not be litigated after a receiver is appointed by the court.

* Sec. 86. AS 21.78.130(j)(3), added by sec. 65 of this Act, has the effect of changing Alaska Rule of Civil Procedure 19, by allowing a receiver to intervene in a court proceeding.

* Sec. 87. AS 21.12.020, as repealed and reenacted in sec. 18 of this Act, applies to all reinsurance transactions having an inception, anniversary, or renewal date on or after July 1, 1990.

* Sec. 88. If, on the effective date of this Act, an insurer has invested in a pooled investment that does not, within one year after the effective date of this Act, appear on the list of eligible pooled investment companies maintained by the director of the division of insurance, or if an insurer has invested in a pooled investment that is subsequently removed from the list maintained by the director of the division of insurance, the investment is treated as described in AS 21.21.310(a).

* Sec. 89. This Act takes effect immediately under AS 01.10.070(c).

SB 212
AN ACT RELATING TO INSURER SOLVENCY

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

DIRECTOR OF INSURANCE

Sections 1 through 15 of this Act 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.

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. 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.

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 12/31/89, $15,000,000 at 12/31/90, and $20,000,000 at 12/31/91). Domestic property or casualty insurers are prohibited from issuing life insurance or annuity contracts.

Section 1. AS 21.06.120. Examination of Insurers, page 1.

Amendment to 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 licensure has ended.

Additionally, further amendment specifically allows 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.

Section 2. AS 21.06.140 (b). Conduct of Examination, page 2.

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

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Section 3. AS 21.06.150 (e). Examination Reports, page 2.

Amendment to this section is primarily editorial in nature and provides 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 4. AS 21.06.160. Examination Expense, page 2.

The provisions of this section are modified by amendatory language that makes 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 5. AS 21.06.165. Immunity for Director and Others, page 3.

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.

Section 6. AS 21.09.020 (3). Exception. Certificate of Authority Requirement, page 4.

The amendment to this section is editorial in nature. It is to provide the correct cross reference, AS 21.34.

Section 7. AS 21.09.060. Combinations of Insuring Power in One Insurer, page 4.

Amendment to this section precludes property or casualty insurers from transacting life insurance or from issuing annuities.

Section 8. AS 21.09.070 (a). Capital Funds Required of Foreign Insurers and New Domestic Insurers, page 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.

Section 9. AS 21.09.070 (c), page 5.

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 10. AS 21.09.070 (f), page 6.

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 12/31/89, $15,000,000 at 12/31/90, and $20,000,000 at 12/31/91. 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 11. AS 21.09.110 (3). Application for Certificate of Authority, page 7.

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 12. AS 21.09.140 (a)(2). Mandatory Revocation, Suspension of Certificate, page 7.

Amendment to this section is necessary due to the change in AS 21.09.070(c) 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 13. AS 21.09.200 (a). Annual Statement, page 7.

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 14. AS 21.09.200 (f), page 8.

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 15. AS 21.09.205. Quarterly Statement, page 8.

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

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 16. AS 21.12.020. Reinsurance Credit Allowed a Domestic Ceding Insurer, page 8.

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 in 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 trusteed, and provides certification of its solvency by a independent auditor and the domestic regulator; or
5. the reinsurer does not meet any of the criterial in 1. through 4. above, then credit is allowed only if funds are trusteed in a form (cash, approved securities, or acceptable letters of credit) and for amounts corresponding to only the amount of funds trusteed.

This section also maintains the existing laws 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 17. AS 21.12.120. Reinsurance Defined. page 14.

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

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 18. AS 21.18.010. Allowable Assets, page 18.

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.

To Subsection (1) is added the allowance of deposits in solvent savings and loan associations. This adds alternative financial institutions to those already listed in the current law, such as banks and trust companies.

Subsections (2)(A)(B)(C) remain the same as the current law.

To Subsection (2)(D) is added the allowance of interest due or accrued on deposits in solvent savings and loan associations to complete its inclusion as an allowed depository above.

Subsection (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.

To Subsection (2)(F) is added 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.

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

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

Subsection (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.

Subsection (4) has been renumbered (5).

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

Subsection (5)(A)(ii) exempts reinsurance premiums from reinsurers authorized to do business in this state from this three-month limitation.

Subsection (5)(A)(iii) 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.

Subsection (5)(B) 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 (B)(i), 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 (B)(ii), the controlled or controlling person must provide a clean, unexpired irrevocable and unconditional letter of credit or 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 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 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 letter of credit must be issued by a Federal Reserve Bank and satisfactory to the division. 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. In (B)(iii), 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. In (B)(iv), the director can disapprove a trust agreement or letter of credit which he feels does not assure the safety of the premiums collected. These subsections are 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.

Subsection (6) of the existing law, dealing with installment premiums, has been included in Subsection (4).

Subsections (7) and (8) remain the same as the current law.

In Subsection (9), the current law allows as an asset amounts receivable by an assuming insurer when a solvent ceding insurer withholds funds under a reinsurance treaty. This subsection 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.

Subsection (10) remains the same as the current law.

Subsection (11) 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.

The current Subsection (12) has been amended and renumbered (16) and a new Subsection (12) 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 subsection defines the requirements which must be met before a receivable based on a tax allocation can be allowed as an asset.

Subsection (13) 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.

Subsection (14) 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.

Subsection (15) 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.

Subsection (12) of current law is renumbered (16) and removes the approval of the director as necessary for the reporting of assets not specifically listed herein and replaced it with allowing those assets included in the annual statement form and consistent with instructions published by the NAIC (as approved by the director).

Subsection (13) of the current law is renumbered (17) and allows the director's discretion in determining assets not inconsistent with the other provisions.

Section 19. AS 21.18.030. Assets Not Allowed, page 21.

Subsections (a) (1)(2)(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. This subsection is also amended to remove the broad exception that allows property permitted under Chapter 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 the Investments Chapter.

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 uncollectable 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.

Sections 20 and 21. AS 21.18.060 (a) and (b). Unearned Premium Reserve, pages 22 and 23.

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

Section 22. AS 21.18.073. Unearned Premium Reserve for Title Insurance, page 23.

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, 1989 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, 1989 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 22. AS 21.18.075. Bail Bond Reserve, page 25.

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 23. AS 21.18.120. Valuation of Bonds, page 25.

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.

Subsection (b) has been deleted and included in 21.18.160.

Section 24. AS 21.18.900. Definitions, page 26.

A new section has been added to define terms used in this chapter.

INVESTMENTS

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 25, AS 21.21.020 (c), Eligible Investments, page 27.

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.

Sections 26, and 27, AS 21.21.030 (c) and (d), General Qualifications, page 27.

These modifications closed a loophole in prior law. In the past, insurers could 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 28, AS 21.21.050, Diversification of Investments, page 28.

These changes exempt a new clan 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 29. AS 21.21.080. State, County, Municipal and School Obligations. page 30.

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 fail, 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 for the obligations of states and political subdivisions to be eligible for investment that 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 30. AS 21.21.130. Inter-American Development Bank. page 30.

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.

Section 31. AS 21.21.140. Corporate Bond and Debentures. page 31.

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

Section 32. AS 21.21.150. Preferred or Guaranteed Stocks. page 32.

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 33. AS 21.21.160. Common Stocks, page 33.

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

Section 34. AS 21.21.170. Insurance Stocks, page 34.

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

Section 35. AS 21.21.190. Equipment Trust Certificates, page 34.

These changes are editorial only.

Section 36. AS 21.21.245. Pooled Investments, page 34.

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 37. AS 21.21.250 (c). Miscellaneous Investments, page 35.

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

Section 38. AS 21.21.270. Chattel Mortgages, page 35.

The changes provided in this section pertains to an insurer's chattel mortgages and accomplish the following:

(1) requires that appraisers hired to value an insurer's interest in a property must be independent of the insurer; and

(2) 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 39. AS 21.21.280. Real Estate, page 36.

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 40. AS 21.21.310. Failure to Dispose of Real Estate, Property or Securities, page 39.

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 41. AS 21.21.350. Investment Transactions with Affiliated or Controlling Persons, page 40.

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 41. AS 21.21.355. Certain Deposits Not Prohibited, page 41.

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 41. AS 21.21.360. Options and Futures Contracts, page 41.

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 42. AS 21.21.600. Definitions, page 45.

This definitional section is highly expanded to clarify the technical terms utilized in this chapter. 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

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 trusteed in the United States by alien insurers.

Section 43. AS 21.34.040 (c). Eligible Surplus Lines Insurers Required, page 47.

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 AS 21.34. The policyholder surplus requirement for foreign insurers is increased to $6,000,000 at 12/31/89, $7,000,000 at 12/31/90, $8,000,000 at 12/31.91, $9,000,000 at 12/31/92 and $10,000,000 at 12/31/93. The policyholder surplus requirements for alien insurers is the same as those above for foreign insurers. The amount of trusteed assets required in the United States for an alien stock or mutual insurer has been increased from $1,500,000 to $5,000,000, and for Lloyd's has been increased from $50,000,000 to $100,000,000. Additionally, the policyholder surplus requirement for an "insurance exchange" domiciled in another state has been increased from $15,000,000 to $20,000,000.

TRADE PRACTICES AND FRAUDS

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 44. AS 21.36.360 (r). Fraudulent or Criminal Insurance Acts, page 49.

The new subsection defines and clarifies insurance related events that constitute criminal activity. This type of definition is necessary to facilitate prosecution of insurance fraud.

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 1 through 15 of the Act which pertains to insurers other than title insurers.)

Section 45. AS 21.36.430. Immunity for Reports on Fraud, page 50.

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, wilful, or intentional misconduct.

TITLE INSURANCE COMPANIES

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 1 through 15 of this Act which pertains to insurers other than title insurers.)

Section 46. AS 21.66.080. Annual Statement, page 50.

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. Title insurers are also required to file their annual financial statements with NAIC. 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.

Section 47. AS 21.66.085. Quarterly Statement, page 51.

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.

Section 48. AS 21.66.090 (b). Application for Certificate of Authority, page 51.

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 49. AS 21.66.130. Expenses of Examination, page 52.

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.

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 50. AS 21.69.530 (a). Impairment of Capital or Assets, page 52.

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 elsewhere in Title 21 but also applies to this chapter.

The following is a description of the substantial amendment to AS 21.78, which pertains to the rehabilitation and liquidation of insurers.

REHABILITATION AND LIQUIDATION

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 51. AS 21.78.020. Commencement of Delinquency Proceedings, page 52.

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 the director to be the court appointed receiver and describes the jurisdiction of the court in these proceedings.

Section 52. AS 21.78.030. Injunctions and Orders, page 54.

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. This amended section also provides for both criminal and civil penalties for a person that obstructs or interferes with the conduct of a delinquency proceeding or an investigation which leads to it.

Sections 53 and 54. AS 21.78.040. Grounds for Rehabilitation. pages 56 and 57.

In addition to the 10 grounds on which the director may seek an order of rehabilitation under AS 21.78, seven 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. an insurer fails to remove an officer found, after hearing, to be dishonest or untrustworthy;

3. control of an insurer is by a person found, after hearing, to be untrustworthy;

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

5. if the insurer fails to make available records of its transactions for examination;

6. 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

7. 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 55. AS 21.78.090. Order of Rehabilitation. page 57.

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 56. AS 21.78.100. Order of Liquidation, Domestic Insurers, page 58.

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 57. AS 21.78.130. Conduct of Delinquency Proceedings Against Domestic and Alien Insurers, page 61.

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.

Sections 58, 59 and 60, AS 21.78.170. Form of Claim, pages 62 and 63.

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. 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.

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.

Sections 61 and 62, AS 21.78.180. Priority of Certain Claims, page 64.

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.

A new subsection (c) 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.

Sections 63 and 64, AS 21.78.250. Fraudulent Transfers Before Petition. AS 21.78.251. Fraudulent Transfer After Petition. AS 21.78.252. Voidable Preferences and Liens. AS 21.78.253. Claims of Holders of Void or Voidable Rights, pages 65-74.

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. 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. 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. 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 65. AS 21.78.260. Priority of Distribution, page 74.

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 premium 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 66. AS 21.78.270. Setoffs and Counterclaims, page 76.

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 67. AS 21.78.271. Recovery of Premiums Owed, page 77.

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 67. AS 21.78.272. Reinsurers Liability, page 77.

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.

Sections 68 and 69. AS 21.78.280. Special Claims. AS 21.78.281. Special Provisions for Third-Party Claims, pages 68-80.

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.

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 70. AS 21.78.290. Notice to Creditors and Others, page 80.

This section has been repealed and reinstated 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 71. AS 21.78.291. Duties of Agents, page 81.

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 71. AS 21.78.292. Filing of Claims, page 82.

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 71. AS 21.78.293. Receiver's Recommendation to the Court, page 83.

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 71. AS 21.78.294. Distribution of Assets, page 84.

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 71. AS 21.78.295. Unclaimed and Withheld Money, page 84.

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 enure to the state without going through any further proceedings.

Section 71. AS 21.78.296. Termination of Proceedings, page 85.

This new section provides for the receiver to apply to the court for discharge from the rehabilitation or liquidation proceedings when all duties have been performed. The court may grant the discharge and issue any other orders it deems appropriate. It is anticipated that such orders would 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 71. AS 21.78.297. Reopening Liquidation, page 85.

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 71. AS 21.78.298. Disposition of Records During and After Termination of Liquidation, page 86.

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.

Section 72. AS 21.90.900. Definitions for Title, page 86.

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 73. AS 21.78.330 (6). Definitions, page 86.

This subsection contains the definition of the terms "impairment" or "insolvency" and is repealed. These terms are now redefined in AS 21.90.900 as these terms are also used in other chapters of Title 21.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

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

February 26, 1990

Honorable Richard Eliason
Chairman
Senate Labor & Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Eliason:

RE: Amendments to Draft CSSB 212 (L&C), Insurer Solvency

As a result of the February 6, 1990 memorandum to you from Michael Ford and our own review of the draft CSSB 212 (L&C), both internally and with industry representatives, I offer the following technical amendments:

Page 2, line 21: After "spent": Delete [relating] and insert directly or indirectly related.

Page 6, line 20: After "Any": Delete [two] and insert three.

Page 9, line 3: After "instructions": Delete [approved by the director].

Page 12, line 10: After "than": Delete [$100,000,000] and insert $50,000,000.

Page 15, lines 26 - 27: After "company": Delete [as defined in AS 21.21].

Page 22, line 4: "good will" should read "goodwill".

Page 35, lines 17 - 22: Delete Section 44 (will add this to SB 259).

Page 50, lines 2 - 3: After "STATEMENT": Delete [Except as provided in (b) of this section, every [EVERY]] and insert (a) Every.

Page 50, line 13: After "instructions": Delete [approved by the director].

Page 85, line 15: After "sec.": Delete [18] and insert 20.

Cross-reference should be revised to reference entire section AS 21.12.020 in AS 21.88.050(a)(3). (M. Ford item #3).

Revise the cross-reference in AS 21.21.290(b) from "AS 21.21.280(2)-(4) to read "AS 21.21.280(3)-(5). (M. Ford item #5).

Substantive changes which came out of discussions with industry representatives include:

1. Add a new effective date clause: AS 21.09.070(a), as amended in Section 10 of this Act, is applicable to an insurer admitted prior to the effective date of this Act, on January 1, 1992.

   The bill raises the capital and surplus requirements for insurers and requires them to maintain additional surplus. So that this requirement will not be a burden to the small insurer, this amendment provides a grandfather clause for existing admitted insurers.

2. Page 9, line 27: Delete [the statements must follow the format specified in AS 21.09.200(a)] and insert the reporting format for a given quarter is the most recently approved National Association of Insurance Commissioners' quarterly financial statement blank form and instructions.

   This amendment relates to the new requirement for filing of quarterly reports and substantially tracks current practice in all other states. The report is uniform in all states since it is designed by NAIC. The quarterly report is substantially less burdensome than the required annual statement and is an important tool in the detection of troubled insurers. Although the typical time following the quarter for filing the report is 45 days, we have selected 60 days to give insurers more time and to use a period comparable to that for the annual statement. To satisfy ACLI's concern that the format be as uniform as possible, the amended language clarifies our intent to utilize the NAIC quarterly form.

3. Page 35, lines 9 - 13: Delete subsection (b).

   Page 85, lines 18 - 24: Delete Section 88.

   The department is persuaded that maintenance of a list of eligible pooled investments is not necessary. Eligible investments would be constantly changing, and it would be

burdensome for staff to keep the list up to date and for the industry to know which investments were eligible. In addition, a list of eligible investments is not required for other types of investments.

4. Page 85, line 17: After "January 1,": Delete [1990] and insert 1991.

   This amendment satisfies a concern on the part of ACLI that an insurer with reinsurance agreements have adequate time to comply with any new requirements under the law.

5. Page 10, line 6: After "reinsurance": Insert transactions.

   Page 15, line 16: After "DEFINED": Insert A.

   Page 15, line 16: After "Reinsurance": Delete [is] and insert transaction as referred to in AS 21.21.020 is a transaction stemming from.

   Page 15, line 18: After "liability": Insert or losses.

   These amendments clarify the definition of reinsurance.

Thank you for your consideration of the proposed amendments to the draft CSSB 212 (L&C) of February 6, 1990.

Sincerely,

Donald Hoch for David Walsh

David Walsh
Director

DW/LW/jc2146q
022690b

SB 259
SB 212

Numbers Game

More than a few life insurers are running low on capital, a situation many try disguising with fancy bookkeeping.

Liabilities dangereuses

By Dana Wechsler

RALPH WANTS TO GET RID of a bond that might default. He sells it to a friend. The friend sells it to his sister, who sells it to her hairdresser, who sells it to Ralph's wife, who puts it in the family safe.

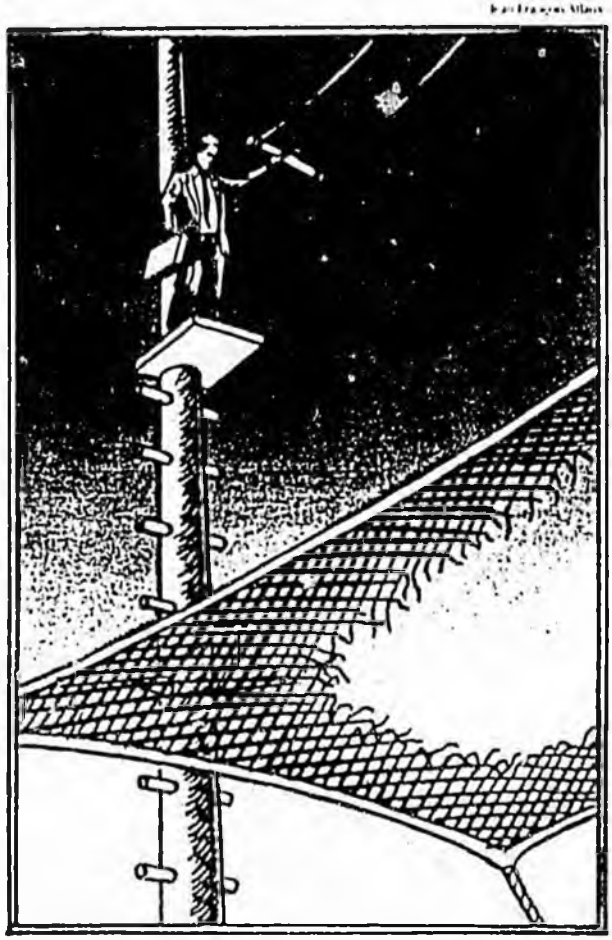
So did Ralph get rid of the bond?

The commonsense answer is no. But the answer as life insurance accounting goes is yes. Clever insurance men are having a field day coming up with new ways to bend the rules on valuing their assets and liabilities. They have found ways for Ralph to seem to shed the bad bond without really selling it. State insurance regulators can scarcely keep up.

At issue here is capital surplus, an insurer's lifeblood. In their reports to the regulators, insurers follow "statutory accounting" rules that compare their assets with their liabilities (future claims); assets are supposed to exceed liabilities by a generous amount. The difference is called "capital surplus." It is the difference between solvency and insolvency. Capital is also something that rapidly growing—or simply reckless—insurers are usually short of, and will go to great lengths to exaggerate.

Take a look, for example, at Executive Life Insurance Co. of California, the state's largest life insurer (assets, $12.8 billion). Between 1980 and 1987 Executive Life told regulators in states where it does business that it had nice surpluses.

By 1988 the California insurance department found that in at least four of those years First Executive overstated its surpluses. In 1986, for example, the insurance department knocked $180 million out of Executive Life's surplus, deflating it by a full 67%.



First Executive's main vehicle for exaggerating its surplus was reinsurance. Think of reinsurance as renting someone else's balance sheet. Suppose an insurance company wants to add $100 million to its capital surplus. Surplus, remember, is assets minus liabilities. Reduce liabilities and you've increased surplus. To do this, the insurer simply transfers—or reinsures—$100 million of its liabilities to a reinsurance company with extra surplus. The insurer pays the reinsurer about $2 million in fees for $100 million of reinsurance. Those fees are rent, as it were, for a piece of the reinsurer's surplus. The insurance company's statutory net worth jumps by $98 million.

All this is perfectly fine with the regulators, as long as the liabilities really are transferred to the reinsurer, and the reinsurer has enough capital surplus to meet any claims arising from the reinsured policies. To know if a reinsurer's capital base is strong enough, the regulators have an authorized list of reinsurers that they examine regularly.

Ah, but what about all those reinsurers in places like Bermuda and the Cayman islands, where capital requirements for insurance companies are much more relaxed than in the U.S.? They have become increasingly popular with U.S. insurers. Since these foreign reinsurers aren't preauthorized, state insurance regulators require them to obtain a letter of credit from a bank. This guarantees that the bank will pick up the liabilities if the reinsurer fails.

Thus the liability has essentially been shifted twice: first from the insurer to the reinsurer, then to a bank.

Still with us? Good, because it is with that letter of credit that a lot of funny business comes in.

Back to First Executive. As of Dec. 31, 1986, Executive Life of California took $180 million of surplus credit for reinsurance with Italy's Assicurazioni Generali, a large but unauthorized reinsurer—meaning Executive Life needed a letter of credit to take surplus credit for Generali's reinsurance. Unfortunately, on subsequent exami-

nation, the California insurance department discovered that the necessary letters of credit were not issued for the Italian reinsurer until nearly a year later. In other words, there was no assurance that Assicurazioni Generali could honor its obligation. As a result, the California regulators disallowed the $180 million of surplus credit that Executive Life had taken in 1986. First Executive's response? "It was just a bookkeeping problem."

Executive Life of California's sister company, Executive Life of New York, also played fast and loose with reinsurance rules. In one case, according to the New York regulators, Executive Life of New York tried to pledge its own assets to get a bank's letter of credit. That means if the reinsurer

failed and the bank was saddled with its liabilities, the bank would turn around and ask Executive Life for the money. The liabilities came full circle. Not acceptable, said the New York regulators, who disallowed the surplus credit that Executive Life had taken for the reinsurance.

For these and a variety of other reinsurance abuses, the New York insurance department fined Executive Life of New York $250,000 in 1987.

First Executive, Executive Life of New York's parent company, is selling its New York subsidiary. Industry rumor has it that First Executive can't stand the heat from the New York regulators.

Officials at First Executive defend their practices by implying the New York regulators were nitpicking. Nitpicking? Come on, fellows.

Cases in which a life insurer's parent company pledges its own assets as collateral for a reinsurance letter of credit are not uncommon. According to a First Executive official, the New York insurance department (the most stringent in the country) informed the company privately that this practice is unacceptable. But regulators in most states let it pass.

A few years ago Lincoln National Life Insurance Corp. (assets, $4.9 billion) devised a neat scheme for plumping up its capital surplus. It set up its own reinsurance subsidiary in Bermuda, and transferred some of its liabilities there. The subsidiary was insuring the parent but with reduced reserves!

In December Terence Lennon, New York's chief life insurance regulator, issued a regulation closing this loophole in New York. Other states have looked the other way.

Unraveling an insurer's web of assets and liabilities is hard enough. Then you have to figure out what the assets are really worth. Junk bonds, for example, are not kept on insurers' books at market value but at cost less amortization. Almost half of Executive Life of California's assets were invested in junk bonds at the end of last year. According to Hartford-based insurance consultants Townsend & Schupp, a 20% writedown in junk bond values would completely wipe out the company's $1 billion surplus. While not likely, a decline of this magnitude is not impossible.

Statutory accounting rules require insurers to set aside special reserves for high-risk bonds: 2% of the face value every year for ten years, over and above capital surplus. That doesn't remove all risk, but it helps.

What about "junk real estate"? Statutory accounting requires no special reserves for real estate or mortgage holdings, which make up fully one-fourth of life insurers' invested assets. But isn't much real estate at least as risky as junk bonds?

Mutual Benefit Life Insurance Co. (assets, $10.6 billion) puts many of its foreclosed properties in its "investment real estate" account rather than its "foreclosed real estate" account. Nearly all of the $90 million worth of real estate that Mutual Benefit added to "investment real estate" in 1988 were properties acquired through foreclosures—including several apartment buildings in Dallas and Houston. Isn't it stretching things a bit to call bad debts "investments"?

It all comes down to this: After a decade of selling low-margin products like universal life policies and annuities, the life insurance industry's capital base is deteriorating. The worst part of it is that it's nearly impossible to tell from their books which insurers will make it and which won't. ■

HENRY LANCASTER, INC.

550 West Seventh Avenue • Suite 920 • P.O. Box 10-3461 • Anchorage, Alaska 99510 • (907) 278-4729

April 12, 1989

Senator Dick Eliason, Chair
Senate Labor & Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

Thank you for taking a few moments in Juneau to discuss S.B. 212, "An act relating to insurer solvency..." The section of the legislation which is under consideration for amendment is AS 21.21.130. The amendment would allow Alaskan insurers to invest in the African Development Bank or the Asian Development Bank. I have enclosed a memorandum explaining the history of the requested amendment.

It is my understanding that S.B. 212 has not been scheduled for a hearing to date. Please advise me when a hearing is scheduled. I would like to be available to the committee to address any concerns.

Sincerely,

Henry M. Lancaster, II
President

HML:bgm

Enclosure

MEMORANDUM

AFRICAN DEVELOPMENT BANK STATE
LEGISLATIVE PROGRAM - ALASKA

I. Background

The African Development Bank ("the Bank") is currently seeking the enactment of legislation, where necessary, which would permit state-regulated banks, insurance companies, fiduciaries and public employee retirement systems to invest in Bank obligations if they choose to do so. Several years ago, largely through the joint efforts of the Congressional Black Caucus and the Reagan Administration, Congress enacted Title XIII of P.L. 97-35 authorizing United States membership and financial participation in the Bank, which was initially created in 1964 and until 1982 limited its membership to African countries. Today, the Bank's membership includes all African nations except for South Africa, plus the Governments of the United States, Canada, Japan and Western Europe.

The Bank, a principal source of financing for economic development projects on the African continent, funds these projects through the sale of its obligations in the world's capital markets. As with the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank and the Asian Development Bank, investments in African Development Bank securities by the state-regulated institutions described above generally require either state legislation or administrative agency rulings prior to the time such securities can be marketed in a particular state. P.L. 97-35 referred to above authorized federally regulated financial institutions to invest in such securities.

Since initiating state legislation activities several years ago, the Bank has obtained passage of legislation or secured comparable administrative agency public rules to qualify its securities for investment in forty-two states.1/

1/ These include Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Washington, West Virginia and Wisconsin. In addition, Alaska state-chartered banks obtained such investment authorization through legislation enacted in the 1988 session.

Bills are also pending in several additional states, while others have either issued private administrative rulings or have laws which already permit such investments under a "prudent investor" standard. It should be noted that each state has its own particular laws applicable to state-regulated institutional investors and no two states are alike in this regard.

The Bank entered the United States capital market for the first time in the Fall of 1985 and most recently in early November 1987 with highly successful bond issues. The three principal American bond rating services have given its bonds AAA, AAA and AA ratings, which makes this type of investment quite attractive once a regulated investor receives appropriate legal authorization. In order to assure a successful United States market presence, the Bank is seeking enactment of legislation in a number of additional states, including Alaska, to obtain this authorization.

II. Specific Legislation Needs in Alaska

A review of the applicable Alaska laws indicates a need for amending only one section of the Alaska Statutes to gain investment authorization for state-regulated insurance companies. This involves merely adding the name of the African Development Bank to those of the World and already eligible for such investments. Alaska state banks recently gained this investment authorization in similar legislation, while other regulated investors apparently already have the necessary authority without the need for statutory change.

Based upon experience to date in other states, this legislation should be completely noncontroversial. President Reagan and the U.S. Treasury Department have actively supported efforts to get this legislation enacted, as have many Black political leaders around the country. Because of the high Bank securities ratings, prospective investors also support it since this increases their high-yield, low-risk portfolio options and provides them an opportunity to make both profitable and socially worthwhile investments. Finally, since the Bank is the major source of foreign exchange financing for transactions in or with Africa, American exporters and technical assistance providers to that continent have ample incentive to support the Bank's financial success.

Prepared November 1988 by:

David Aronofsky, Esq.
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Washington, D.C. 20036-5339
202-857-6054

P.O. Box 6352
Ketchikan, Alaska 99901
November 25, 1989

Govenor Steve Cowper
Box A
Juneau, Alaska 99811-0101

Re: Alaska Chapter 80 Title 21

Dear Govenor Cowper:

While in Seattle last month I spoke with John Wydahl, office of insurance Commissioner, State of Washington, concerning Chapter 48.32 ARCW, short title; Washington Life and Disability Insurance Guaranty Association Act. He mailed a copy of the "Act" to me.

As a recipient of annuities, I am very concerned that we, in the State of Alaska, do not have access to this sort of protection in the event of insolvency of a carrier. Also, this state is in the minority, one of eleven in the nation without such a state law covering life insurance annuities and disability insurance. I have spoken with several of my former co-workers and find they have similar concerns and would like to see a law implemented.

Our problem is; what needs to be done? Where do we start? And what avenues are available? Further, I'm a retired State employee with annuities available through S.B.S. and Northwest Marine Trust, both of which I have not applied for at this point. However, I am receiving PERS and the Unlicenses Vessel Personnel Annuities Retirement Fund. (Monies set aside between the Northwest Marine Trust and our entry into PERS.) This fund was sold to First Executive Life (Executive Life Unit) The enclosed article confirms my concerns. I feel fortunate that my S.B.S. is still deferred; some of my co-workers are receiving the "UVPARF" and S.B.S. from Executive Life.

I would appreciate some input and suggestions from you concerning this very troubling issue.

Very truly yours,

Carol J. Keleske

Carol J. Keleske
I.B.U. of Pacific retired

cc: Senator Richard I. Ellison
Representative Dave Donley
Senator James Duncan
I.B.U.
M.E.B.A.
M.M. & P.

Enclosure

years of service (page 164). The trend is toward defined-contribution (DC) plans, where only the amounts that employees and employers put into a pool are fixed. With unlucky or unwise investments, a DC payout can fall way short of a retiree's needs. Despite that uncertainty, DC plans such as the 401(k) have one clear virtue for employees: When they change jobs, they get the money in a lump sum. Lamentably, only 30% of the job jumpers put it into another retirement kitty. Typically, DC plans are found in newer ventures, and DB plans or DC-DB blends in established companies. Why is the number of DB plans no longer growing? Because they cost more and government DB rules are a hassle. While an aging work force eventually may clamor for employers to start DB plans, too many disincentives exist for that to happen.

Retirement is so nothing few people think about until it is within hailing distance. So the tug-of-wars over pension largesse are, to many, an abstraction. But with the graying of America, these battles are going to seem more and more relevant.

By Larry Light in New York, with bureau reports

WHEN THE SAFETY NET IS FRAYED

For Lester Reynolds, retirement means finally getting time to refurbish the 1936 Ford coupé that sits rusting in his backyard in rural Fortuna, Calif. He thought about retiring early to get started. No such luck. When Charles E. Hurwitz took over his employer, Pacific Lumber Co., in 1985, the Houston financier scrapped Pacific's pension plan and used its surplus to help pay down his debt. In its place, Hurwitz bought annuities from First Executive Corp., known for its heavy reliance on income from junk bonds.

There's no reason to believe First Executive is in trouble. But if its risky bonds were to cause its collapse, Reynolds and others fear their retirement security will go down with it. Now, the 57-year-old mechanic will work at the mill in nearby Scotia until he's 62 to build up a second nest egg—just in case.

"You work all your life thinking you've got security at the end," says Reynolds, who has put in 33 years with Pacific. To make sure it'll be there, he and six co-workers filed suit on Sept. 25 in U.S. District Court in San Francisco to force Hurwitz and First Executive to buy a bond guaranteeing the annuities or to rebid them to another insurer. The companies won't comment on the suit, saying they haven't seen it.

MECHANIC REYNOLDS: A TAKEOVER ENDED HIS HOPE TO RETIRE EARLY

JUICY TARGET. The nearly $60 million of overfunding in Pacific's pension plan made a juicy target for Hurwitz. But his predecessors had more benign uses for surpluses: They boosted the pension payouts every few years, which kept Pacific's 2,700 employees and retirees apace with inflation. With no increase since 1978, the plan was about to be considered for another jump when Hurwitz showed up. The annuities that replaced it offer no hope of future hikes. And a new plan set up for current workers has barely enough in it to meet current obligations.

The bigger concern, however, is whether the annuities will survive. Executive Life Insurance Co., the First Executive unit that sold the annuities to Hurwitz' holding company, Maxxam Group Inc., has had run-ins with regulators in recent years. The California Insurance Dept. found that the unit overstated its net worth by $180 million in 1986 and by $69 million in 1987.

Worse, Pacific workers worry because 51% of First Executive's $17 billion bond portfolio, which earns the interest for their annuities, is in the troubled junk-bond market; on average, large insurers are roughly 15% in junk. First Executive has boosted its reserves this year by 28%, to $250 million, so it can cover $329 million in nonperforming issues. California has no state fund to protect annuitants whose insurers fail, so "if that junk collapses, there goes my pension," says Wiley J. Lacey, 61, Pacific's tax manager until he retired four years ago.

First Executive insists that Pacific's annuities are secure, and they point to the company's AAA claims-paying rating from Standard & Poor's Corp., which stems from strong capitalization and high earnings, partly from its junk holdings. Plus, the insurer's chairman, Fred Carr, has taken more conservative measures to boost capital.

But First Executive has an apparent conflict of interest with Maxxam that doesn't inspire confidence. Over the objections of Pacific's managers and outside consultants, Maxxam selected Executive Life through what the employees' suit says was a suspicious bidding process. Reynolds and his colleagues charge that Maxxam did so to pay back First Executive for being the biggest buyer of the $450 million in junk bonds it floated, through Drexel Burnham Lambert Inc., to take over Pacific. A congressional committee asked the Labor Dept. in a 1987 letter to look into the matter for possible violations of federal law. Sources say that Labor investigators have urged that action be taken against Maxxam, but nothing has been filed. Maxxam and First Executive deny the charge, saying no other insurer came close to Executive's bid.

Lester Reynolds now has $55,000 in Pacific's savings plan. If he works until age 62, he expects to more than double that as a cushion to supplement—or, if necessary, replace—the $900 monthly annuity check he's due. Failing that, he figures he could raise cash by logging the Douglas fir on 40 acres he owns or helping his son build houses. His retirement may be something he never expected—a scramble.

By Jonathan B. Levine in Fortuna, Calif., with bureau reports

TIM PARSONS

FIRST BANCORPORATION OF OHIO

HOWARD L. FLOOD

Akron, Ohio 216-384-8000

SALES: *$254 mil.* PROFITS: *$34 mil.*

MARKET VALUE: *$408 mil.*

▶ Born 10/28/34, New York, N. Y. Career path–finance/accounting; tenure–26 years, CEO 6 years. Compensation: 1988 salary & bonus, $291,000; ownership, 9,000 direct, 1,000 indirect shares. ▶ Building a regional powerhouse. Buys local banks with middling returns and makes them top performers, dangling early retirement offers to shrink staff, chopping health benefits to cut costs. Gives a lot of freedom to local managers to run their banks. Expanded automatic-teller network, and more acquisitions should provide more growth.

FIRST BANK SYSTEM

DARRELL G. KNUDSON

Minneapolis, Minn. 612-370-5100

SALES: *$1.9 bil.* LOSS: *$310 mil.*

MARKET VALUE: *$1.6 bil.*

▶ Born 7/16/37, Centerville, S. D.; attended Southern St. Coll., Augustana. Career path–banking; tenure–31 years, CEO 1 month. Compensation: 1988 salary & bonus, $368,000; ownership, 05,000 shares. ▶ Took over troubled regional bank as acting boss when predecessor Pete Ankeny resigned. Bank had suffered through two years of increasingly bad news. Latest crisis is the prospect of $83 million in losses from LBO loans that have gone sour. Popular vice-chairman likely to put restructuring on hold pending permanent replacement.

FIRST CAPITAL HOLDINGS

ROBERT I. WEINGARTEN

Los Angeles, Calif. 213-551-1000

SALES: *$736 mil.* PROFITS: *$53 mil.*

MARKET VALUE: *$429 mil.*

▶ Born 12/25/41, New York, N. Y.; BBA, City Coll. of N. Y., 1962. Career path–investment banking; tenure–17 years, CEO 17 years. Compensation: 1988 salary & bonus, $1,438,000; ownership, none.[3] ▶ Ex-magazine publisher (*Financial World*) built insurer, fund group aggressively: Offers high rate on annuities, delivers by junk-bond investing. Sold Pilgrim funds group to its manager, wife Palomba. Also sold 43% of company to Shearson Lehman, which now virtually controls board. Some takeover rumors. Active in West Coast culture-social set.

FIRST CHICAGO

BARRY F. SULLIVAN

Chicago, Ill. 312-732-4000

SALES: *$4.8 bil.* PROFITS: *$513 mil.*

MARKET VALUE: *$3 bil.*

▶ Born 12/21/30, Bronx, N. Y.; BA, Columbia, 1955; MBA, U. of Chicago, 1957. Career path–banking; tenure–9 years, CEO 9 years. Compensation: 1988 salary & bonus, $1,514,000; ownership, 178,000 direct, 6,000 indirect shares. ▶ Lanky chairman's strategy is working, so may be able to hold off takeover or restructuring. Earning money again after big Third World loan write-off last year. But foreign currency operations still a problem. Betting on new commercial-paper subsidiary. Wall Street seems pleased with his progress.

FIRST CITY BANCORPORATION OF TEXAS

A. ROBERT ABBOUD

Houston, Tex. 713-658-6011

SALES: *$1.2 bil.* PROFITS: *$14 mil.*

MARKET VALUE: *$555 mil.*

▶ Born 5/29/29, Boston, Mass.; BA (1951), MBA (1958), Harvard; JD, Harvard Law, 1969. Career path–finance, banking; tenure–1 year, CEO 1 year. Compensation: 1988 salary & bonus, $316,000[5]; ownership, 131,000 direct, 597,000 indirect shares.[6] ▶ He vowed he'd turn this troubled Texas bank around fast–and he has. Unloaded bad loans, slashed costs. Now he's aiming to grow, not just survive. Looks to expand to Dallas, bolster weak consumer business. With out-of-state BankOne and NCNB breathing down his neck, he'll need to move fast.

FIRST EMPIRE STATE

ROBERT G. WILMERS

Buffalo, N. Y. 716-842-5445

SALES: *$537 mil.* PROFITS: *$44 mil.*

MARKET VALUE: *$480 mil.*

▶ Born 4/20/34, New York, N. Y.; AB (business), Harvard, 1956. Career path–banking; tenure–7 years, CEO 6 years. Compensation: 1988 salary & bonus, $448,000; ownership, 500,000 direct, 2,000 indirect shares. ▶ Turned around ailing bank after he and New York investor group bought controlling interest six years ago. Targeting local mortgage market. Downshifting international to emphasize regional business. One hitch: Charges from absorbing East New York Savings Bank, acquired in 1988, slowed earnings growth. Expects quick recovery.

FIRST EXECUTIVE

FRED CARR

Los Angeles, Calif. 213-312-1000

SALES: *$3 bil.* PROFITS: *$197 mil.*

MARKET VALUE: *$1.1 bil.*

▶ Born 3/24/81, Los Angeles. Career path–finance/accounting; tenure–15 years, CEO 15 years. Compensation: 1988 salary & bonus, $1,805,000; ownership, 922,000 shares. ▶ He holds the insurance company's annual meeting in its cafeteria–shareholders have had plenty of food for thought. A portfolio full of junk debt and an investigation into dealings with Drexel make investors and customers uneasy. Troubles with big shareholders also roil stock. Another hitch: Selling his New York insurance subsidiary resulted in a big loss. Takeover talk persists.

FIRST FIDELITY BANCORPORATION

ROBERT R. FERGUSON JR.

Lawrenceville, N. J. 201-565-3200

SALES: *$2.8 bil.* PROFITS: *$34 mil.*

MARKET VALUE: *$1.9 bil.*

▶ Born 12/31/23, Savannah, Ga.; BS (business admin.), Lehigh, 1947. Career path–financial services; tenure–40 years, CEO 17 years. Compensation: 1988 salary & bonus, $792,000; ownership, 15,000 direct, 15,000 indirect shares. ▶ Under fire. Expected to retire, but took over when predecessor Harold Pote resigned after surprise fourth-quarter-1988 loss on bad Philadelphia real estate loans. Recovery may be rocky: First-half earnings are off. Irate investors prompted SEC look into the way loss was announced. Bank is searching for a successor.

FOOTNOTES APPEAR ON PAGE 434

Alaska National
INSURANCE COMPANY

A policy of service and protection

January 22, 1990

The Honorable Richard Eliason
Chairman, Senate Labor and Commerce Committee
Alaska State Legislature
Room No. 417, Capitol
P. O. Box V
Juneau, AK 99811

Re: Senate Bills 212 and 259

Dear Senator Eliason:

We had a report last week that a member of the Division of Insurance had communicated to your staff that these two bills are acceptable to Alaska National Insurance Company.

Whether or not such a communication took place, we want to be sure there is no misunderstanding regarding our position.

We still have some concerns with SB212 and some serious concerns with SB259. These concerns were communicated to Acting Director Jim Jordan on December 12, 1989.

Sincerely,

James E. Pfeifer
President

JEP:lp

cc Acting Director Jim Jordan
Alex Miller

7001 Jewel Lake Road • Anchorage, Alaska 99502 • Telephone (907) 248-2642 • FAX 266-9252

Proposed Amendments to SB 212: Insurer Solvency

Sections Amended:

Section 8

AS 21.09.070(a), p. 5, lines 23 through 29, p. 6, lines 1 through 14

New Section: AS 21.09.070(b)

Section 9

AS 21.09.070(c), p. 6, lines 18 and 19

Section 10

AS 21.09.070(f), p. 6, lines 23, 28, and 29

New Section: AS 21.09.080(a)

Section 43

p. 48, lines 8 through 10
p. 48, line 24
p. 49, lines 9, 20 and 21

Section 44

Delete entire section: p. 55, line 13 through p. 56, line 12

Section 52

Delete entire section: p. 55, line 13 through p. 56, line 12

Section 67

p. 77, line 4 and lines 6 through 10

Section 73

p. 86, line 27

SB 212, Insurer Solvency

Section 8:

Delete Section 8 and Insert:

* Sec. 8. AS 21.09.070(a) is repealed and reenacted to read:

(a) To qualify for authority to transact any one kind of insurance as defined in AS 21.12, or combination of kinds of insurance as shown below, a foreign insurer, or a domestic insurer applying for its original certificate of authority in this state after having withdrawn from this state for any cause, shall possess and after that maintain unimpaired basic paid-in capital stock (if a stock insurer) or unimpaired basic guaranty surplus (if a foreign mutual insurer or foreign reciprocal insurer) that is unavailable for dividends of any kind, and shall possess when first so authorized, and maintain after that, additional money in surplus, as follows:

Kind or Kinds Insurance	Basic Capital or Basic Guaranty Surplus	Additional Surplus when First so Authorized	Additional Surplus Following Authorized
Life	$1,000,000	$1,000,000	$ 750,000
Disability	1,000,000	1,000,000	750,000
Life and Disability	1,250,000	1,250,000	1,000,000
Property	1,000,000	1,000,000	750,000
Casualty excluding vehicle	1,000,000	1,000,000	750,000
Vehicle	1,000,000	1,000,000	750,000
Marine and Transportation	1,000,000	1,000,000	750,000
Surety	1,000,000	1,000,000	750,000
Title	500,000	500,000	250,000
All of the following kinds of insurance: property, marine and transportation, vehicle, casualty excluding vehicle, surety and disability	3,000,000	3,000,000	2,250,000
Legal Expenses	1,000,000	1,000,000	750,000
Mortgage Guarantee	1,000,000	1,000,000	750,000

New Section:

Page 6, after line 15 Insert new section to read: AS 21.09.070(b) is amended to read:

(b) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in all areas in which it operates or proposes to operate, whether or not only a portion of the kinds of insurance are to be transacted in this state. Following a hearing, the director may require an insurer to maintain funds in excess of basic capital, basic guaranty surplus, additional surplus when first so authorized, or additional surplus following authorization for the protection of the public due to the amount, kind, or combination of kinds of insurance considered prudent. Failure of an insurer to maintain such excess funds as ordered by the director is grounds for suspension or revocation of the insurer's certificate of authority.

Renumber remaining sections accordingly.

Section 9:

Page 6, line 18 after "June 30,": Delete [1990] and Insert 1991

Section 10:

Page 6, line 28, after the first "December 31,": Delete [1989] and Insert 1990

Page 6, line 28 after the second "December 31,": Delete [1990] and Insert 1991

Page 6, line 29 after "December 31,": Delete [1991] and Insert 1992

New Section:

Page 7, after line 3 add a new section to read:

AS 21.09.080(a) is repealed and reenacted to read:

(a) In order for a domestic insurer to renew and continue its certificate of authority beyond June 30, 1991, it must possess at least the basic capital or basic guaranty surplus and additional surplus following authorization required under AS 21.09.070.

Renumber remaining sections accordingly.

Section 43:

Page 48, line 8 after "1989,": Delete [$7,000,000] and Insert $10,000,000

Page 48, line 9 after "1990,": Delete [$8,000,000] and Insert $12,500,000

Page 48, line 9 after "1991": Delete [$9,000,000 AS OF DECEMBER 31, 1992]

Page 48, line 9 after "and": Delete: [$10,000,000] and Insert $15,000,0000

Page 48, line 9 after the second "December 31,": Delete [1993] and Insert 1992

Page 48, line 17 before "as of": Delete [$7,000,000] and Insert $10,000,000

Page 48, line 17 after "1990": Delete [$8,000,000] and Insert $12,500,000

Page 48, line 18 after "1991": Delete [$9,000,000 AS OF DECEMBER 31, 1992,]

Page 48, line 18 after "and": Delete [$10,000,000] and Insert $15,000,0000

Page 48, line 19 after "31,": Delete [1993] and Insert 1992

Page 48, line 24 after "less than": Delete [$5,000,000] and Insert $2,500,000

Page 49, line 9 after "than": Delete [$100,000,000] and Insert $50,000,000

Page 49, line 20 after "less than": Delete [$20,000,000] and Insert $50,000,000

Page 49, line 21 after "aggregate;": Delete [IN] and Insert for insurane exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent, of not less than $3,000,000. In

Section 44:

Page 49, line 25 through page 50, line 14: Delete entire section

Renumber remaining sections accordingly

Section 53:

Page 55, line 13 through page 56, line 12: Delete all material

Section 67:

Page 77, line 4 after "premium": Delete [,]

Page 77, line 6 after "to pay": Delete [AN] and Insert any

Page 77, line 6 after "unpaid": Insert earned

Page 77, line 6 after "premium": Delete [FOR THE FULL POLICY TERM]

Page 77, line 7 after "insolvency": Delete [, WHETHER EARNED OR UNEARNED]

Page 77, lines 8 through 10 after "insurer;": Delete [THE RECEIVER HAS THE RIGHT TO RECOVER FROM SUCH A PERSON ANY PART OF AN UNEARNED PREMIUM THAT REPRESENTS A COMMISSION OF THE PERSON;]

Section 73:

Page 86, line 27 before "AS 21.21.020(b)": Insert: AS 21.09.080(b) & (c),

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Phone (907) 586-2286

Telecopy (907) 586-2317

April 10, 1989

HAND DELIVERED

The Honorable Dick Eliason, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P. O. Box D
Juneau, Alaska 99822

Dear Senator Eliason:

On behalf of the American Council of Life Insurance (ACLI), I wish to bring to your attention the following concerns with regard to SB 212, "An Act Relating to Insurer Solvency . . ."

Section 4, Pages 2 and 3:

ACLI endorses reasonable regulation of the insurance industry by the State of Alaska and agrees in concept with the examination provisions now included in Alaska law; however, we believe it is unnecessary and unreasonable for the state to step up regulation of the insurance industry and to require the examined companies to pay all of the associated additional expenses. To require insurers to assume the salary and benefit costs in addition to actual expenses is simply too excessive, and we must object to such a proposal.

Section 8, Pages 5 and 6:

This section doubles the amount of capital and surplus required to do business in Alaska by June 30, 1990. For some insurers this time-line will be unduly burdensome. We believe the state should modify this provision and extend the compliance deadline to three years from the effective date of the bill.

Section 15, Page 8:

We are concerned that the statute does not specify the conditions under which a quarterly report will be required. We recommend that this section be expanded to provide such guidelines. We also believe that a fine of $100 per day for late filing is totally unnecessary; however, if a fine is deemed appropriate, it should be at a more reasonable level.

Section 16(g), Page 14:

This section apparently is intended to be a grandfather clause, but it is inconsistent with the reinsurance system. It attempts to require all reinsurance treaties which existed prior to the adoption of the Act, and which are subsequently renewed, to comply with any new requirements provided under the law. In the area of reinsurance, it is customary for an insurer to take reserve credit under non-complying treaties. Subsection (g) would conflict with this practice. We suggest the following amendment:

> (g) Subsections (a) - (f) shall apply to all cessions after the effective date of this act under reinsurance agreements which have had an inception, anniversary or renewal date not less than six months after the effective date of this statute.

Section 17, Page 14:

The definition of reinsurance is inaccurate. Reinsurance is the indemnification, not the contract stipulating the terms and conditions of indemnification. In addition, there exists a type of reinsurance called assumption or "bulk" reinsurance, which is different from indemnification reinsurance. In assumption reinsurance, which is used in the sale of companies or books of business, the assuming insurer becomes directly obligated to the policy-holder.

We do not believe that the Division of Insurance desires to prohibit assumption reinsurance and for this reason we suggest correcting this problem with the approach used in the New York statutes. Instead of defining reinsurance, New York defines "assuming insurer" as "an insurer which, under a contract of reinsurance, incurs to another insurer, called the ceding insurer, an obligation the performance of which is contingent upon the ceding insurer's incurring liability or loss under its contract or contract of insurance, guaranty or suretyship made with third persons." It also defines a ceding insurer as "the insurer to which an assuming insurer is obligated."

The remaining sections are drawn essentially from the provision of the NAIC Model Insurers Supervision, Rehabilitation and Liquidation Act, "Model Act," which the ACLI supports. There are some differences, however, that should be addressed.

Section 57, Page 61:

Proposed subsection (h) appears to constitute an inappropriate effort by the Division to combine NAIC guaranty

association language with rehabilitation and liquidation language. We point out that life guaranty association legislation has been introduced and is now pending before your committee and recommend that provisions such as this one should be covered by that legislation rather than SB 212.

Sections 67, Pages 77 and 78:

This section would adopt verbatim the language contained in Section 32 of the Model Act. Section 32 has never been coordinated with the standard reinsurance law provision prohibiting any diminution of reinsurance proceeds because of the ceding company's insolvency.

The ACLI's Reinsurance Subcommittee has drafted language which we believe would solve any potential conflict and benefit all parties concerned.

Section 32. Liability Under Reinsurance Agreements.

> Amounts owed under a reinsurance agreement to an insurer subject to delinquency proceedings are payable by the assuming insurers on the basis of the claims allowed against the ceding insurer in the delinquency proceedings under the contract or contracts reinsured without diminution because of the insolvency of of the ceding insurer. These amounts must be paid directly to the ceding insurer or to its domiciliary liquidator or receivor except:
>
> (a) where the contract specifically provides another payee of these amounts in the event of the insolvency of the ceding insurer; or
>
> (b) where the assuming insurer has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

Section 68, Page 78:

Subsection (b) should be redrafted to mirror Section 37.A of the Model Act.

> 37.A. The claim of the third party which is contingent only on his first obtaining judgment against the insured shall be considered and allowed as if there were no such contingency.

We look forward to working with the Committee on this proposed legislation and would appreciate being notified when consideration of this measure is to be scheduled.

Sincerely,

J. P. Tangen

JPT:lyn

0331INS.DOC
April 10, 1989

cc: Julie Spiezio
American Council of Life Insurance

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 1 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 in 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 trusteed, and provides certification of its solvency by a 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 trusteed in a form (cash, approved securities, or acceptable letters of credit) and for amounts corresponding to only the amount of funds trusteed.

This section also maintains the existing laws 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 12, 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 clan 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 fail, 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 trusteed in the United States by alien insurers.

Section 51. AS 21.34.040(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 trusteed 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 7 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 2[illegible] [illegible]pecial Claims.
Page 75, [illegible] to page 76, line 25.

Currently AS [illegible].280 contains provisions pertaining to both contingent and unliquidated [illegible]s, and third party liability claims. This one section has now been divided [illegible] to two separate sections with AS 21.78.280 pertaining to contingent ar[illegible] 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 81. 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 duties have been performed. The court may grant the discharge and issue any other orders it deems appropriate. It is anticipated that such orders would 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.