

S B

259

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 4/6/89
IN ACCORDANCE WITH UNIFORM RULE 23

**FISCAL NOTE(S) MUST BE ATTACHED
IN ACCORDANCE WITH AS 24.08.035

FURTHER

JUD
FIN

DATE TURNED INTO OFFICE 3/26/90

4/4/89

Mr. President:

L&C

Committee considered SB 259

insurance guaranty funds; changing Rule 62(a), Rules of Civil Procedure;
efd

and recommended:

replace with CS SB 259 (L+C) same title

attached amendment(s) and

new title

_____ letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to _____

FISCAL NOTE(S) attached zero

appropriation no FN attached

fiscal impact

Gov. FN introduced w/ bill

zero - unchanged in CS

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS

[Signature]

[Signature]

[Signature]
Chair: signature and recommendation

Committee backup attached

REMARKS ON SB 259

MR. PRESIDENT, I RISE TO SPEAK IN SUPPORT OF SB 259. THIS BILL AND SB 212, WHICH WE HAVE JUST PASSED, PROVIDE ADDITIONAL PROTECTION FOR INSURED INDIVIDUALS AND BUSINESS IN THE STATE OF ALASKA.

THE BILL CREATES A LIFE INSURANCE, DISABILITY INSURANCE, AND ANNUITY GUARANTY FUND TO PROVIDE FUNDS FOR PAYMENT OF CLAIMS WHEN AN INSURANCE COMPANY BECOMES INSOLVENT. THE BILL WILL PROTECT THE POLICYHOLDERS AND CLAIMANTS FROM FINANCIAL LOSS UP TO \$500,000 FOR ANY ONE LIFE AND UP TO \$5 MILLION IN UNALLOCATED ANNUITY CONTRACT BENEFITS.

THE BILL ESTABLISHES THE ALASKA LIFE AND DISABILITY INSURANCE GUARANTY ASSOCIATION AS A NONPROFIT ENTITY TO ASSESS THE ADMITTED INSURERS IN THE STATE OF ALASKA UP TO 2% OF THEIR ANNUAL PREMIUM AND TO DISBURSE THIS MONEY TO POLICYHOLDERS AND CLAIMANTS OF INSOLVENT INSURERS. THE BILL ALSO ALLOWS THE GUARANTY ASSOCIATION TO ASSUME OR REINSURE ALL POLICIES OF AN IMPAIRED INSURER IN ORDER TO ENSURE CONTINUITY OF COVERAGE FOR POLICYHOLDERS. THE BOARD SERVES WITHOUT COMPENSATION, EXCEPT FOR EXPENSES, AND HAS THE ABILITY TO ASSIST POLICYHOLDERS AND CLAIMANTS FOR COMPANIES WHICH ARE IMPAIRED BUT NOT YET INSOLVENT.

THE BILL PROVIDES AN IMPORTANT TOOL TO ENSURE, TO THE MAXIMUM EXTENT POSSIBLE THAT ALASKANS WILL NOT SUFFER FINANCIAL LOSS IN THE EVENT THAT THEIR INSURANCE COMPANY BECOMES INSOLVENT.

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: SB 259
PUBLISH DATE: 4/4/89

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to Insurance
Guarantee Funds
Sponsor: Rules
Requester: Governor

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

EXPENDITURES / REVENUES : (Thousands of Dollars)

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

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

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

POSITIONS:

FULLTIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact on the division.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance

Phone: 465-2597
Date: 3-31-89

Approved by Commissioner: Larry Mercurieff
Agency: Department of Commerce & Economic Development

Phone: 465-2500
Date: 4/3/89

Distribution (by preparer):

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

3712D-1/040389a

STATE OF ALASKA
THE LEGISLATURE

POUCHY STATE CAPITOL
JUNEAU ALASKA 99801
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

March 15, 1990

SUBJECT: CSSB 259(L&C); go0129sE

TO: Senator Dick Eliason, Chairman
Senate Labor and Commerce Committee

FROM: Pamela Finley *Pam*
Assistant Revisor of Statutes

Enclosed is the draft you requested. In addition to changes to conform the draft to the drafting manual, we have made the following changes to the bill as introduced by the governor:

1. In AS 21.79.020(b), "life, disability, annuity, or supplemental" was inserted after "direct group".
2. The last three sentences of AS 21.79.050(a), with some changes, were moved to temporary law (new sec. 17). In the first sentence of AS 21.79.050(a) "representative of" was inserted before "member insurers."
3. In AS 21.79.060(j), the cross reference was changed from AS 21.79.020(c)(3) to AS 21.79.020(c)(4).
4. AS 21.79.060(m) was rewritten.
5. In AS 21.79.060(o) the reference to a "temporary stay" was replaced with a reference to "an injunction". "Stay" is usually used in connection with a court order, judgment, or proceeding. The term "injunction" includes temporary and permanent injunctions. Also, we do not understand the last phrase in this subsection ("in addition to . . . value.") Is this a power in addition to the right to seek an injunction, or is it tied to the right to withdraw funds?
6. In AS 21.79.900, the definitions of "director," "impaired," and "insolvent" were deleted because the definitions in AS 21.90.900 will apply to AS 21.79 without a cross reference.

Senator Dick Eliason
Page 2
March 15, 1990

7. In AS 21.80.080(b)(4), I deleted a cross reference to AS 21.80.065 because that section was deleted.

8. The references to "majority vote" in AS 21.79.100(f), (g), and (h) were deleted. Boards act by majority vote unless otherwise provided.

9. A new section 16 was added to note a court rule change.

10. The title was changed to include the added court rule change and the definitions of terms (in bill sec. 13) that apply to matters other than guaranty funds.

If you have any questions, please call me (until March 19) or Mike Ford (after March 18). You may want to consult with the AG's Office about the changes noted above, as well as the meaning of the last phrase of AS 21.79.060(o), mentioned in #5 above.

PF:gc
G13/124

Enclosure

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 259 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurance guaranty funds and to
7 definitions of "impaired or impairment" and "insol-
8 vent or insolvency" in laws relating to insurance;
9 amending Rules 24(a) and 62(a), Alaska Rules of Civil
10 Procedure; and providing for an effective date."

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

12 * Section 1. AS 21.21.250 is amended by adding a new subsection to
13 read:

14 (c) A domestic insurer may invest in notes or other evidence of
15 indebtedness of the Alaska Life and Disability Insurance Guaranty
16 Association established under AS 21.79.040, and the director may
17 consider those notes and other evidence of indebtedness, that are not
18 in default, as admitted assets of the insurer.

19 * Sec. 2. AS 21.36 is amended by adding a new section to read:

20 Sec. 21.36.035. PROHIBITED ADVERTISEMENTS AND REPRESENTATIONS.

21 (a) A person may not place before the public an advertisement, an-
22 nouncement, or statement that uses the existence of the Alaska Life
23 and Disability Insurance Guaranty Association established under
24 AS 21.79.040 to sell, solicit, or induce the public to purchase any
25 form of insurance governed by AS 21.79.

26 (b) A person having a beneficial interest in any form of insur-
27 ance governed by AS 21.79 may not represent to a lender or another
28 person that the insurance or form of insurance has value as collateral
29 for a loan because the insurance is covered by the Alaska Life and

1 Disability Insurance Guaranty Association. This subsection does not
2 apply to the Alaska Life and Disability Insurance Guaranty Association
3 itself, or to an entity that does not sell or solicit insurance.

4 * Sec. 3. AS 21 is amended by adding a new chapter to read:

5 CHAPTER 79. ALASKA LIFE AND DISABILITY INSURANCE
6 GUARANTY ASSOCIATION ACT.

7 Sec. 21.79.010. PURPOSE. The purpose of this chapter is to
8 provide a mechanism to pay a covered claim under a life insurance
9 policy, disability insurance policy, annuity contract, or supplemental
10 contract; to protect a policyholder; and to avoid financial loss to a
11 claimant or policyholder because of the impairment or insolvency of a
12 member insurer issuing the policy or contract.

13 Sec. 21.79.020. SCOPE. (a) This chapter applies to a policy
14 and contract specified in (b) of this section and to a person who

15 (1) except for a nonresident certificate holder under a
16 group policy or contract, is the beneficiary, assignee, or payee of a
17 person described in (2) of this subsection; and

18 (2) is the owner of, or a certificate holder under, the
19 policy or contract, or, in the case of an unallocated annuity con-
20 tract, is the contract holder, and who

21 (A) is a resident, or

22 (B) is not a resident, if the following conditions are

23 satisfied:

24 (i) the insurer that issued the policy or con-
25 tract is domiciled in this state;

26 (ii) the insurer never held a license or certifi-
27 cate of authority in the state in which the person resides;

28 (iii) the state in which the person resides has an
29 association similar to the association created by this

1 chapter; and

2 (iv) the person is not eligible for coverage of
3 the association of the state in which the person resides.

4 (b) This chapter applies to a person specified in (a) of this
5 section and to a direct, nongroup life, disability, annuity, and
6 supplemental policy or contract, to a certificate under a direct group
7 life, disability, annuity, or supplemental policy or contract, and to
8 an unallocated annuity contract issued by a member insurer, except as
9 otherwise limited by this chapter.

10 (c) This chapter does not apply to

11 (1) that part of a policy or contract that is not guaran-
12 teed by the insurer;

13 (2) that part of the risk borne by the policy or contract
14 holder;

15 (3) a policy or contract of reinsurance, unless an assump-
16 tion certificate has been issued;

17 (4) that part of a policy or contract on which the rate of
18 interest

19 (A) averaged over the period of four years before the
20 date on which the association becomes obligated with respect to
21 the policy or contract, exceeds a rate of interest determined by
22 subtracting two percentage points from the published monthly
23 average for that same four-year period or for a lesser period if
24 the policy or contract was issued less than four years before the
25 association became obligated; and

26 (B) on and after the date on which the association
27 becomes obligated with respect to the policy or contract, exceeds
28 the rate of interest determined by subtracting three percentage
29 points from the most recent published monthly average;

1 (5) a plan or program of an employer, association, or
2 similar entity to provide life, disability, or an annuity benefit to
3 an employee or member, to the extent that the plan or program is self-
4 funded or uninsured, including a benefit payable by the employer,
5 association, or similar entity under

6 (A) a multiple employer welfare arrangement as defined
7 in 26 U.S.C. 414 (Employee Retirement Income Security Act of
8 1974);

9 (B) a minimum premium group insurance plan;

10 (C) a stop-loss group insurance plan; or

11 (D) an administrative services only contract;

12 (6) that part of a policy or contract that provides a divi-
13 dend or experience rating credit, or provides that a fee or allowance
14 be paid to a person, including the policy or contract holder, in
15 connection with the service to or administration of the policy or
16 contract; and

17 (7) a policy or contract issued in this state by a member
18 insurer at a time when it was not licensed or did not have a certifi-
19 cate of authority to issue the policy or contract in this state.

20 (d) In this section, "published monthly average" means the
21 monthly average of corporate bond yields as published by Moody's
22 Investor Service, Inc., or its successor, or, if Moody's corporate
23 bond yield average-monthly average corporates is not published, a
24 substantially similar average established by regulation adopted by the
25 director.

26 Sec. 21.79.025. LIABILITY LIMITS. The benefits for which the
27 association may become liable may not exceed the lesser of

28 (1) the contractual obligations for which the insurer is
29 liable or would have been liable if it were not an impaired or

1 insolvent insurer; or

2 (2) with respect to any one life, regardless of the number
3 of policies or contracts, and subject to an aggregate of \$300,000,

4 (A) \$300,000 in life insurance death benefits, but not
5 more than \$100,000 in net cash surrender and net cash withdrawal
6 values for life insurance;

7 (B) \$100,000 in disability insurance benefits, includ-
8 ing any net cash withdrawal values;

9 (C) \$100,000 in the present value of annuity benefits,
10 including net cash surrender and net cash withdrawal values;

11 (3) with respect to any one contract holder, \$5,000,000 in
12 unallocated annuity contract benefits, irrespective of the number of
13 contracts held by that contract holder.

14 Sec. 21.79.030. CONSTRUCTION. This chapter shall be liberally
15 construed to achieve the purposes set out in AS 21.79.010.

16 Sec. 21.79.040. ASSOCIATION ESTABLISHED. (a) There is estab-
17 lished as a nonprofit legal entity the Alaska Life and Disability
18 Insurance Guaranty Association. An insurer that issues an insurance
19 policy described in AS 21.79.020(b) shall be a member of the asso-
20 ciation as a condition of the insurer's authority to transact insur-
21 ance in this state. The association shall perform its functions under
22 a plan of operation established and approved under AS 21.79.080 and
23 shall exercise its powers through the Board of Governors established
24 under AS 21.79.050. For purposes of administration and assessment,
25 the association shall maintain the following accounts:

26 (1) the disability insurance account; and

27 (2) the life insurance, annuity, and unallocated annuity
28 contract account.

29 (b) The association is under the supervision of the director and

1 is subject to the insurance laws of the state. Except as provided in
2 AS 21.79.110(b), meetings or records of the association may be open to
3 the public upon majority vote of the Board of Governors of the asso-
4 ciation.

5 Sec. 21.79.050. BOARD OF GOVERNORS. (a) The Board of Governors
6 of the association consists of not less than five nor more than nine
7 representatives of member insurers. Terms of office for board members
8 shall be established in the plan of operation submitted under AS 21.-
9 79.080. Member insurers shall select the board members, subject to
10 the approval of the director. A vacancy on the board shall be filled
11 for the unexpired term by a majority vote of the remaining board
12 members, subject to the approval of the director.

13 (b) Before the director approves the selection of a board member
14 or appoints a board member, the director shall consider whether all
15 member insurers are fairly represented on the board.

16 (c) A board member is not entitled to compensation by the asso-
17 ciation. However, a board member may be reimbursed from the assets of
18 the association for expenses incurred while performing duties as a
19 member of the board.

20 Sec. 21.79.060. POWERS AND DUTIES OF THE ASSOCIATION. (a) If a
21 domestic insurer becomes impaired, the association may, with the
22 approval of the director,

23 (1) guarantee, assume, reinsure, or provide for the guaran-
24 tee, assumption, or reinsurance of the policies or contracts of the
25 impaired insurer;

26 (2) provide money, pledges, notes, guarantees, or other
27 means that are necessary to act under (1) of this subsection and to
28 assure payment of the contractual obligations of the impaired insurer
29 until those obligations are guaranteed, reinsured, or assumed; or

1 (3) loan money to the impaired insurer.

2 (b) If a member insurer is an impaired insurer, and the insurer
3 is not paying claims in a timely manner, the association may

4 (1) take any of the actions specified in (a) of this sec-
5 tion, or

6 (2) provide a substitute benefit in lieu of the contractual
7 obligation of the impaired insurer solely for a

8 (A) disability claim;

9 (B) periodic annuity benefit payment;

10 (C) death benefit;

11 (D) supplemental benefit; and

12 (E) cash withdrawal for a policy or contract owner who
13 petitions under a claim of emergency or hardship under a standard
14 proposed by the association and approved by the director.

15 (c) The actions specified in (b) of this section may not be
16 taken unless

17 (1) the law of the impaired insurer's state of domicile
18 provides that until all payments of or on account of a contractual
19 obligation of the impaired insurer by a guaranty association, along
20 with all expenses and interest on all payments and expenses, have been
21 repaid to the guaranty association or a repayment plan by the impaired
22 insurer has been approved by a guaranty association,

23 (A) a delinquency proceeding may not be dismissed;

24 (B) neither the impaired insurer nor its assets may be
25 returned to the control of its shareholders or private manage-
26 ment; and

27 (C) solicitation or acceptance of new business or
28 restoration of a suspended or revoked license may not be permit-
29 ted; and

1 (2) if the impaired insurer is a

2 (A) domestic insurer, the insurer has been placed
3 under an order of rehabilitation by a superior court in this
4 state; or

5 (B) foreign or alien insurer,

6 (i) the insurer has been prohibited from solicit-
7 ing or accepting new business in this state;

8 (ii) the insurer's certificate of authority has
9 been suspended or revoked in this state; and

10 (iii) a petition for rehabilitation or liquidation
11 has been filed in a court of competent jurisdiction in the
12 insurer's state of domicile by the insurance commissioner of
13 that state.

14 (d) If a member insurer becomes insolvent, the association
15 shall, with the approval of the director,

16 (1) guarantee, assume, reinsure, or provide for the guaran-
17 tee, assumption, or reinsurance of the covered policies of the insol-
18 vent insurer held by residents;

19 (2) assure payment to residents of the contractual obliga-
20 tions of the insolvent insurer;

21 (3) provide money, pledges, notes, guarantees, or other
22 means necessary to discharge the insurer's duties under this subsec-
23 tion; or

24 (4) with respect only to life and disability insurance
25 policies, provide benefits and coverages required under (e) of this
26 section.

27 (e) When proceeding under (b)(2) or (d)(4) of this section, the
28 association shall, with respect to a life or disability insurance
29 policy,

1 (1) assure payment of benefits, other than terms of conver-
2 sion and renewability, for a premium identical to the premium that
3 would have been payable under a policy of the insolvent insurer for
4 claims incurred with respect to

5 (A) a group policy, not later than the earlier of the
6 next renewal date under the policy or contract or 45 days, but in
7 no event less than 30 days, after the date on which the associa-
8 tion becomes obligated with respect to the policy;

9 (B) an individual policy, not later than the earlier
10 of the next renewal date, if any, under the policy or one year,
11 but in no event less than 30 days, from the date on which the
12 association becomes obligated with respect to the policy;

13 (2) make a diligent effort to provide a known insurer or a
14 group policyholder, with respect to a group policy, 30 days notice of
15 the termination of the benefits provided;

16 (3) with respect to an individual policy, make available to
17 each known insured, or owner if other than the insured, and with
18 respect to an individual formerly insured under a group policy who is
19 not eligible for replacement group coverage, substitute coverage on an
20 individual basis under the provisions of (f) of this section, if the
21 insured had a right under law or the terminated policy to convert
22 coverage to individual coverage, to continue an individual policy in
23 force until a specified age, or for a specific time during which the
24 insurer did not have the unilateral right to make changes in any
25 provision of the policy or had a right only to make changes in premium
26 by class.

27 (f) With respect to life and disability insurance policies, the
28 association

29 (1) in providing the substitute coverage under (e)(3) of

1 this section, shall either offer to reissue the terminated coverage or
2 to issue an alternate policy;

3 (2) shall offer alternative or reissued policies without
4 requiring evidence of insurability, and may not provide for any wait-
5 ing period or exclusion that would not have applied under the termi-
6 nated policy; and

7 (3) may reinsure any alternative or reissued policy.

8 (g) An alternative life or disability policy must,

9 (1) if adopted by the association, be subject to the ap-
10 proval of the director; the association may adopt alternative policies
11 of various types for future issuance without regard to a particular
12 impairment or insolvency;

13 (2) contain at least the minimum statutory provisions
14 required in this state and provide benefits that may not be unrea-
15 sonable in relation to the premium charged; the association shall set
16 the premium under a table of rates that it shall adopt; the premium
17 must reflect the amount of insurance to be provided and the age and
18 class of risk of each insured, but may not reflect changes in the
19 health of the insured after the original policy was last underwritten;

20 (3) if issued by the association, provide coverage of a
21 type similar to that of the policy issued by the impaired or insolvent
22 insurer, as determined by the association.

23 (h) If the association elects to reissue terminated coverage at
24 a premium rate different from that charged under the terminated poli-
25 cy, the premium shall be set by the association according to the
26 amount of insurance provided, the age and class of risk, and is sub-
27 ject to the approval of the director or by a court of competent juris-
28 diction.

29 (i) The association's obligations with respect to coverage under

1 a policy of an impaired or insolvent insurer or under any reissue or
2 alternative policy cease on the date the coverage or policy is re-
3 placed by another similar policy by the policyholder, the insured, or
4 the association.

5 (j) When proceeding under (b)(2) or (d) of this section with
6 respect to a policy or contract carrying guaranteed minimum interest
7 rates, the association shall assure the payment or crediting of a rate
8 of interest consistent with AS 21.79.020(c)(4).

9 (k) Nonpayment of a premium within 31 days after the date re-
10 quired under the terms of a guaranteed, assumed, alternative or reis-
11 sued policy or contract or substitute coverage terminates the obliga-
12 tions of the association under the policy or coverage except with
13 respect to the claims incurred or the net cash surrender value that
14 may be due under the provisions of this chapter.

15 (l) A premium due for coverage after entry of an order of liq-
16 uidation of an insolvent insurer belongs to and is payable at the
17 direction of the association, and the association is liable for un-
18 earned premiums due to a policy or contract owner arising after the
19 entry of the order.

20 (m) The protection provided by this chapter does not apply if
21 guaranty protection is provided to residents of this state by the laws
22 of another state or jurisdiction that is the domicile of the impaired
23 or insolvent insurer.

24 (n) In carrying out its duties under (b), (c), and (d) of this
25 section, the association may impose a permanent policy or contract
26 lien under a guarantee, assumption, or reinsurance agreement, if the
27 policy or contract lien is approved by a court, and the court finds
28 that

29 (1) the amount that may be assessed under this chapter is

1 less than the amount needed to assure full and prompt performance of
2 the insolvent insurer's contractual obligations; or

3 (2) the economic or financial condition that affects member
4 insurers is sufficiently adverse that the imposition of a policy or
5 contract lien is in the public interest.

6 (o) Before taking action under (b) - (e) of this section, the
7 association may request the superior court to impose an injunction
8 against the payment of a cash value and policy loan, or the exercise
9 of another right to withdraw funds held in connection with a policy or
10 contract, in addition to a contractual provision for deferral of a
11 cash or policy loan value.

12 (p) If the association fails to take action under (b) - (e) of
13 this section within a reasonable period of time after a member insurer
14 becomes insolvent, the director shall assume the powers of the asso-
15 ciation under (b) - (e) of this section.

16 (q) If requested by the director, the association may assist and
17 advise the director concerning rehabilitation, payment of claims,
18 continuance of coverage, or the performance of other contractual
19 obligations of an impaired or insolvent insurer.

20 (r) The association is entitled to appear in a court proceeding
21 in the state involving an impaired or insolvent insurer. The standing
22 conferred by this subsection extends to all matters germane to the
23 powers and duties of the association, including proposals to reinsure
24 or guarantee a covered policy of the impaired or insolvent insurer and
25 the determination of a covered policy and a contractual obligation.

26 (s) A person who receives benefits under this chapter is con-
27 sidered to have assigned the rights under the covered policy to the
28 association to the extent of the benefits received under this chapter.
29 The association may require an assignment to the association of those

1 rights by the payees, policy or contract owner, beneficiary, insured,
2 or annuitant before a person receives the rights or benefits conferred
3 by this chapter. The association is subrogated to these rights
4 against the assets of an insolvent insurer. The priority of the
5 association's subrogation right to the assets of the insolvent insurer
6 is the same as the priority of the person entitled to benefits under
7 this chapter.

8 (t) The association may

9 (1) enter into contracts that are necessary or proper to
10 carry out the provisions of this chapter;

11 (2) sue or be sued, and take legal action necessary or
12 proper for recovery of an unpaid assessment under AS 21.79.070;

13 (3) borrow money to carry out the purposes of this chapter;

14 (4) employ or retain those persons necessary to handle the
15 financial transactions of the association and other functions under
16 this chapter;

17 (5) negotiate and contract with a liquidator, rehabil-
18 itator, conservator, or ancillary receiver to carry out the powers and
19 duties of the association;

20 (6) exercise, for the purposes of this chapter and to the
21 extent approved by the director, the powers of a domestic life or
22 disability insurer; however, the association may not issue insurance
23 policies or annuity contracts other than those issued to perform the
24 contractual obligations of an impaired or insolvent insurer;

25 (7) take legal action to prevent the payment of improper
26 claims;

27 (8) join an organization of one or more other state asso-
28 ciations with similar purposes; and

29 (9) perform all other acts necessary or proper to implement

1 this chapter.

2 Sec. 21.79.070. ASSESSMENTS. (a) For the purpose of providing
3 funds necessary to carry out the powers and duties of the association,
4 the Board of Governors shall assess the member insurers, separately
5 for each account, at a time and for an amount that the board finds
6 necessary. Assessments are due not less than 30 days after prior
7 written notice to the member insurers and accrue interest at 10 per-
8 cent a year from the date payment is due.

9 (b) There shall be two assessments as follows:

10 (1) class A assessments shall be made for the purpose of
11 meeting administrative and legal costs and other expenses and examina-
12 tions conducted under the authority of AS 21.79.060; class A assess-
13 ments may be made whether or not related to a particular impaired or
14 insolvent insurer;

15 (2) class B assessments are post assessment charges and
16 shall be made only as necessary to carry out the powers and duties of
17 the association with regard to an impaired or an insolvent insurer.

18 (c) The amount of a class A assessment shall be determined by
19 the board and may be made on a pro rata or nonpro rata basis. If a
20 pro rata assessment is made, the board may provide that it be credited
21 against future class B assessments. A nonpro rata assessment may not
22 exceed \$250 per member insurer in a calendar year. The amount of a
23 class B assessment shall be allocated for assessment purposes among
24 the accounts under an allocation formula that may be based on the
25 premiums or reserves of the impaired or insolvent insurer or by
26 another standard determined by the board as being fair and reasonable
27 under the circumstances.

28 (d) Class B assessments shall be based on the premiums received
29 on business in this state by each assessed member insurer or for

1 policies or contracts covered by each account in proportion to the
2 premiums received on business in this state by all assessed member
3 insurers during the three calendar years preceding the year in which
4 the insolvency or impairment occurred.

5 (e) The association may abate or defer, in whole or in part, the
6 assessment of a member insurer if a payment of the assessment would
7 endanger the ability of the member insurer to fulfill its contractual
8 obligations. The amount by which an assessment against a member
9 insurer is abated or deferred may be assessed against the other member
10 insurers in a manner consistent with the basis for assessments set
11 forth in (c) of this section.

12 Sec. 21.79.080. PLAN OF OPERATION. (a) The association shall
13 submit to the director a plan of operation and any amendments to
14 assure the fair, reasonable, and equitable administration of the
15 association. The plan of operation and any amendments take effect on
16 the written approval of the plan by the director.

17 (b) Notwithstanding (a) of this section, if the association
18 fails to submit a plan of operation acceptable to the director by
19 July 1, 1991, or if at a later time the association fails to submit
20 suitable amendments to the plan, the director shall, after notice and
21 hearing, adopt regulations to implement this chapter. These regula-
22 tions remain in effect until amended or repealed by the director or
23 superseded by a plan submitted by the association that is approved by
24 the director.

25 (c) A member insurer shall comply with the plan of operation.
26 The plan of operation must

27 (1) establish procedures for handling assets of the asso-
28 ciation;

29 (2) establish the amount and method of reimbursing members

1 of the board under AS 21.79.050(c);

2 (3) establish regular places and times for meetings of the
3 board in the state;

4 (4) establish procedures for keeping records of all finan-
5 cial transactions of the association, its agents, and the board;

6 (5) establish terms of office for members of the board, and
7 establish procedures for the selection of the members of the board and
8 for the director's approval of the members selected;

9 (6) establish additional procedures for assessments under
10 AS 21.79.070; and

11 (7) contain additional provisions necessary or proper for
12 the association to exercise its powers and duties.

13 (d) The plan of operation may delegate the powers and duties of
14 the association, other than those under AS 21.79.060(t)(3) and 21.79.-
15 070, to a corporation or other organization performing functions
16 similar to those of the association, or its equivalent, in two or more
17 states. The association shall reimburse the corporation or orga-
18 nization for a payment made for the association and for performing a
19 function of the association. A delegation under this subsection takes
20 effect only with the approval of the board and the director.

21 Sec. 21.79.090. POWERS AND DUTIES OF THE DIRECTOR. (a) Upon
22 request of the board, the director shall provide the association with
23 a statement of the premiums in the appropriate states for each member
24 insurer.

25 (b) The director may

26 (1) after notice and hearing as provided in AS 21.06.180 -
27 21.06.230, suspend or revoke the certificate of authority to transact
28 insurance in this state of a member insurer that fails to pay an
29 assessment when due or fails to comply with the plan of operation;

1 (2) levy a penalty on a member insurer that fails to comply
2 with the plan of operation; or

3 (3) levy a penalty on a member insurer that fails to pay an
4 assessment when due; if the unpaid assessment is more than \$2,000, the
5 penalty may not exceed five percent of the unpaid assessment per month
6 or be less than \$100 per month; if the unpaid assessment is \$2,000 or
7 less, the penalty is \$100 per month.

8 (c) An action of the board or the association may be appealed to
9 the director by a member insurer if the appeal is taken within 30 days
10 after the date the notice of the action is mailed. Final action or
11 order of the director may be reviewed by the superior court.

12 (d) The liquidator, rehabilitator, or conservator of an impaired
13 insurer may notify all interested persons of the effect of this chap-
14 ter.

15 Sec. 21.79.100. PREVENTION OF INSOLVENCIES. (a) The director
16 shall notify, by mail, the commissioner, director, or superintendent
17 of insurance of the other states, territories of the United States,
18 and the District of Columbia, within 30 days after the date on which
19 the following actions are taken against a member insurer:

20 (1) revocation of a license;

21 (2) suspension of a license; or

22 (3) a formal order that a member insurer restrict its
23 premium writing, obtain additional contributions to surplus, withdraw
24 from the state, reinsure all or any part of its business, or increase
25 capital, surplus, or any other account for the security of policy-
26 holders or creditors.

27 (b) The director shall report to the board if an action set out
28 in (a) of this section is taken or a report is received from a state
29 insurance regulator that similar action has been taken in another

1 state. The report to the board must contain all significant details
2 of the action taken or the report received from another insurance
3 regulator.

4 (c) The director shall report to the board if there is reason-
5 able cause to believe, during or after an examination of a member
6 insurer, that the company may be impaired or insolvent.

7 (d) The director shall furnish the board with the NAIC Insurance
8 Regulatory Information System (IRIS) ratios and a listing of companies
9 not included in the ratios developed by the NAIC, and the board may
10 use that information to carry out its duties and responsibilities
11 under this section. The information shall be kept confidential by the
12 board until it is made public by the director.

13 (e) The director may seek the board's advice and recommendations
14 concerning the financial condition of member insurers and insurers who
15 apply for admission to transact insurance business in the state.

16 (f) The board shall

17 (1) make reports and recommendations to the director relat-
18 ing to the solvency, liquidation, rehabilitation, or conservation of a
19 member insurer or the solvency of insurers who apply to transact
20 insurance business in the state; the director and the board shall keep
21 the reports and recommendations confidential;

22 (2) notify the director of any information that indicates
23 that a member insurer may be impaired or insolvent.

24 (g) The board may request the director to examine a member
25 insurer that the board believes may be an impaired or insolvent in-
26 surer. Within 30 days after receipt of the request, the director
27 shall begin the examination. The examination may be conducted as a
28 NAIC examination or may be conducted by persons the director desig-
29 nates. The cost of examination shall be paid by the association, and

1 the examination report shall be treated in the same manner as other
2 examination reports under AS 21.06. The completed examination report
3 may not be released to the board before it is released to the public,
4 but this does not preclude the director from complying with (c) of
5 this section. The director shall notify the board when the examina-
6 tion is completed. The request for an examination shall be kept on
7 file by the director and may not be released to the public before the
8 release of the examination report to the public.

9 (h) The board may make recommendations to the director for
10 detecting and preventing insurer insolvencies.

11 (i) The board shall, at the conclusion of an insurer insolvency
12 in which the association was required to pay covered claims, prepare a
13 report to the director that sets out information concerning the his-
14 tory and cause of the insolvency. The board shall cooperate with the
15 boards of guaranty associations in other states in preparing a report
16 on the history and causes of insolvency of an insurer, and may adopt
17 by reference a report prepared by other associations.

18 Sec. 21.79.110. MISCELLANEOUS PROVISIONS. (a) This chapter
19 does not reduce the liability for unpaid assessments of an insured of
20 an impaired or insolvent insurer operating under an insurance policy
21 with assessment liability.

22 (b) The association shall keep records of negotiations and
23 meetings relating to its activities. Records of negotiations or
24 meetings may only be made public under AS 21.79.040(b)

25 (1) after the termination of a liquidation, rehabilitation,
26 or conservation proceeding that involves the impaired or insolvent
27 insurer;

28 (2) after the insurer is no longer impaired or insolvent;
29 or

1 (3) upon the order of a court of competent jurisdiction.

2 (c) The association is considered to be a creditor of the im-
3 paired or insolvent insurer to the extent of assets attributable to
4 covered policies that are reduced by an amount to which the asso-
5 ciation is entitled under AS 21.79.060(s). Assets of the impaired or
6 insolvent insurer that are attributable to covered policies shall be
7 used to continue all covered policies and pay all contractual obliga-
8 tions of the impaired or insolvent insurer as required by this chap-
9 ter. Assets attributable to covered policies include those assets
10 that should have been established as reserves for the covered poli-
11 cies. These assets are determined by multiplying the total assets of
12 the impaired or insolvent insurer by a fraction, the numerator of
13 which is the amount that should have been established as reserves for
14 the covered policies of the impaired or insolvent insurer, and the
15 denominator of which is the amount that should have been established
16 as reserves for all policies of insurance issued in all states by that
17 insurer.

18 (d) Before the termination of a liquidation, rehabilitation, or
19 conservation proceeding, the court may consider the contributions of
20 the respective parties, including the association, the shareholders
21 and policyholders of the impaired or insolvent insurer, and any other
22 party with a bona fide interest, in distributing the ownership rights
23 of the impaired or insolvent insurer. The court shall consider the
24 welfare of policyholders of the continuing or successor insurers. A
25 distribution to stockholders of an impaired or insolvent insurer may
26 not be made until the total amount of valid claims of the association
27 for money spent in carrying out its powers and duties under AS 21.-
28 79.060, with respect to the insurer, has been fully recovered by the
29 association.

1 (e) The receiver appointed under an order for liquidation or
2 rehabilitation of a domestic insurer may recover the amount distribut-
3 ed, other than stock dividends paid by the insurer on its capital
4 stock, to a controlling affiliate, as defined in AS 21.22.200, during
5 the five years preceding the petition for liquidation or rehabilita-
6 tion. However, if the insurer shows that, when paid, the distribution
7 was lawful and reasonable, and that the distribution might adversely
8 affect the ability of the insurer to fulfill the insurer's contractual
9 obligations, the receiver may not recover the amount distributed to
10 the controlling affiliate. The following provisions apply to recovery
11 of amounts distributed:

12 (1) a controlling affiliate of the insurer at the time the
13 distribution was paid is liable for a distribution received; a con-
14 trolling affiliate at the time the distribution was declared is liable
15 for a distribution that would have been received if the distribution
16 had been paid at that time; if two or more persons are liable with
17 respect to the same distribution, they are jointly and severally
18 liable;

19 (2) if an affiliate liable under (1) of this subsection is
20 insolvent, all its controlling affiliates at the time the dividend was
21 paid are jointly and severally liable for any amount that is not
22 recovered from the insolvent affiliate;

23 (3) the amount needed to pay the contractual obligations of
24 the insolvent insurer that exceeds the available assets of the insol-
25 vent insurer is the greatest amount that may be recovered under this
26 subsection.

27 Sec. 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.
28 The association may be examined by the director. The board shall
29 submit to the director, not later than May 1 of each year, a certified

1 financial report for the preceding calendar year in a form approved by
2 the director and a report of its activities during the preceding
3 calendar year. Nothing in AS 21.79.110(b) limits the duty of the
4 association to report under this section.

5 Sec. 21.79.130. TAX EXEMPTION. The association is exempt from
6 payment of all fees and taxes levied by the state or its political
7 subdivisions, other than real property taxes.

8 Sec. 21.79.140. CIVIL IMMUNITY. The association and its agents
9 and employees, members of the Board of Governors, and the director and
10 the director's representatives are not civilly liable for action taken
11 by them to perform duties under this chapter.

12 Sec. 21.79.150. STAY OF PROCEEDING ENFORCING JUDGMENT. Pro-
13 ceedings that involve the enforcement of a judgment of liquidation,
14 rehabilitation, or conservation against an impaired or insolvent
15 insurer may not be taken until at least 60 days after the entry of the
16 judgment.

17 Sec. 21.79.900. DEFINITIONS. In this chapter,

18 (1) "account" means an account created under AS 21.79.040;

19 (2) "association" means the Alaska Life and Disability
20 Insurance Guaranty Association;

21 (3) "board" means the Board of Governors of the Alaska Life
22 and Disability Insurance Guaranty Association;

23 (4) "contractual obligation" means an obligation under a
24 policy, contract, or certificate under a group policy or contract, or
25 a portion of one;

26 (5) "covered policy" means a policy or contract described
27 in AS 21.79.020(a) and (b);

28 (6) "member insurer" means an insurer licensed to transact
29 insurance in the state that issues a policy described in

1 AS 21.79.020(a) and (b), or a subscriber contract providing benefits
2 described in AS 21.87.120(a)(2) - (4) or 21.87.130(a)(2) and (3), and
3 includes an insurer whose license or certificate of authority in this
4 state may have been suspended, revoked, not renewed, or voluntarily
5 withdrawn; "member insurer" but does not include

6 (A) a health maintenance organization;

7 (B) a fraternal benefit society;

8 (C) a mandatory state pooling plan;

9 (D) a mutual assessment company or an entity that
10 operates on an assessment basis;

11 (E) an insurance exchange; or

12 (F) a hospital or medical service organization;

13 (7) "NAIC" means the National Association of Insurance
14 Commissioners;

15 (8) "premium" means the amount received on a covered policy
16 or contract less a premium, consideration, and deposit returned, and
17 less a dividend and experience credit; "premium" does not include an
18 amount charged for an assessment or an amount received for a policy or
19 contract or for the portions of a policy or contract for which cover-
20 age is not provided under AS 21.79.020(b) and (c);

21 (9) "resident" means a person who resides in this state at
22 the time a member insurer is determined to be an impaired or insolvent
23 insurer and to which a contractual obligation is owed; a person may be
24 a resident of only one state, which in the case of a person other than
25 a natural person shall be the principal place of business;

26 (10) "supplemental contract" means an agreement entered into
27 for the distribution of policy or contract benefits;

28 (11) "unallocated annuity contract" means an annuity contract
29 or group annuity certificate that is not issued to and owned by an

1 individual, except to the extent of annuity benefits guaranteed to an
2 individual by an insurer under the contract or certificate.

3 Sec. 21.79.990. SHORT TITLE. This chapter may be cited as the
4 Alaska Life and Disability Insurance Guaranty Association Act.

5 * Sec. 4. AS 21.80.020 is amended to read:

6 Sec. 21.80.020. APPLICABILITY. This chapter applies to all
7 kinds of direct insurance written by an admitted insurer [,] except
8 life, title, surety, disability, credit, mortgage guaranty, and wet
9 [OCEAN] marine and transportation insurance for vessels 100 feet or
10 more in length as measured at the water line.

11 * Sec. 5. AS 21.80.040 is amended to read:

12 Sec. 21.80.040. CREATION OF ASSOCIATION. There is created a
13 nonprofit incorporated legal entity to be known as the Alaska Insur-
14 ance Guaranty Association. All insurers defined as member insurers in
15 AS 21.80.180(6) shall be and remain members of the association as a
16 condition of their authority to transact insurance in this state. The
17 association shall perform its functions under a plan of operation
18 established and approved under AS 21.80.070 and shall exercise its
19 powers through a board of directors established under AS 21.80.050.
20 For purposes of administration and assessment, the association shall
21 be divided into three separate accounts:

- 22 (1) the workers' compensation insurance account;
- 23 (2) the automobile insurance account; and
- 24 (3) the account for all other insurance to which this
25 chapter applies, including coverage on vessels less than 100 feet in
26 length as measured at the water line.

27 * Sec. 6. AS 21.80.050(a) is amended to read:

28 (a) The board of directors of the association consists of not
29 fewer than five nor more than nine persons serving terms as

1 established in the plan of operation. The members of the board shall
2 be selected by member insurers subject to the approval of the direc-
3 tor. Vacancies of the board shall be filled for the remaining period
4 of the term in the same manner as initial appointments. If a member
5 is not selected to fill a vacancy on the board of directors within 90
6 days of the vacancy, the director may appoint a member for the remain-
7 ing period of the term.

8 * Sec. 7. AS 21.80.060(a) is amended to read:

9 (a) The association [SHALL]

10 (1) is [BE] obligated to the extent of the covered claims
11 existing before the determination of insolvency and arising within 30
12 days after the determination of insolvency by a court of competent
13 jurisdiction if the insolvent insurer or receiver ceases to pay any or
14 all claims while preparing and adopting a plan of liquidation or
15 having entered into a plan of liquidation approved by the court under
16 AS 21.78, or before the policy expiration date if less than 30 days
17 after the determination, or before the insured replaces the policy or
18 causes its cancellation[,] if the insured does so within 30 days of
19 the determination, but this obligation includes only that amount of
20 each covered claim that [WHICH] is in excess of \$100 and is less than
21 \$500,000 [\$300,000], except that the association shall pay the full
22 amount of any covered claim arising out of a workers' compensation
23 policy; in no event is the association obligated to a policyholder or
24 claimant in an amount in excess of the obligation of the insolvent
25 insurer under the policy from which the claim arises;

26 (2) is [BE] considered the insurer to the extent of its
27 obligation on the covered claims and to that extent has all rights,
28 duties, and obligations of the insolvent insurer as if the insurer had
29 not become insolvent;

1 (3) shall allocate claims paid and expenses incurred among
2 the three accounts separately, and assess member insurers separately
3 for each account amounts necessary to pay the obligation of the asso-
4 ciation under (a)(1) of this section subsequent to an insolvency, the
5 expenses of handling covered claims subsequent to an insolvency, the
6 cost of examinations under AS 21.80.110, and other expenses authorized
7 by this chapter; the assessments of each member insurer must [SHALL]
8 be in the proportion that the net direct written premiums of the
9 member insurer for the preceding calendar year on the kinds of insur-
10 ance in the account bears to the net direct written premiums of all
11 member insurers for the preceding calendar year on the kinds of insur-
12 ance in the account; each member insurer shall be notified of the
13 assessment not later than 30 days before it is due; a member insurer
14 may not be assessed in any year on any account an amount greater than
15 two per cent of the member insurer's net direct written premiums for
16 the preceding calendar year on the kinds of insurance in the account;
17 if the maximum assessment, together with the other assets of the asso-
18 ciation in any account, does not provide in any one year in any ac-
19 count an amount sufficient to make all necessary payments from that
20 account, the funds available shall be prorated and the unpaid portion
21 shall be paid as soon thereafter as funds become available; the asso-
22 ciation may exempt or defer, in whole or in part, an [THE] assessment
23 of any member insurer, if the assessment would endanger the ability of
24 the member insurer to fulfill the insurer's contractual obligations or
25 cause the member insurer's financial statement to reflect amounts of
26 capital or surplus less than the minimum amounts required for a cer-
27 tificate of authority by any jurisdiction in which the member insurer
28 is authorized to transact insurance; each member insurer may set off
29 against an assessment, authorized payments made on covered claims and

1 expenses incurred in the payment of these claims by the member insurer
2 if they are chargeable to the account for which the assessment is
3 made;

4 (4) shall investigate claims brought against the associa-
5 tion and adjust, compromise, settle, and pay covered claims to the
6 extent of the association's obligation and deny all other claims and
7 may review settlements, releases, and judgments to which the insolvent
8 insurer or its insureds were parties to determine the extent to which
9 settlements, releases, and judgments may be properly contested;

10 (5) shall notify persons [AS THE DIRECTOR DIRECTS] under
11 AS 21.80.080(b)(1);

12 (6) shall handle claims through its employees or through
13 one or more insurers or other persons designated as servicing facili-
14 ties; a servicing facility shall operate and maintain its principal
15 office in this state unless the use of a servicing facility located
16 outside of the state would result in operating cost savings of at
17 least 10 percent and would not result in material delay in claim
18 payments; designation of a servicing facility is subject to the ap-
19 proval of the director, but designation may be declined by a member
20 insurer;

21 (7) shall reimburse each servicing facility for obligations
22 of the association paid by the facility and for expenses incurred by
23 the facility while handling claims on behalf of the association and
24 shall pay the other expenses of the association authorized by this
25 chapter.

26 * Sec. 8. AS 21.80.070(a) is amended to read:

27 (a) The association shall submit to the director a plan of
28 operation and any amendments necessary or suitable to assure the fair,
29 reasonable, and equitable administration of the association. The plan

1 of operation and amendments become effective upon approval in writing
2 by the director. If [THE ASSOCIATION FAILS TO SUBMIT A SUITABLE PLAN
3 OF OPERATION BY NOVEMBER 4, 1970 OR IF AT ANY SUBSEQUENT TIME] the
4 association fails to submit suitable amendments to the plan, the
5 director shall, after notice and hearing, adopt reasonable regulations
6 necessary or advisable to effectuate the provisions of this chapter.
7 These regulations shall continue in force until modified by the direc-
8 tor or superseded by a plan submitted by the association and approved
9 by the director.

10 * Sec. 9. AS 21.80.080(b) is amended to read:

11 (b) The director may

12 (1) require that the association notify the insureds of the
13 insolvent insurer and any other interested parties of the determina-
14 tion of insolvency and of their rights under this chapter; this noti-
15 fication shall be by mail at their last known address, when available,
16 but if sufficient information for notification by mail is not avail-
17 able, notice by publication in a newspaper of general circulation is
18 sufficient;

19 (2) suspend or revoke, after notice and hearing, the certi-
20 ficate of authority to transact insurance in this state of any member
21 insurer that [WHICH] fails to pay an assessment when due or fails to
22 comply with the plan of operation; as an alternative, the director may
23 levy a fine on any member insurer that [WHICH] fails to pay an assess-
24 ment when due; this fine may not exceed five per cent of the unpaid
25 assessment per month or portion of a month, except that a [NO] fine
26 may not be less than \$250 [\$100] a month;

27 (3) revoke the designation of any servicing facility upon a
28 finding that claims are being handled unsatisfactorily;

29 (4) upon a finding by the superior court that the board of

1 directors has failed to comply with a requirement of this chapter or
2 the plan of operation, assume the powers of the board of directors
3 under AS 21.80.060.

4 * Sec. 10. AS 21.80.120 is amended to read:

5 Sec. 21.80.120. EXAMINATION OF THE ASSOCIATION. The association
6 is subject to examination and regulation by the director. The board
7 of directors shall submit, not later than March 30 of each year, a
8 certified financial report for the preceding calendar year in a form
9 approved by the director.

10 * Sec. 11. AS 21.80.140 is amended to read:

11 Sec. 21.80.140. RECOGNITION OF ASSESSMENTS IN RATES. The rates
12 and premiums charged for insurance policies to which this chapter
13 applies may [SHALL] include amounts sufficient to offset the assess-
14 ment made under this chapter and [RECOUP A SUM EQUAL TO THE AMOUNTS]
15 paid to the association by the member insurer less [ANY] amounts
16 returned to the member insurer by the association and these rates may
17 [SHALL] not be considered excessive because they contain an amount
18 reasonably calculated to offset [RECOUP] assessments paid by the
19 member insurer. The amount charged on a policy shall be shown sepa-
20 rate from the premium for coverage on the policy. A rating organi-
21 zation may make a provision in its rate filing to recover an assess-
22 ment under this chapter for the organization's member and subscriber
23 insurers. The assessment charge is not considered a premium and is
24 not subject to the premium tax imposed under AS 21.09.210.

25 * Sec. 12. AS 21.90.900 is amended by adding new paragraphs to read:

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

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

1 (B) an insurer is being operated in a manner such that
2 irreparable loss and injury has occurred, or might occur, to the
3 insurer or to the public;

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

6 * Sec. 13. AS 21.80.060(b)(6), 21.80.070(d), and 21.80.170 are re-
7 pealed.

8 * Sec. 14. AS 21.79.150, enacted in sec. 3 of this Act, has the effect
9 of changing Rule 62(a), Alaska Rules of Civil Procedure, by providing for
10 an automatic 60-day stay of action in a liquidation, rehabilitation, or
11 conservation proceeding.

12 * Sec. 15. AS 21.79.060(r), enacted in sec. 3 of this Act, has the
13 effect of amending Rule 24(a), Alaska Rules of Civil Procedure, by giving
14 the Alaska Life and Disability Insurance Guaranty Association the right to
15 intervene in certain civil actions.

16 * Sec. 16. INITIAL ORGANIZATION OF ASSOCIATION. To organize the Alaska
17 Life and Disability Insurance Guaranty Association established under
18 AS 21.79.040, as enacted by sec. 3 of this Act, and to select its first
19 Board of Governors, the director of the division of insurance shall give
20 notice to all member insurers of the time and place of the organizational
21 meeting. A member insurer is entitled to one vote in person or by proxy at
22 the organization meeting. If the members of the board are not selected
23 within 60 days after the date that notice of the organizational meeting is
24 given, the director may appoint the members.

25 * Sec. 17. This Act takes effect January 1, 1991.
26
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29

CSSB 259 (L&C) Ford 3/16/90
Technical Ammendments

3/19/90

On Page 9, Line 13.

Change word "**insurer**" to read "**insured**"

This is a typographical error that has not been noted in several drafts.

On Page 30, Line 6.

Remove the reference "**AS 21.80.060(b)(6)**"

This was an oversight with the latest draft committee substitute. The section should not be repealed since the guaranty fund will remain a post insolvency plan.

adopted

PROPOSED AMENDMENT TO SB 259(L&C)

AMEND SECTION 21.79.070 by adding a new subsection (f) as follows:

"(f) (1) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any one calendar year exceed two percent and for the health account shall not in any one calendar year exceed two percent of such insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

"(2) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

"(3) If a one percent assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to subsection (d), the board shall assess all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subsection (f)(1)."

adopted

PROPOSED AMENDMENT TO SB 259(L&C)

AMEND SECTION 21.79.040(a) to read:

Page 5, Line 27,

"(2) the life insurance and annuity account which includes the following subaccounts:

- (a) Life Insurance Account
- (b) Annuity Account
- (c) Unallocated Annuity Account which shall include contracts qualified under Section 403(b) of the United States Internal Revenue Code."

not adopted

PROPOSEL AMENDMENT TO SB 259 (L&C)

ADD A NEW SECTION 21.79.110 to read as follows:

"Sec. 21.79.110. Credits for Assessments Paid (Tax Offsets) A member insurer may offset against its premium tax liability to this state an assessment described in Section 21.79.070(2) to the extent of ten percent of the amount of such assessment for each of the ten calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business."

and renumber the subsequent sections accordingly.

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

SECTION 1

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

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

SECTION 2

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

This Section makes the use of the protection afforded by this Act to aid a person in the sale of insurance a prohibited unfair trade practice. This would extend to a person with an interest in a policy who uses the presence of the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) to support the value of the policy as collateral in a loan transaction, which action would be prohibited.

The legitimate function of advertising the existence of the Act by the ALDIGA and the Director would be permitted. This would be particularly desirable in notifying policyholders of a company found to be insolvent. It would also be appropriate for insurer trade groups not engaged in sales to provide such information as public service announcements.

Enforcement mechanisms for this section already exist in current statute.

SECTION 3

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

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

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

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

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

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

This section outlines what ALDIGA does and does not cover.

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

This subsection lists persons covered by ALDIGA.

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

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

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

This subsection lists items not covered by ALDIGA.

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

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

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

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

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

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

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

Subsection (d)

(Page 4, Lines 20 to 25.)

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

Sec. 21.79.025 Liability Limits

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

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

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

Sec. 21.79.030 Construction

(Page 5, Lines 14 to 15.)

This section provides for liberal construction.

Sec. 21.79.040 Creation of Association

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

Subsection (a)

(Page 5, Lines 16 to 28.)

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

Subsection (b)

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

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

Sec. 21.79.050 Board of Governors

(Page 6, Lines 5 to 19.)

Subsection (a)

(Page 6, Lines 5 to 12.)

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

Subsection (b)

(Page 6, Lines 13 to 15.)

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

Subsection (c)

(Page 6, Lines 16 to 19.)

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

Sec. 21.79.060 Powers and Duties of the Association

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

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

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

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

Subsection (a)

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

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

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

Subsection (b)

(Page 7, Lines 2 to 14.)

This subsection requires ALDIGA to act even without an order of liquidation in the case of an impaired member insurer (not insolvent) that is not paying claims provided the conditions in Subsection (c) are met. ALDIGA, as a condition of its assistance, may negotiate any requirements or safeguards it deems necessary so long as they are approved by the Director, are accepted by the impaired insurer, and do not impair the contractual obligations to the policyholders, insureds, and beneficiaries.

In the absence of any court order, before any negotiations become final the impaired insurer's acceptance of the terms of ALDIGA is necessary. Through this approach, a mechanism is provided for early action by ALDIGA before the situation further deteriorates. The policyholder, insured, and beneficiaries are protected, claims are paid and coverages continued, for example through rehabilitating the impaired insurers, or reinsuring the policies elsewhere.

Subsection (c)

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

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

Subsection (d)

(Page 8, Lines 14 to 26.)

This subsection details the main role of ALDIGA in the event of an insolvency. It provides that if the insurer acquires its insolvent status as a result of a final order of liquidation, rehabilitation or conservation, ALDIGA shall, rather than may, guarantee, assume, reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer and to assure payment of contractual obligations.

Subsection (e)

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

Subsection (e)(1)

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

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

Subsection (e)(2)

(Page 9, Lines 13 to 15.)

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

Subsection (e)(3)

(Page 9, Lines 16 to 26.)

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

Subsection (f)

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

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

Subsection (g)

(Page 10, Lines 8 to 22.)

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

Subsection (h)

(Page 10, Lines 23 to 28.)

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

Subsection (i)

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

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

Subsection (j)

(Page 11, Lines 4 to 7.)

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

Subsection (k)

(Page 11, Lines 9 to 14.)

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

Subsection (l)

(Page 11, Lines 15 to 19.)

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

Subsection (m)

(Page 11, Lines 20 to 23.)

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

Subsection (n)

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

This subsection provides that under certain circumstances, the court can issue policy or contract liens in connection with ALDIGA provided guarantees, assumptions or reinsurance agreements. This is a device that has been used in the past in connection with the continuation of the insolvent insurers' coverage. Since by definition, the assets of the insolvent insurer were not adequate to support its contractual obligations, liens were used to reduce its obligations to a level where the assets would be adequate.

Subsection (o)

(Page 12, Lines 6 to 11.)

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

Subsection (p)

(Page 12, Lines 12 to 15.)

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

Subsection (q)

(Page 12, Lines 16 to 19.)

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

Subsection (r)

(Page 12 Lines 20 to 25.)

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

Subsection (s)

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

This subsection provides that a person who receives a benefit from ALDIGA on a covered policy makes an assignment to ALDIGA to the extent of the benefits received. It also establishes subrogation rights for ALDIGA. It provides that ALDIGA's right to assets of the insolvent insurer is the same as any other person entitled to benefits under this Act.

Subsection (t)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsection (b)

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

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

Subsection (c)

(Page 18, Lines 4 to 6.)

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

Subsection (d)

(Page 18, Lines 7 to 12.)

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

Subsection (e)

(Page 18, Lines 13 to 15.)

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

Subsection (f)

(Page 18, Lines 16 to 23.)

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

Subsection (g)

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

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

Subsection (h)

(Page 19, Lines 9 to 10.)

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

Subsection (l)

(Page 19, Lines 11 to 17.)

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

Sec. 21.79.110 Miscellaneous Provisions

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

Subsection (a)

(Page 19, Lines 18 to 21.)

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

Subsection (b)

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

This subsection requires ALDIGA to maintain records of all its negotiations and actions. ALDIGA should be held publicly accountable for its actions. On the other hand, effective handling of a rehabilitation or liquidation effort requires minimum publicity. Thus, such records will be made public only after the liquidation, rehabilitation or conservation proceeding is terminated, the impairment or insolvency is terminated or there is a prior order by the court.

Subsection (c)

(Page 20, Lines 2 to 17.)

This subsection provides that since ALDIGA has the obligation imposed upon it to continue coverage for policyholders of insolvent insurers, the assets of the insolvent insurer ought to be used, to the extent available, for the purpose of continuing such coverage.

Subsection (d)

(Page 20, Lines 18 to 29.)

This subsection is intended to prevent the shareholders of an impaired insurer from sitting back and doing nothing and then reaping the benefit of funds put up by the ALDIGA. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this Act. The court is empowered by order to modify and distribute the ownership rights of impaired insurers to establish equity.

Subsection (e)

(Page 21, Lines 1 to 26.)

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

Sec. 21.79.120 Examination of the Association, Annual Report

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

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

Sec. 21.79.130 Tax Exemptions

(Page 22, Lines 5 to 7.)

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

Sec. 21.79.140 Immunity

(Page 22, Lines 8 to 11.)

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

Sec. 21.79.150 Stay of Proceeding, Reopening Default Judgements

(Page 22, Lines 12 to 16.)

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

Sec. 21.79.900 Definitions

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

Sec. 21.79.990 Title

(Page 24, Lines 3 to 4.)

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

SECTION 4

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

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

SECTION 5

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

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

SECTION 6

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

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

SECTION 7

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

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

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

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

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

SECTION 8

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

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

SECTION 9

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

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

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

SECTION 10

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

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

SECTION 11

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

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

SECTION 12

Sec. 21.90.900(24)-(25)

(Page 29, Line 25 to Page 30, Line 5.)

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

SECTION 13

Repealed

(Page 30, Lines 6 to 7.)

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

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

SECTION 14

Rule 62(a) Rules of Civil Procedure

(Page 30, Lines 8 to 11.)

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

SECTION 15

Rule 24(a) Rules of Civil Procedure

(Page 30, Lines 12 to 15.)

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

SECTION 16

Initial Organization of Association

(Page 30, Lines 16 to 24.)

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

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

SECTION 17

Effective Date
(Page 30, Line 25.)

This proposal is effective January 1, 1991.

CSSB 259 (L&C) Ford 3/16/90
Technical Ammendments

3/19/90

On Page 9, Line 13.

Change word "**insurer**" to read "**insured**"

This is a typographical error that has not been noted in several drafts.

On Page 30, Line 6.

Remove the reference "**AS 21.80.060(b)(6)**"

This was an oversight with the latest draft committee substitute. The section should not be repealed since the guaranty fund will remain a post insolvency plan.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

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

May 9, 1989

Honorable Ted Stevens
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Stevens:

Re: Group Health Insurance Defaults

Thank you for your letter of April 18, 1989 and the enclosed correspondence from Lois J. Covlasky of Wasilla. Enclosed is a copy of my letter to her based upon the records of this division.

Enclosed please find a copy of the legislation which this division has proposed in order to create a guaranty fund to protect Alaskans from health insurer insolvencies. I have been disappointed that insurance companies have opposed this legislation.

I wish to call to your attention a serious issue raised by Ms. Covlasky. She has asked if you could come up with a law which would require that claims be paid before anything else is paid in the case of insurer insolvency. I had assumed that the purpose of a receivership of an insolvent or impaired insurer would be to provide just such claim payments on a priority basis. Unfortunately, the Federal Priority statute has created certain unintended problems. Not only are unpaid taxes collected first by the Internal Revenue Service, but the federal government has priority for any current or future claims that it may have from the proceeds and assets of the estate of the insurer. I am sure that Congress never intended that citizens suffer unpaid claims because the federal government is claiming priority. Certainly, the federal government would be less severely impacted than hundreds and thousands of individual citizens who have relied upon insurance for their protection.

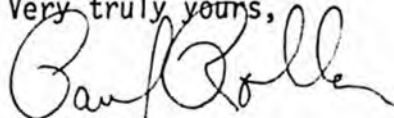
The National Association of Insurance Commissioners is seeking to work with the federal government to cure this problem. I would solicit your assistance and that of the entire Alaska Congressional Delegation in these matters.

May 9, 1989

Alaska is one of ten states which does not have a life/health guaranty fund. Our legislation is intended to remedy this situation. Presently, the legislation is in the Senate Labor and Commerce Committee whose members are Senator Eliason, Senator Rodey, Senator Faiks, Senator Kerttula and Senator Coghill.

I look forward to your support of a guaranty fund for life/health insurance here in Alaska as well as making sure that Alaskan's claims get paid first.

Very truly yours,



Paul A. Roller
Director

PAR/cw9896c

5889a

Enclosure

cc: Senator Dick Eliason
Senator Pat Rodey
Senator Jan Faiks
Senator Jay Kerttula
Senator Jack Coghill

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

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JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

March 12, 1990

Honorable Richard I. Eliason
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Eliason:

Re: SB 259, Insurance Guaranty Funds

Enclosed please find proposed amendments to SB 259, relating to Insurance Guaranty Funds, which are offered for consideration by the Senate Labor and Commerce Committee. These amendments are the result of extensive discussions, both internally and with industry representatives, since this bill was heard in your committee on April 14, 1989.

Substantive changes to the bill include:

- o changing the life and disability guaranty fund to post assessment rather than preassessment;
- o excluding hospital and medical service organizations from the provisions of the life and disability guaranty fund;
- o including marine insurance in the account for "all other" lines of insurance rather than setting it out as a separate account;
- o establishing that a court order is necessary for the director of insurance to assume the powers of the board of directors of an insurer upon failure to meet the requirements of the Insurance Guaranty Association Act; and
- o establishing that a rating organization may make a provision in its filing of rates to recover an assessment made to the fund, and that an assessment charge is not considered to be premium and is not subject to the premium tax.

Honorable Richard I. Eliason

-2-

March 12, 1990

I will be discussing the proposed amendments with industry representatives this week, and would like to request a hearing on the bill on Friday, March 23, if that date would be compatible with your committee schedule. Unfortunately, I have out-of-town commitments earlier that week and also the week after.

Thank you for your consideration. I would be happy to discuss this bill with you or your staff at any time.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Walsh". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

David Walsh
Director

DW/lw/mst0067Q
031290a
Enclosure

Proposed Amendments to SB 259: Insurance Guaranty Funds

New Section

Page 1, line 10, add a new section and renumber the following sections accordingly.

* Sec. 1. 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.

Section 2

Page 14, line 3 to page 15, line 10. Replace Sec. 21.79.070 with:

Sec. 21.79.070. ASSESSMENTS. (a) For the purpose of providing funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at 10% per year from the date payment is due.

(b) There shall be two assessments as follows:

(1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of Sec. 21.79.060. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments are post assessment charges and shall be made only as necessary to carry out the powers and duties of the association with regard to an impaired or an insolvent insurer.

(c) (1) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A nonpro rata assessment shall not exceed \$250.00 per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or by any other standard deemed by the board as being fair and reasonable under the circumstances.

(2) Class B assessments shall be based on the premiums received on business in this state by each assessed member insurer or for policies or contracts covered by each account in proportion to the premiums received on business in this state by all assessed member insurers during the three calendar years preceding the year in which the insolvency or impairment occurred.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if a payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The amount by which an assessment against a member insurer is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in section (c).

Page 21, line 29, between "a" and "financial": insert certified.

Page 23, lines 7 through 8, after "insurer": Delete [OR HOSPITAL OR MEDICAL SERVICE ORGANIZATION].

Page 23, line 9, after "(b)": Insert or subscriber contract providing benefits as provided for in AS 21.87.120(a)(2)-(4) or AS 21.87.130(a)(2) and (3).

Page 23, line 17, after "basis,": Delete [OR].

Page 23, line 18, after "exchange": Delete [.] and insert ; or.

Page 23, after line 19, insert a new subparagraph to read: (F) hospital or medical service organization.

Page 23, line 24, after "amounts": Insert charged for an assessment or any amounts.

Section 3:

Page 24, line 14, after "insurance": Insert written by an admitted insurer.

Page 24, line 16, after "insurance": Delete [AS IT APPLIES TO] and insert for.

Section 4:

Page 24, line 28, delete the change: "four" is removed and "three" remains.

Page 25, line 3, remove new language: "(3) The marine insurance account;" Renummer remaining subsection accordingly.

Page 25, line 4, after "applies": Insert , including coverage on vessels less than 100 feet long as measured at the water line.

Section 6:

Page 25, line 16, after "association": Delete [SHALL].

Page 25, line 17, before "obligated": Delete [BE] and insert is.

Page 25, line 19, after "insolvency": Insert by a court of competent jurisdiction where the insolvent insurer or receiver ceases to pay any or all claims pursuant to preparing and adopting a plan of liquidation or having entered into a plan of liquidation approved by the court under AS 21.78.

Page 25, line, 29, before "considered": Delete [BE] and Insert is.

Page 26, line 4, before "allocate": Insert shall.

Page 26, lines 4 through page 27, line 2: Retain language of current statute.

Page 27, line 1, after "part,": Delete [THE] and Insert an.

Page 27, line 2, after "would": Insert "endanger the ability of the member insurer to fulfill its contractual obligations; ["

Page 27, line 10, before "investigate": Insert shall.

Page 27, line 16, before "notify": Insert shall.

Page 27, line 18, before "handle": Insert shall.

Page 27, line 21, after "state": Insert unless the use of a servicing facility located outside the state would result in operating cost savings of at least 10% and no material delay in claim payments.

Page 27, line 24, before "reimburse": Insert shall.

Section 7:

Page 27, line 28 through page 28, line 10: Delete entire section.

Section 9:

Page 29, lines 14 and 15 after "upon": Delete [DECLARATION OF A STATE OF EMERGENCY, FOLLOWING A FAILURE OF] and Insert a finding by the superior court that.

Page 29, line 15, after "directors": Insert has failed.

Section 11:

Page 29, line 27: Delete [SHALL] and Insert may.

Page 29, line 27, after "the": Delete [RATE OF].

Page 29, line 28: Delete [ESTABLISHED IN AS 21.80.060(a)(3)] and insert made under this chapter.

Page 29, line 29: Remove bracket after "insurer."

Page 30, line 1: Remove bracket after "association."

Page 30, line 3, after "policy": Insert A rating organization may make a provision in its filing of rates to recover an assessment under this chapter for its member and subscriber insurers. The assessment charge is not considered to be premium and is not subject to premium tax under AS 21.09.21.

Section 16:

Page 30, lines 25 and 26: Delete Section 16.

Section 17:

Page 30, line 27, after "January 1,": Delete [1990] and Insert 1991.

**DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE**

Senate Bill 259 - Sectional Analysis

For an ACT entitled: "An Act relating to insurance guaranty funds; changing Rule 62(a), Rules of Civil Procedure; and providing for an effective date."

SECTION 1

Sec. 21.36.035 Prohibited Advertisements and Representations
(Page 1, Lines 11 to 24.)

This Section makes the use of the protection afforded by this Act to aid a person in the sale of insurance a prohibited unfair trade practice. This would extend to a person with an interest in a policy who uses the presence of the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) to support the value of the policy as collateral in a loan transaction, which action would be prohibited.

The legitimate function of advertising the existence of the Act by the ALDIGA and the Director would be permitted. This would be particularly desirable in notifying policyholders of a company found to be insolvent. It would also be appropriate for insurer trade groups not engaged in sales to provide such information as public service announcements.

Enforcement mechanisms for this section already exist in current statute.

SECTION 2

Sec. 21.79 Alaska Life and Disability Insurance Guaranty Association
(Page 1, Line 5 to Page 24, Line 11.)

This Section creates the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) which will address the problem of providing funds for the payment of claims when an insurance company becomes insolvent. The proposal creates a funding mechanism to guarantee life insurance, disability insurance and annuity writings of admitted insurers. These kinds of insurance are not presently covered by any form of protection. The proposal is based on a model drafted by the National Association of Insurance Commissioners but does depart from that model on some issues.

Senate Bill 259
Sectional Analysis

Sec 21.79.010 Purpose
(Page 1, Line 28 to Page 2, Line 4.)

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

Sec. 21.79.020 Scope
(Page 2, Line 5 to Page 4, Line 16.)

This section outlines what ALDIGA does and does not cover.

Subsection (a)
(Page 2, Lines 5 to 24.)

This subsection lists persons covered by ALDIGA.

Subsection (b)
(Page 2, Lines 25 to 29.)

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

Subsection (c)
(Page 3, Line 1 to Page 4, Line 10.)

This subsection lists items not covered by ALDIGA.

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

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

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

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

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

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

Senate Bill 259
Sectional Analysis

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

Subsection (d)
(Page 4, Lines 11 to 16.)

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

Sec. 21.79.025 Liability Limits
(Page 4, Line 17 to Page 5, Line 4.)

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

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

Sec. 21.79.030 Construction
(Page 5, Lines 5 to 6.)

This section provides for liberal construction.

Sec. 21.79.040 Creation of Association
(Page 5, Lines 7 to 24.)

Subsection (a)
(Page 5, Lines 7 to 19.)

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

Subsection (b)
(Page 5, Lines 20 to 24.)

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

Senate Bill 259
Sectional Analysis

Sec. 21.79.050 Board of Governors
(Page 5, Line 25 to Page 6, Line 13.)

Subsection (a)
(Page 5, Line 25 to Page 6, Line 9.)

This subsection provides for the number and term of the members of the Board of Governors of ALDIGA to be determined in the plan of operation. To avoid problems in initially selecting the board, this subsection provides for an organizational meeting to be called by the Director of Insurance. A voting process is described. If no board members are selected within 60 days the Director may appoint the initial board.

Subsection (b)
(Page 6, Lines 10 to 12.)

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

Subsection (c)
(Page 6, Lines 13 to 16.)

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

Sec. 21.79.060 Powers and Duties of the Association
(Page 6, Line 17 to Page 14, Line 2.)

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

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

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

Subsection (a)
(Page 6, Lines 17 to 27.)

This subsection allows the ALDIGA to act to guarantee, assume or reinsure any or all policies of an impaired domestic insurer. ALDIGA would presumably do so in those situations where early action would prevent a more costly insolvency of later liquidation. Action under this subsection is not limited to resident policyholders.

Senate Bill 259
Sectional Analysis

Subsection (b)

(Page 6, Line 28 to Page 7, Line 12.)

This subsection requires ALDIGA to act even without an order of liquidation in the case of an impaired member insurer (not insolvent) that is not paying claims provided the conditions in Subsection (c) are met. ALDIGA, as a condition of its assistance, may negotiate any requirements or safeguards it deems necessary so long as they are approved by the Director, are accepted by the impaired insurer, and do not impair the contractual obligations to the policyholders, insureds, and beneficiaries. (See error notes.)

In the absence of any court order, before any negotiations become final the impaired insurer's acceptance of the terms of ALDIGA is necessary. Through this approach, a mechanism is provided for early action by ALDIGA before the situation further deteriorates. The policyholder, insured, and beneficiaries are protected, claims are paid and coverages continued, for example through rehabilitating the impaired insurers, or reinsuring the policies elsewhere.

Subsection (c)

(Page 7, Line 13 to Page 8, Line 11.)

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

Subsection (d)

(Page 8, Lines 12 to 23.)

This subsection details the main role of ALDIGA in the event of an insolvency. It provides that if the insurer acquires its insolvent status as a result of a final order of liquidation, rehabilitation or conservation, ALDIGA shall, rather than may, guarantee, assume, reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer and to assure payment of contractual obligations.

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Sectional Analysis

Subsection (e)

(Page 8, Line 24 to Page 9, Line 25.)

Subsection (e)(1)

(Page 8, Line 24 to Page 9, Line 11.)

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

Subsection (e)(2)

(Page 9, Lines 12 to 14.)

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

Subsection (e)(3)

(Page 9, Lines 15 to 25.)

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

Subsection (f)

(Page 9, Line 26 to Page 10, Line 6.)

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

Subsection (g)

(Page 10, Lines 7 to 22.)

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

Subsection (h)

(Page 10, Lines 23 to 27.)

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

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Sectional Analysis

Subsection (i)

(Page 10, Line 28 to Page 11, Line 3.)

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

Subsection (j)

(Page 11, Lines 4 to 7.)

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

Subsection (k)

(Page 11, Lines 8 to 14.)

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

Subsection (l)

(Page 11, Lines 15 to 19.)

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

Subsection (m)

(Page 11, Lines 20 to 23.)

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

Subsection (n)

(Page 11, Line 24 to Page 12, Line 6.)

This subsection provides that under certain circumstances, the court can issue policy or contract liens in connection with ALDIGA provided guarantees, assumptions or reinsurance agreements. This is a device that has been used in the past in connection with the continuation of the insolvent insurers' coverage. Since by definition, the assets of the insolvent insurer were not adequate to support its contractual obligations, liens were used to reduce its obligations to a level where the assets would be adequate.

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Sectional Analysis

Subsection (o)

(Page 12, Lines 7 to 12.)

This subsection permits ALDIGA to seek court imposed temporary stays on the payment of cash values and policy loans. This is intended to avoid a run on the assets of the impaired or insolvent insurer.

Subsection (p)

(Page 12, Lines 13 to 16.)

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

Subsection (q)

(Page 12, Lines 17 to 20.)

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

Subsection (r)

(Page 12 Lines 21 to 27.)

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

Subsection (s)

(Page 12, Line 28 to Page 13, Line 8.)

This subsection provides that a person who receives a benefit from ALDIGA on a covered policy makes an assignment to ALDIGA to the extent of the benefits received. It also establishes subrogation rights for ALDIGA. It provides that ALDIGA's right to assets of the insolvent insurer is the same as any other person entitled to benefits under this Act.

Subsection (t)

(Page 13, Line 9 to Page 14, Line 2.)

This subsection allows ALDIGA to contract, sue or be sued, borrow money, employ persons, negotiate, act as a domestic life or disability insurer, take legal action to avoid payment of improper claims, to join an association of similar organizations, and perform other acts that are proper or necessary to implement this Act.

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Sectional Analysis

Sec. 21.79.070 Assessment
(Page 14, Line 3 to Page 15, Line 10.)

This Section establishes a pre-insolvency assessment approach as the funding mechanism as opposed to the usual post-insolvency approach. The principle advantages include the ability to respond quickly to situations requiring funds, rather than need to wait until assessments can be made and collected. It is expected that since funds will be on hand, in state, it will also generate some employment in state and an increased activity level in the prevention of insolvencies.

Subsection (a)
(Page 14, Lines 3 to 9.)

This subsection establishes an assessment rate of 2% of premium which is to be remitted to ALDIGA on a quarterly basis to fund the purposes of this Act. Late payments accrue a 10% penalty charge.

Subsection (b)
(Page 14, Lines 10 to 18.)

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

Subsection (c)
(Page 14, Lines 19 to 22.)

This subsection allows ALDIGA to reduce or defer payment of the assessment if such would endanger the ability of the insurer to meet its obligations. This is unlikely to occur since it is expected that this assessment will routinely be built into the rate. An insurer needing such protection is a prime candidate for insolvency.

Subsection (d)
(Page 14, Lines 23 to 26.)

This subsection allows ALDIGA to provide a method of allocation of funds when the funds are insufficient to meet all obligations.

Subsection (e)
(Page 14, Line 27 to Page 15, Line 1.)

This subsection allows ALDIGA to reduce the assessment when the fund reaches \$50,000,000. This amount should be sufficient to contain that portion of an insolvency affecting Alaska insureds and policyholders.

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Sectional Analysis

Subsection (f)
(Page 15, Lines 2 to 6.)

This subsection allows ALDIGA to increase coverage as the health of the fund grows and stabilizes.

Subsection (g)
(Page 15, Lines 7 to 10.)

This subsection allows insurers to reflect the assessment in their rates.

Sec. 21.79.080 Plan of Operation
(Page 15, Line 11 to Page 16, Line 19.)

This section requires the adoption of a plan of operation by ALDIGA to provide for the administration of ALDIGA. This plan would be subject to review and approval by the Director of Insurance. The National Association of Insurance Commissioners has adopted a model plan of operation which is available in the office of the Division of Insurance. It is anticipated that ALDIGA, upon passage of this Act would substantially adopt the provisions contained in the model plan.

Sec. 21.79.090 Powers and Duties of the Director
(Page 16, Line 20 to Page 17, Line 14.)

Subsection (a)
(Page 16, Lines 20 to 23.)

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

Subsection (b)
(Page 16, Line 24 to Page 17, Line 6.)

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

Subsection (c)
(Page 17, Lines 7 to 11.)

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

Senate Bill 259
Sectional Analysis

Subsection (d)

(Page 17, Lines 12 to 14.)

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

Sec. 21.79.100 Prevention of Insolvencies

(Page 17, Line 15 to Page 19, Line 19.)

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

Subsection (a)

(Page 17, Lines 15 to 26.)

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

Subsection (b)

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

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

Subsection (c)

(Page 18, Lines 4 to 6.)

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

Subsection (d)

(Page 18, Lines 7 to 12.)

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

Subsection (e)

(Page 18, Lines 13 to 15.)

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

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Sectional Analysis

Subsection (f)

(Page 18, Lines 16 to 21.)

This subsection requires ALDIGA to report and make recommendations to the Director concerning companies seeking to do business in Alaska.

Subsection (g)

(Page 18, Lines 22 to 24.)

This subsection requires ALDIGA to report to the Director information indicating impairment or insolvency of a member insurer.

Subsection (h)

(Page 18, Line 25 to Page 19, Line 10.)

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

Subsection (i)

(Page 19, Lines 11 to 12.)

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

Subsection (j)

(Page 19, Lines 13 to 19.)

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

Sec. 21.79.110 Miscellaneous Provisions

(Page 19, Line 20 to Page 21, Line 26.)

Subsection (a)

(Page 19, Lines 20 to 23.)

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

Senate Bill 259
Sectional Analysis

Subsection (b)

(Page 19, Line 24 to Page 20, Line 3.)

This subsection requires ALDIGA to maintain records of all its negotiations and actions. ALDIGA should be held publicly accountable for its actions. On the other hand, effective handling of a rehabilitation or liquidation effort requires minimum publicity. Thus, such records will be made public only after the liquidation, rehabilitation or conservation proceeding is terminated, the impairment or insolvency is terminated or there is a prior order by the court.

Subsection (c)

(Page 20, Lines 4 to 18.)

This subsection provides that since ALDIGA has the obligation imposed upon it to continue coverage for policyholders of insolvent insurers, the assets of the insolvent insurer ought to be used, to the extent available, for the purpose of continuing such coverage.

Subsection (d)

(Page 20, Line 19 to Page 21, Line 1.)

This subsection is intended to prevent the shareholders of an impaired insurer from sitting back and doing nothing and then reaping the benefit of funds put up by the ALDIGA. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this Act. The court is empowered by order to modify and distribute the ownership rights of impaired insurers to establish equity.

Subsection (e)

(Page 21, Lines 2 to 26.)

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

Sec. 21.79.120 Examination of the Association, Annual Report

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

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

Senate Bill 259
Sectional Analysis

Sec. 21.79.130 Tax Exemptions
(Page 22, Lines 5 to 7.)

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

Sec. 21.79.140 Immunity
(Page 22, Lines 8 to 11.)

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

Sec. 21.79.150 Stay of Proceeding, Reopening Default Judgements
(Page 22, Lines 12 to 16.)

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

Sec. 21.79.160 Title
(Page 22, Lines 17 to 18.)

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

Sec. 21.79.900 Definitions
(Page 19, Line 20 to Page 21, Line 26.)

SECTION 3

Sec. 21.80.020 Applicability
(Page 24, Lines 12 to 17.)

This amendment expands the existing Alaska Insurance Guaranty Association (AIGA) to include marine coverage for vessels under 100 feet in length. Presently no marine coverage is provided under AIGA.

SECTION 4

Sec. 21.80.040 Creation of Association
(Page 24, Line 18 to Page 25, Line 4.)

This amendment establishes an additional account in AIGA for marine coverage.

Senate Bill 259
Sectional Analysis

SECTION 5

Sec. 21.80.050(a)
(Page 25, Lines 5 to 14.)

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

SECTION 6

Sec. 21.80.060(a)
(Page 25, Line 15 to Page 27, Line 27.)

This amendment increases the covered claim amount from \$300,000 to \$500,000 (Page 25, Line 24).

It establishes the rate of assessment at 4% initially (Page 26, Line 12), reducing to 2% in five years (Page 26, Line 15).

Since the AIGA is being changed to a pre-insolvency plan from a post-assessment plan, inappropriate language is being removed (Page 26, Lines 4 to 8; Page 26 Lines 15 to 24; and Page 26 Line 29 to Page 27 Line 5).

It requires that AIGA's servicing facility operate and maintain its principal office in Alaska.

SECTION 7

Sec. 21.80.060 **Limit on Assessment**
(Page 27, Line 28 to Page 28, Line 10.)

This new Section places an upper limit on the growth of the AIGA fund that cannot exceed total premium volume for the previous year.

SECTION 8

Sec. 21.80.070(a)
(Page 28, Line 11 to 23.)

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

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Sectional Analysis

SECTION 9

Sec. 21.80.080(b)
(Page 28, Line 24 to Page 29, Line 17.)

This amendment allows the Director of Insurance to assume AIGA powers if AIGA fails to act in accordance with statute, or its plan of operation and the Director has declared a state of emergency.

SECTION 10

Sec. 21.80.120 Examination of Association
(Page 29, Lines 19 to 23.)

This amendment requires that the annual report by AIGA be certified. This reflects on the fact that AIGA will be holding funds that it previously held only after an insolvency.

SECTION 11

Sec. 21.80.140 Recognition of Assessments in Rates
(Page 29, Line 24 to Page 30, Line 5.)

This amendment requires the assessment to be reflected as a separate charge on the policy.

SECTION 12

Sec. 21.80.180(1)
(Page 30, Lines 6 to 8.)

This amendment changes the definition of account to reflect the added account for marine coverages.

SECTION 13

Sec. 21.90.900(24)-(25)
(Page 30, Lines 9 to 18.)

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

Senate Bill 259
Sectional Analysis

SECTION 14

Repealed

(Page 30, Lines 19 to 20.)

AS 21.80.060(b)(6) is repealed. This section relates to excess funds in the post insolvency fund accounts.

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

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

SECTION 15

Rule 62(a), Rules of Civil Procedure

(Page 30, Lines 21 to 24.)

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

SECTION 16

Sec. 21.87.340

(Page 30, Lines 25 to 26.)

The addition of this reference in AS 21.87.340 makes Hospital Medical Service Corporations such as Blue Cross subject to the Act.

SECTION 17

Effective Date

(Page 30, Line 27.)

This proposal is effective January 1, 1990. This should be sufficient lead time to complete the work necessary to implement the bill.

Senate Bill 259
Sectional Analysis

CORRECTIONS

(Page 6, Line 29.)

Change the word "may" to read "shall"

(Page 9, Line 12.)

Change the word "insurers" to read "insureds"

(Page 11, Line 7.)

Change the reference "AS 21.79.020(c)(3)" to read "AS 21.79.020(c)(4)"

J. P. Tangen

Attorney at Law
217 2nd Street, suite 206
P. O. Box 21808
Juneau, AK 99802-1808

Telephone (907) 586-2286

Telecopier (907) 586-2317

April 26, 1990

Senator Dick Eliason
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Re: SB 259

Dear Senator Eliason:

I am writing on behalf of the American Council of Life Insurance (ACLI). This is to request you to vote against the adoption of SB 259 unless it is amended to include a premium tax offset for life insurance carriers.

The premium tax offset is necessary so that life insurers can recoup the added cost of the proposed guaranty fund.

Unlike other kinds of insurers, life insurance companies cannot simply adjust the premium to recapture the added cost of a guaranty fund. This is due to the customary practice in the life insurance industry of guaranteeing that the premium will remain the same over the life of the policy.

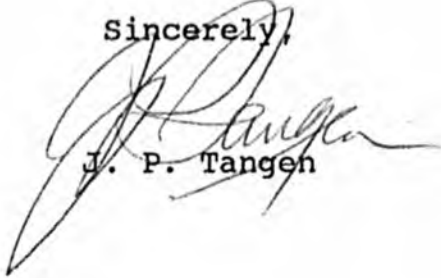
Although the ACLI supports the concept of a Guaranty Fund, and endorses every other aspect of SB 259 (Labor & Commerce), which is virtually identical with the language recommended by the National Association of Insurance Commissioners, and which has been adopted in 46 other jurisdictions, ACLI cannot support this bill without provision for a premium tax offset. It is noted that 37 of the 46 jurisdictions which have adopted guaranty fund legislation have adopted the premium tax offset language.

Senator Dick Eliason
April 26, 1990
Page -2-

I enclose an extract of a statement by Jana Lee Pruitt of the ACLI which she delivered to the Senate Labor and Commerce Committee earlier this Spring. This statement sets forth the details of the reasons for the ACLI position.

If I may answer any questions with regard to this bill, please let me know.

Sincerely,



J. P. Tangen

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

We support the enactment of life and health insurance guaranty associations in all states, the District of Columbia, and Puerto Rico. Currently, such associations exist in 45 of the 52 jurisdictions. The seven jurisdictions without guaranty associations for the life and health insurance industry are Alaska, California, Colorado, the District of Columbia, Louisiana, New Jersey, and Wyoming. Enabling legislation passed the Wyoming Legislature last week and is on the Governor's desk for signature.

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

1) Premium Tax Offset

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

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

This provision has been adopted in some form by 36 of the 45 jurisdictions which have operational life/health guaranty associations. We strongly believe it should be incorporated into the language of Senate Bill 259.

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

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

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

Senator Richard Eliason
March 23, 1990
Page -2-

HUGHES THORSNESS GANTZ POWELL & BRUNDIN
ATTORNEYS AT LAW

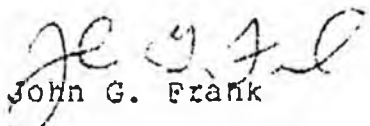
only with allocated annuities. The net result of the scheme contemplated by SB251 would be to have allocated annuities contributing to the failures associated with unallocated annuities. This would effectively place the allocated annuities in a position where they were insuring the investment risks of certain banks and other institutions. For these reasons, it would be our preference to see unallocated annuities out of the fund created for allocated annuities. This is similar to the NAIC model, a copy of which is attached.

Another issue that concerns State Farm in the Committee Substitute for SB259 is the absence of any provision for the premium tax offset. It is absolutely critical that any guaranty fund legislation allow for such a premium tax offset. Again, State Farm would refer the Committee to the NAIC model language that we have attached.

State Farm objects to the inclusion of unallocated annuities in any fund with allocated annuities and strongly supports the allowance of a premium tax offset for fund contributions. Again, I apologize for not being present before the Committee in person this afternoon. I will be back in my office on Monday and would be happy to respond to any questions that the Committee might have at that time. Thank you for your consideration.

Very truly yours,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN

BY: 
John G. Frank

jet/0728q
Enclosure

Model Regulation Service - July 1986

Subsection C explicitly recognizes that prompt and efficient discharge of the Association's obligations will be greatly facilitated, especially in multistate insolvencies by acting in concert through the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) to develop and, where appropriate, carry out coordinated plans.

Section 8. Assessments

- A. For the purpose of providing the funds necessary to carry out the powers and duties of the Association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty days after prior written notice to the member insurers and shall accrue interest at [insert amount] percent per annum on and after the due date.
- B. There shall be two assessments, as follows:
- (1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of Section 12E. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.
 - (2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the Association under Section 3 with regard to an impaired or an insolvent insurer.
- C. (1) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A non-pro rata assessment shall not exceed \$150 per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.
- * (2) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer or policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.
- (3) Assessments for funds to meet the requirements of the Association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under Subsection B and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.
- D. The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

Guaranty Funds - Life and Health

E. The board of directors may, upon majority vote, request that the Commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty days of the receipt of such request, the Commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the Commissioner designates. The cost of such examination shall be paid by the Association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the Commissioner from complying with Subsection A.

The Commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the Commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

F. The board of directors may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of insurer insolvencies.

G. The board of directors shall, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, prepare a report to the Commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

* Section 18. Credits for Assessments Paid (Tax Offsets) - OPTIONAL

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

B. Any sums which are acquired by refund, pursuant to Section 9F, from the Association by member insurers, and which have theretofore been offset against (premium, franchise or income) taxes as provided in Subsection A above, shall be paid by such insurers to this state in such manner as the tax authorities may require. The Association shall notify the Commissioner that such refunds have been made.

Comment: Subsection A provides an offset against future premium, franchise or income taxes of assessments, over a five-year period. The timing of the credit is dependent on the year the assessment is paid. It also allows the member insurer to select the applicable tax (premium, franchise or income) against which the credit may be applied and it permits member insurers going out of business to make use of the credit in their final year of operations.

The N.A. model insolvency guaranty bill for property and casualty insurance provides, in Section 18, that rates "of all include amounts sufficient to recover a sum equal to the amounts paid to the Association..." It is obvious that life insurance premiums, and premiums for certain forms of health insurance, cannot be charged or existing policyholders. Thus, reimbursement is virtually unattainable through existing policy premium rates and building such assessments into rates for future policyholders is not only impractical but unfair to all policyholders. The only equitable and practical method of reimbursement available to companies writing life and health insurance lies in offsets against premium or other taxes on such companies. The method suggested in this section is not only equitable to the companies involved but also reduces the impact on state revenues by the partial offset over a period of years. To the extent the recovery from the insolvent company exceeds the tax credit received, the state would be the ultimate beneficiary. Such equitable treatment of assessments for tax purposes would have additional positive effects. (1) the state legislature would have an additional incentive for providing adequate funds for insurance department personnel and administration, and (2) participation in the economic loss would be shared, to some extent.

JAMES J. DALY
2051 SEALEVEL DR. #301
KETCHIKAN, ALASKA 99901
(907) 225-4461

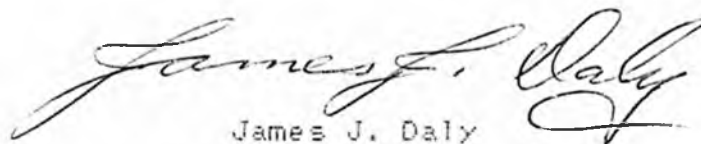
February 1, 1990

Dear Senator Eliason:

I would like to express my support for Senate Bill 259 which is currently in the Senate Labor Committee and the Senate Commerce Committee. This bill which provides a protection of people in Alaska for life, health, and annuity insurance is badly needed, particularly in the light of recent developments with First Executive Life Co.

I hope you will give this bill your full support.

Sincerely,


James J. Daly

cc: Sen. Lloyd Jones
Sen. Jim Duncan

P.O. Box 6352
Ketchikan, Alaska 99901
November 25, 1989

Governor Steve Cowper
Box A
Juneau, Alaska 99811-0101

Re: Alaska Chapter 80 Title 21

Dear Governor Cowper:

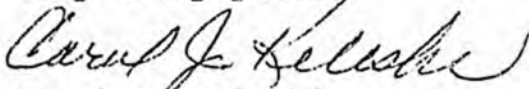
While in Seattle last month I spoke with John Wydahl, office of insurance Commissioner, State of Washington, concerning Chapter 48.32 ARCW, short title; Washington Life and Disability Insurance Guaranty Association Act. He mailed a copy of the "Act" to me.

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 Unlicensed 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
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

Retirement is something 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.

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 payout very 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.

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



MECHANIC REYNOLDS: A TAKEOVER ENDED HIS HOPE TO RETIRE EARLY

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 Willey J. Lacey, 61, Pacific's tax manager until he retired four years ago.

**FIRST BANK CORPORATION 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 5 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 7/10/37, Centerville, S. D.; attended Southern St. Coll., Augustana. Career path-banking; tenure-31 years, CEO 1 month. Compensation: 1988 salary & bonus, \$368,000; ownership, 66,000 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. 813-551-1000
SALES: \$736 mil. PROFITS: \$53 mil.
MARKET VALUE: \$429 mil.

► Born 12/26/41, 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. ► 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, 1956; 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 ABOUD
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; ownership, 131,000 direct, 597,000 indirect shares. ► 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, 600,000 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. 213-912-1000
SALES: \$3 bil. PROFITS: \$197 mil.
MARKET VALUE: \$1.1 bil.

► Born 3/24/31, 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.



Alaska National
INSURANCE COMPANY

A policy of service and protection

April 17, 1989

The Honorable Dick Eliason
Chairman
Senate Labor & Commerce Committee
Pouch 5
Juneau, AK 99811

Dear Senator Eliason:

Thank you for the opportunity for me to testify before your committee last week. As promised, I enclose a copy of my testimony.

If I can provide further information, please advise.

Yours truly,

James E. Pfeifer
President

JP:klb

Encl.

cc: Senator Jack Coghill
Senator Jan Faiks
Senator Jay Kertula
Senator Pat Rodey

TESTIMONY TO
SENATE LABOR & COMMERCE COMMITTEE
APRIL 14, 1989

My name is Jim Pfeifer and I am President of Alaska National Insurance Company. Chairman Eliason asked that I testify today to present our position on SB 259 - an act relating to insurance guaranty funds.

SB 259 would establish a brand new guaranty fund for life, annuity and disability coverage and provide substantive changes to the existing guaranty fund for certain property and casualty coverages.

Except for consideration of provisions common to the property and casualty fund which are of concern to us, we will not take a position on the life, annuity and disability fund since we are not in that business.

I will be surprised if you do not receive substantial opposition from others in the insurance industry as to the pre-funding assessment provision. The recent problem with New York state's pre-funded guaranty fund is a vivid example in support of historical arguments that have been made against pre-funding. I do not have all the details but I believe that the New York Guaranty fund accumulated over 150 million dollars of which 87 million was confiscated by the legislature to solve budget problems. Subsequently, further assessments were made against the industry to restore the 87 million to the fund. Law suits have been filed and are in progress.

The Alaskan insurance-buying public may also resist this bill, particularly if the assessment rates and fund caps are not set at sensible levels. After all, it is our Alaskan insureds that this bill would tax to establish and maintain this fund.

One of the arguments advanced to support pre-funding is that insurance companies that ultimately go broke will at least have contributed something to the fund. But, again, keep in mind that it is not these companies but the insurance buying public that is asked to pay up for these funds.

Alaska National is opposed to the pre-funding provision contained in SB 259. However, we are not opposed to pre-funding per se and we would reconsider our position if certain concerns which we have are resolved. Our principal recommendations are outlined below but first I would like to be very candid with this Committee about why Alaska National Insurance Company would support sensible pre-funded Guaranty Association legislation. There are two reasons.

First, under Alaska's existing post-assessment fund statute, we and others in our industry are the guaranty fund's bankers. We pay guaranty fund assessments. These assessments then go into the rate making base. Subsequently, insurance rates are increased for the assessments and, in theory, we recover our payouts out of future premiums. I say "in theory," because, in spite of what many of our natural adversaries maintain, we live in a competitive marketplace, and that competitive marketplace may not allow us to charge the increased premiums to recover past assessments. This particularly would be the case when we compete with new entrants in the marketplace who were not subject to prior years' assessments.

Second, when an insurance company fails and is placed in rehabilitation (as is presently the situation with Pacific Marine Insurance Company), we incur a contingent liability for future guaranty fund assessments which is not quantifiable. Under existing accounting and tax rules, we cannot reserve for these contingent liabilities, but there they sit like huge rain clouds overhead threatening our policyholders' surplus.

A pre-funded guaranty association would nicely solve both of these problems for Alaska National.

Now, I'd like to submit our recommendations for amending this bill:

1. Set a reasonable limit on the size of the fund.
2. Reduce the assessment rates.
3. Require the Director of Insurance to have a court order to assume emergency powers.
4. Establish investment guidelines for the fund.
5. Clearly provide for subrogation rights of the Guaranty Association.

FUND LIMIT

The bill before you today provides for a limit in the fund which is astronomical. The limit is defined as "the total of the net direct written premiums for the previous year." Based upon 1987 premiums, such a limit would total over 600 million dollars. Allowing this fund to potentially build up to even 10% of that amount is unwise, unnecessary and unduly tempting.

Since the late 1970's, Guaranty Fund assessments in Alaska totalled 11,848,842 dollars. So, you can see that the proposed limit in this bill is a little over-kill.

As I understand it, New York established its fund at 150,000,000 dollars. However, total property/casualty premiums for 1987 for New York were over 17 billion dollars. Thus, this amount represents less than 9/10th's of 1% of the written premium. If you applied the same percentage to Alaska's premium, the comparable amount would be \$5,361,000.

I suggest that the following schedule would be more reasonable as well as adequate except for an insurer insolvency of a catastrophic nature.

Workers' Compensation - 4% of prior year written premium
(\$6,000,000 based on 1987 premiums)

All Other Lines - 2% of prior year written premium
(\$9,000,000 based on 1987 premiums)

ASSESSMENT RATES

I also believe that the annual assessment rates are excessive. Consistent with the limits suggested above, I suggest that the assessment rates be set at 1% with a provision to increase the rate by an additional 1% if the fund is in a deficit position.

It should be pointed out that the fund, which currently is subject to a post-assessment limit of 2% has never been in a deficit position. Much to-do has been made about the Guaranty Association's lack of capacity to handle large liquidations - with specific reference being made to the potential impact of the Pacific Marine companies. To my knowledge, no one has bothered to ask the Guaranty Association about its own capacity.

While obtaining precise numbers on the deficit of the Pacific Marine group is elusive, some conjecture has surfaced that the potential shortfall which would impact the Guaranty Association could be in the 10-15 million dollar range. While I am not speaking on behalf of the Guaranty Association, it is my personal opinion that such a deficit could be handled under the current post-assessment plan.

First of all, the cash requirement would be significantly less in any given year as claims, particularly workers' compensation, are paid out over time. Secondly, the Guaranty Association has the ability to borrow funds to meet cash needs. In fact, borrowings have taken place in the past to cover temporary shortfalls pending receipt of assessments.

POWERS OF DIRECTOR OF INSURANCE

Another provision of this bill, which I believe is inappropriate and unnecessary, is Section AS 21.80.080(b)(4). This section states that the Director may declare a state of emergency and assume the powers of the Board of Directors of the Guaranty Association.

I believe this language developed under the notion perceived by Director Roller that the Board of Directors was not responsive to his interpretation of their responsibilities relating to the Pacific Marine debacle. I can say, without qualification, that as a member of the Board of Directors, I view the responsibilities most seriously and believe the Board acted responsibly and correctly in all of its actions. Had this provision been in effect at that time, Director Roller could have set a "state of emergency" action in motion with particularly disastrous results.

It is interesting to note that this provision has not been included in the life guaranty section of the bill.

INVESTMENT GUIDELINES

The bill does not specify any guidelines regarding the investment of funds which would accumulate to a sizeable sum over time. Currently, any excess funds are invested in very short term securities such as bank certificates of deposit.

While it would still be appropriate to keep any investments relatively short term, it may be appropriate to invest for a time period up to three years to maximize yields. As to the type of investments, the bill could reference AS 21.21 which codifies the authorized investments for insurance companies. Certain exclusions would be needed such as real estate and, perhaps, equity investments.

SUBROGATION RIGHTS

In order to prevent an insolvent insurer from impairing the Guaranty Association's subrogation rights (as provided under AS 21.80.90) by continuing to pay uncovered claims after covered claims have been assumed by the Association, I propose the following amendment:

"The Guaranty Association's obligation to pay the covered claims of an insolvent insurer shall begin when the insurer is declared insolvent by a court of competent jurisdiction and ceases to pay all claims pursuant to preparing and adopting a plan of liquidation or having entered into a plan of liquidation."

OTHER ITEMS

Alaska National has no objection to extending Guaranty Association protection to marine insurance. The original draft bill excluded vessels over 60 gross tons. The bill as introduced dropped that language and now includes vessels at least 100 feet long. In conversations with Director Roller I had thought the intent was to protect the small boat owner. This latest change seems to do the reverse. Actually, it is not clear to me why any size limitation should exist.

The primary problem here is jurisdiction and assessment. For example, if a Seattle-based insured employs Seattle and Alaskan employees to operate in Alaskan waters, would Alaska have jurisdiction to assess and on what basis. Perhaps coverage should be limited to those instances where it can be demonstrated that the Alaskan admitted insurance carrier actually reported premiums and paid premium taxes to the State of Alaska. Otherwise, coverage would be denied.

We have no objection to assessments on a quarterly basis, but the bill should also provide that the Guaranty Association shall obtain annual premium data from all admitted companies and reconcile the annual numbers to the four quarterly reports submitted by the companies for that year.

We agree that the amount charged for the assessment should be shown as a special item separate from the premium. As such, it would appear to be unnecessary to include any provision in the premium rates for this item (Section 21.80.140). We do believe, however, that the assessment charge should not be subject to any premium tax.

The bill indicates a due date for payment of 30 days after the end of the quarter for the property/casualty fund. However, payment for the life fund assessments has a due date of 60 days after the end of the quarter. I suggest that the payment terms be the same for both funds and that 60 days is the more reasonable choice.

Thank you for the opportunity to testify here today. I will be happy to try to answer any questions.

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April 14, 1989

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ADMITTED IN WASHINGTON, D.C.
AND ALASKA

ALL OTHERS ADMITTED
IN ALASKA

The Honorable Dick Eliason
Chairman
Senate Labor & Commerce Committee
Pouch V
Juneau, AK 99811

RE: Senate Bill 259 - Insurance Guaranty Fund

Dear Senator Eliason:

The American Insurance Association (AIA), a trade organization representing over 190 property/casualty insurance companies, supports improvements in the State Guaranty Fund to enable it to respond to new challenges. The Division of Insurance regulates for solvency utilizing several tiers of regulation, including rate regulation, investment regulation, accounting and financial reporting requirements, and periodic examination of insurance companies. In the event that an insurer experiences extreme difficulties, a regulator may become involved with or assume control of the management of the company. In the unlikely event that these measures fail to protect against liquidation, the ultimate protection for the consumer is the State Guaranty Fund which operates in all 50 states, Puerto Rico, and the District of Columbia. Whether the reason for an insurer's failure is mismanagement, fraud, or business conditions, the insurance industry has accepted an obligation to protect the general insurance-buying public from the ravages of an insurer liquidation.

Senate Bill 259 proposes the creation of the Alaska Life and Disability Insurance Guaranty Association. The bill also expands the current Alaska Insurance Guaranty Association to include a marine insurance account. The AIA is primarily concerned with the provisions of the bill which change the AIG Fund from a post-assessment plan to a pre-insolvency plan (Section 6, page 25,

April 14, 1989

subparagraph 3). The bill proposes an initial 4% assessment based on premiums. The upper limit of the AIG Fund could be up to approximately \$600 million.

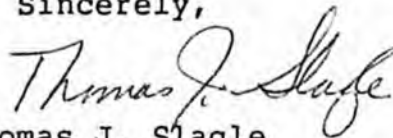
The AIA is opposed to the prefunded plan. The assessments would be passed directly on to the consuming public. New York is the only other state with a pre-assessment plan and it requires a \$150 million minimum assessment. The New York Legislature "borrowed" \$87 million from the pre-assessed guaranty fund. The New York Department of Insurance, in turn, reassessed the insurance carriers for the \$87 million deficit which, in turn, means an assessment back to the policyholder. The raid on the funds in New York and the additional reassessment have resulted in litigation which is still ongoing.

The post-assessment process, in response to an insolvency, has worked in Alaska --- as well as our sister states. The Alaska Insurance Guaranty Association has adequately responded to claims left unpaid as a result of an insolvency covered by the AIGA. In New York, the only state which requires a pre-assessment, the mechanism to protect the fund for insolvencies has not worked.

The American Insurance Association urges the Senate Labor & Commerce Committee to thoroughly consider the ramifications of a pre-assessment of the Guaranty Fund and the subsequent increased cost to the consuming public. We recommend deletion of any prefunding requirements in SB 259.

On behalf of the American Insurance Association, I would be pleased to supply any additional background information, in particular on the consequences of a pre-assessment Guaranty Fund.

Sincerely,



Thomas J. Slagle
Alaska Counsel

American Insurance Association

cc: Senate Labor & Commerce Committee Members

J. P. TANGEN

ATTORNEY AT LAW

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April 11, 1989

HAND DELIVERED

The Honorable Dick Eliason, Chairman
Senate Labor and Commerce Committee
Alaska State Legislature
P. O. Box D
Juneau, AK 99822

Re: SB 259 "An Act Relating to Insurance Guaranty
Funds"

Dear Senator Eliason:

On February 16, 1989, on behalf of the American Council of Life Insurance (ACLI), I commented extensively upon the draft version of SB 259 in a letter to the Director of the Division of Insurance. A copy of that letter is enclosed for your consideration.

SB 259, as introduced, contains all of the points on which we commented, unchanged.

ACLI is sincerely concerned about a prefunded guaranty fund which does not contain a tax offset and respectfully requests that you address this issue in your deliberations.

I shall be prepared to present these concerns in person at the scheduled hearing Friday, April 14; however, I wanted to afford your committee the opportunity to review these points in advance.

We appreciate your attention to the problems which we associate with this bill.

Sincerely,


J. P. Tangen

Enclosure

c:: ACLI

0411acli

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February 16, 1989

Paul Roller, Director
Division of Insurance
Department of Commerce
and Economic Development
State of Alaska
P. O. Box D
Juneau, Alaska 99811

Re: Proposed Life and Disability Insurance Guaranty
Association

Dear Paul:

The American Council of Life Insurance (ACLI), a national trade association representing 648 life insurance companies (354 of whom presently do business in Alaska), has reviewed the Division's draft bill to establish the Alaska Life and Disability Insurance Guaranty Association. As presently written, we think this proposal poses significant problems for us.

The Division's bill is based upon the latest version of the NAIC Model Act, but simplifies and omits much of the original Model language. We would prefer that the state's bill more closely track the language contained in the NAIC Model.

ACLI's primary opposition to this bill stems from the fact that it provides no premium tax offset for assessments paid by member insurers to the guaranty association. We would much rather see no guaranty fund bill at all than see a bill with no tax offset.

Life insurance and many health insurance policies differ from property-casualty insurance in that the former are issued for substantially long periods of time with the premiums guaranteed and not subject to change. Property and casualty insurance policies are yearly renewable term policies and any assessment can be readily passed on to policyholders in the form of an increase in premiums. Life insurance policies, on the other hand, are lifetime policies issued at fixed premium rates so assessment against a life insurer cannot be passed on to its policyholders. Thus, life and health insurance companies differ from casualty insurance companies by being unable to recover the

costs of an assessment by adjusting the rates for their outstanding block of business. Accordingly, if a life insurance guaranty fund bill is enacted without a tax offset, rather than equal treatment, a gross inequity is created between life insurers and property and casualty insurers.

In addition to the distinction with respect to premiums, this legislation imposes requirements not contained in the Guaranty Law now applicable to property and casualty insurers. With respect to life and health insolvencies, a Guaranty Association is obligated to not only pay outstanding claims, but also to continue in force the policies of existing policyholders and pay future claims. Moreover, if the insolvent insurer had a substantial block of business for which the premiums proved inadequate to cover benefits and expenses, additional losses will continue to accrue over the lifetime of the business. Thus, the potential liability is substantially greater than in the case of property and casualty insurers, since under the latter the liability of the Guaranty Association is limited to claims incurred before the insolvencies.

While it is true that the premium rate on future life insurance policyholders could be increased, assuming that reasonably accurate estimates could be made as to future insolvencies and consequent assessments, such future policyholders would also have to bear the cost of present insolvencies whereas present policyholders would not. On participating policies, the dividend could be reduced to reflect the increased expense, however, nonparticipating policyholders would not be so affected. In calculating premiums conservative assumptions can only, at best, provide for what is either known or can reasonably be anticipated on the basis of experience. Therefore, the adoption of insolvency guaranty legislation without a premium tax offset exposes the insurers that are underwriting the insolvent insurer's policies, to a potential future liability which is unknown and immeasurable.

One of the difficulties in measuring the potential cost to life insurers is the absence of figures on previous life company insolvencies that are usable to project future losses. The statistical information that is available is not particularly meaningful unless related to the amount which would be assessed in various states in order to carry out the obligation of the respective insolvency guaranty associations. More specifically, an initial loss to policyholders in the case of one insolvency may require no assessment if the business is assumed by an insurer in sound financial condition and full continuity of coverage, or with only a temporary lien or moratorium on policy cash values.

The concept of "policy value" further distinguishes life insurance from other lines of insurance and facilitates the disposition of the business when a life insurer becomes insolvent. In these situations, the assuming insurer acquires not only the remaining assets, if any, but may also require an agency force and the good will attached thereto for having acted to preserve coverage, which in many instances could not have been replaced due to poor health. For these and other reasons, the impairment of a life insurer has traditionally been handled by state insurance departments with no loss to policyholders and beneficiaries other than liens on cash value, even through the depression years 1930-1939. Lastly, and most importantly, the public interest would be served by allowing otherwise uninsurable individuals to maintain their existing coverage in the event of an insurance company insolvency.

The Life and Health Insurance Guaranty Association Model Act, as adopted by the NAIC, allows as an option a premium tax offset. Thirty-three states have enacted legislation permitting the offset. They did so because they recognized that the problem of insurance company insolvencies is a social problem and not simply an industry problem, the remedial cost of which should be borne by the citizens as a whole. They also realize that it is patently unfair to require the solvent, well-managed life insurance companies to bear the entire financial burden. In the infrequent case of a life insurance company insolvency, the life insurance industry under a guaranty association law usually picks up the entire tab for the loss in the year in which it occurs so that in most cases policyholders are paid immediately. (The exception being when the insolvency is very large and runs up against a statutory cap.) In effect, the life insurance industry is "loaning" the state the money to fulfill its social obligation and the state allows the "lending insurance companies" to be repaid this advance over a five-year period via a premium tax offset.

When an insolvency occurs and solvent companies are assessed as a result, there is logic in the state accepting this responsibility. In the case of property and casualty insurance this burden is passed on to all citizens of the state who are policyholders through increased premium rates. Since life insurers are unable to do this, the burden can only be shared by the state through the form of a premium tax offset. Thus, the burden is not shifted completely to solvent companies and their future policyholders. The responsibility of the state remains an important element of regulation and is primary.

Giving life and health insurance companies the right to offset assessments against future taxes provides a practical and equitable alternative to the right given the property and casualty insurers to increase premiums on their entire block of business. Such an approach recognizes the fundamental difference between the two types of insurance. It would prevent the pyramiding effects that might occur in times of economic stress when repeated assessments could force otherwise sound companies into financial hardship. The actual cost in revenue to a particular state, though difficult to measure, would almost certainly be minimal when measured against total tax revenue from life insurance companies.

The tax offset provision requires the solvent insurers to stand in the shoes of the state, and rather than the state doing so, the solvent insurers advance the necessary funds to carry out the various duties of the guaranty association, for which certificates of assessment are issued. This permits such insurers to offset a limited percentage of this amount assessed against future taxes over a period of not less than five years.

In the event that the ultimate value of certificates exceeds the tax credit received, a distinct possibility based on the history of life company impairments the state would of course be the recipient of such funds. Even when the life and health insurance guarantee bill contains a full tax offset (100% over 5 years or stated a different way, 20% per year), the net effect is to allow the insurance companies an offset of only 75% of their assessment because the tax offset does not take into consideration the time loss of money. If an insurance company had not been assessed, those funds would have gone into the company surplus account and been available for investments which earn interest. Therefore, with the loss of interest these funds could have earned, an insurance company will recoup only 75% of its assessment even with the full premium tax offset.

We also oppose this bill because it provides for a pre-funded guaranty association; i.e., assessments are to be levied against member insurers prior to the existence of any insolvencies. The NAIC Model Act is a post-assessment act; i.e., no assessments are levied until an insurer has been declared insolvent and the guaranty association has been activated.

There has historically been minority support for pre-assessment funds, both on the property/casualty and life/health sides of the business, among some regulators and even some companies. The theory behind this support, from a regulator's viewpoint, is that the lag time between an insurer insolvency and payment of policyholder claims will be severely diminished if a

fund already exists. With a post-assessment fund, assessments are due (under the NAIC Model) not less than 30 days after prior written notice from the Association to member insurers and begin to accrue interest on and after the due date until paid. The few companies that support pre-assessment funds contend that pre-funding enables them to plan for their guaranty fund liabilities more easily, since, as in the Alaska proposal, payments would be due at regular intervals and the fund would be maintained at a set amount (\$50,000,000 in the Alaska proposal).

The vast majority of companies oppose pre-funded guaranty associations for two main reasons - (1) the existence of readily-available cash to take care of troubled companies creates a disincentive for regulators, both to maintain and enforce stringent solvency standards for companies, and to rehabilitate a company rather than seek a declaration of insolvency; and (2) the existence of a large pool of money lying idle provides an overwhelming temptation for legislators to appropriate the funds for other purposes when the state is in financial need. New York is the only state that has a prefunded guaranty association and its legislators have dipped into the fund on more than one occasion. As a result, the insurance industry has filed a lawsuit against the state for the purpose of requiring them to replace the money.

We also oppose the inclusion of Blues plans in "our" guaranty fund (see the definition of member insurer). As you know, Blues plans are not subject to the same regulatory standards as commercial health insurers. They are, theoretically, operated on a non-profit basis and pick up through their open enrollment periods, many high-risk individuals. In exchange for this "service," they often pay no premium tax at all, or are taxed at lower rates than commercial carriers, and they are given hospital discounts. Because of these benefits, which enable Blues to offer lower premiums and/or expanded coverage, commercial carriers often become noncompetitive. It is not at all unusual for the Blues in a particular state to have 50-65% of the health insurance market. It is also not at all unusual for Blues plans to suffer severe financial problems. Understandably, commercial carriers do not want to pick up the pieces when a Blues plan, with which they could not compete in the marketplace, goes under.

Finally, we oppose the inclusion of unallocated funding obligations in the draft legislation and the NAIC draft. We believe that it is not necessary to establish statutory protection for investors in this type of investment primarily because such investors are universally sophisticated entities

Paul Roller, Director
February 16, 1989
Page 6

such as pension plans. As such, they are well-equipped to make financial judgments about the soundness of the companies in which they are investing.

Certainly, if there does have to be an unallocated annuity account set up as part of the guarantee association, \$5,000,000 is much too high a threshold. We recommend either elimination of this account, or settling it at \$1,000,000.

I hope this information is helpful. Please let me know if you have any questions.

Very truly yours,

J. P. Tangen

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John L. George And Associates
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(907) 789-0172

April 13, 1989

The Honorable Dick Ellason
Chairman
Senate Labor And Commerce Committee
Pouch V
Juneau, Alaska 99811

RE: SB 259 - Insurance Guaranty Funds

Dear Senator Ellason:

The National Association of Independent Insurers, a property and casualty insurer trade association, supports the consumer protection provided by the current Alaska Insurance Guaranty Association Act. Under the act Alaskans have been adequately protected from loss due to admitted insurer insolvency. NAII member companies have contributed funds to the association as needed to cover competing company insolvency.

The NAII is disturbed by certain provisions of SB 259 which call for establishment of an association account for marine insurance and which call for the pre-assessment of insurers in an amount of 4% of written premiums to cover potential insolvency.

Despite the appearance of providing consumer protection, SB 259 actually will result in an automatic premium increase for all covered policyholders as insurers add on the cost of the pre-assessment to each policy. The policyholders pay for the protection provided by the association. In the case of SB 259 the added cost will be incurred whether or not funds are needed to cover insolvency. The high property and casualty coverage fund cap provided by the bill assures that policyholders will be impacted for at least the next 48 years with the added cost.

For purchasers of marine insurance the passage of SB-259 may well be a disaster. In no other jurisdiction in the United States is marine insurance regulated, much less covered by a guaranty act. As a virtually unregulated line of insurance, a very limited marine market has been available in Alaska. In addition to an immediate 4% rate increase forced on marine policyholders the bill may cause admitted insurers to cease writing marine insurance in the state. Insurers of pleasure boats will not be interested in covering losses of insolvent fishing vessel insurers, nor will the

The Honorable Dick Ellason -2-

April 12, 1989

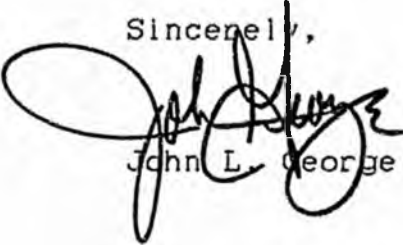
policyholders be pleased with the rate increase to pre-fund the guaranty.

SB 259 does provide substantial increased protection for life and health company insolvency. Similar problems involving pre-funding these funds exist. In addition there are many problems with the bill which are not readily apparent.

The NAII urges the Senate Labor and Commerce Committee to fully explore all of the ramifications of this bill and to not take any action until all of the facts are fully considered.

As the Alaskan representative of NAII, I stand ready to assist the committee in every way possible. Please let me know if I can be of assistance.

Sincerely,



John L. George