

S B

2 5 1

SB 251: "An Act relating to regulation of securities held by insurers; and providing for an effective date."

The Alaska Legislature passed the limits on investments contained in AS 21.21 for the purpose of promoting the safety and soundness of the Alaskan domestic insurance industry. Various pieces of AS 21.21 prevent an Alaskan insurer from concentrating its investments in one particular type of investment. Concentration in particular investment vehicles is unsafe. If that vehicle suffers problems, an insurer may become insolvent. As an example, the reader is referred to Executive Life Insurance Company's, domiciled in California, concentration of investment in junk bonds.

A number of years ago, the federal government, in an effort to provide a larger market for its agencies' mortgage backed securities, passed legislation calling for a preemption at the state level of all legislation which was designed to limit the level for mortgage backed securities to which all state regulated financial entities were allowed to invest. This federal legislation provided a certain number of years for the states individually to opt out of the loosening of mortgage backed security investment restrictions. SB 251 is Alaska's legislation designed to opt out of this federal preemption.

The reader should note that this federal legislation was passed several years prior to the current general collapse of real estate values that has occurred in the lower contiguous forty-eight states.

The Division of Insurance supports the passage of SB 251. Alaska does not wish to have its standards lowered by the action of others.



Glenn A. Olds, Commissioner

Date: 4-16-91

FISCAL NOTE

STATE OF ALASKA
1991 LEGISLATIVE SESSION

BILL NO. SB 251

Revision Date: 4/12/91 Department Affected: Commerce & Economic Dev.
 Title: Regulation of securities held BRU: Insurance
by insurers Component: Operations
 Sponsor: Senate Labor & Commerce
 Requestor: Senate Labor & Commerce COMPONENT SERIAL NO.

0	2	5	4
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
----------------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
----------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

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

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: _____

ANALYSIS: (Attach a separate page if necessary.)
 No financial impact on the division.

Prepared By Joan Brown, Administrative Officer Phone: 465-2597
 Division: Insurance Date: 4-16-91
 Approved by Commissioner: Glenn A. Olds Asst Comm.
 Agency: Department of Commerce & Economic Development Date: 4-16-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

MEMORANDUM

State of Alaska

TO: Senator Drue Pearce
Chairman, Labor & Commerce Committee
Alaska State Senate


DATE: May 15, 1991

FILE NO.:

THRU:

TELEPHONE NO.: (907) 465-2500

SUBJECT: HCS SB 251(L&C)

FROM: Larry Galloway 
Assistant Commissioner
Department of Commerce
and Economic Development

SB 251 passed the Senate with your much appreciated floor management. The Bill has been modified in the House. This bill is currently in House Rules and calendaring is expected shortly. The changes made do not impair the Bill which is urgently needed this session. It accomplishes the same thing as the Senate version. We would very much appreciate your assistance in seeking Senate concurrence with the House amendments.

The principal difference between the two versions is that the House version is more specific concerning the Alaska statutes applicable to the securities to be regulated. Incidentally, our concerns on the federal preemption of regulation of this area are not unwarranted. There has been a recent insolvency directly related to this type of investment. Its a good example of what can happen when too many of the insurer's "eggs are in one basket."

Should you have any questions, Don Koch (465-2577) in the Division of Insurance is the person handling this Bill in this Department. Thank you for your help on this Bill.

*Keep for
concurrence.*

Utah insurer's failure triggered by GNMA's

By DOUGLAS McLEOD

PROVO, Utah—The president of Southern American Insurance Co last year considered replacing some of the insurer's assets with Government National Mortgage Assn. securities at the same time a Utah insurer he founded was collapsing because its GNMA investments could not be verified.

Commercial Surety & Insurance Corp. was ordered liquidated Jan. 7 by a Utah judge after state insurance regulators were unable to confirm that the insurer actually held \$1.8 million in GNMA's that formed the bulk of its assets (II, Feb. 4).

Victor Borcherts, Southern American's president, had proposed a similar infusion of GNMA's for his company but dropped the idea after the Utah Insurance Department warned him about the difficulty of confirming ownership of the securities.

GNMA, an agency of the U.S. Department of Housing and Urban Development, guarantees principal and interest payments to holders of mortgage-backed securities.

The securities are often held in "book entry" form, meaning that no actual certificates change hands. This makes it difficult to confirm ownership, since the financial institutions that keep records of securities transfers are often unwilling to disclose investors' holdings to state regulators.

The GNMA's were offered to both Commercial Surety and Southern American by Robert H. Wyshak &

Associates Ltd.

Commercial Surety was formed by Mr. Borcherts and Robert V. Murton in November 1987, shortly before Mr. Borcherts agreed to buy Southern American from The Crump Cos. Inc. (see story, page 1). However, Commercial Surety was not licensed until 1989.

Mr. Borcherts, originally Commercial Surety's chairman, had planned to assign ownership of Southern American to Commercial Surety, merging the two companies or making Southern American a Commercial Surety subsidiary, documents filed with the Tennessee Insurance Department show.

The merger never took place, though. Mr. Borcherts resigned from Commercial Surety in early 1989 and operated Southern American as an independent company.

Mr. Murton—who also was a Southern American senior vp until his resignation in 1989—continued to operate Commercial Surety with various titles, including president and vp. Mr. Murton could not be reached to comment on Commercial Surety's operations.

Commercial Surety was licensed in Utah in August 1989. Its stock was issued to Mr. Murton in consideration for a bond portfolio that capitalized the company, Utah department documents say.

A dispute later arose over ownership of the bond portfolio, though, and Mr. Murton agreed to recapitalize Commercial Surety with new

assets, the documents say.

Mr. Murton and Commercial Surety Vp Mark C. Burdge then formed a new company, Burdge Murton Capital Corp., to acquire assets to contribute to the insurer.

The new assets Burdge Murton presented for the Utah department's approval in August 1989 were \$4.0 million in "negotiable registered trust receipts" evidencing ownership of a pool of GNMA securities, according to Utah department documents.

The trust receipts had been issued to Burdge Murton by Wyshak & Associates, which acted as custodian for the GNMA's. Mr. Wyshak told Insurance Department officials the securities were "readily available and accessible" to Commercial Surety, and regulators approved the recapitalization on Aug. 31, documents show.

When the Utah department later tried to confirm that Commercial Surety actually owned the instruments, it hit a dead end.

Mr. Wyshak, the department found, did not have the GNMA's in his possession. Instead, he provided regulators with a copy of an account statement showing that Dallas-based Fidelity Asset Management Ltd. unrelated to Boston-based Fidelity Investments—held 100% of the \$1.8 million GNMA pool.

Fidelity Asset Management purportedly held the securities on behalf of the Gwendolyn Demand Trust, which maintained an account at another institution, Los Angeles-based Interbank Financial Ltd., Insurance Department documents say.

Interbank also did not have possession of the GNMA's, and Utah regulators' calls to Fidelity were not returned, documents say.

Gwendolyn Demand is the mother-in-law of George Eggleston, an associate of Mr. Wyshak's who also was in contact with the Utah department on Commercial Surety's GNMA holdings, Mr. Wyshak and others say.

Mr. Eggleston currently is on probation after pleading guilty in U.S. District Court in Los Angeles in 1982 to federal mail fraud charges related to a tax shelter scheme.

Mr. Eggleston served jail time after the guilty plea but was released in 1988 and remains on probation until 1993, said David Sano, Mr. Eggleston's probation officer with the U.S. Probation Office in Santa Ana, Calif.

Attempting to trace ownership of the GNMA's by the pool number on the trust receipts, Utah regulators found that New York-based Participants Trust Corp. actually held the purported Commercial Surety GNMA's for the benefit of six financial institutions.

Participants Trust would not identify the six institutions, but it told the Utah department that the largest single holding in the pool was about \$1.2 million and that it would be unusual for one institution to own 100% of any pool.

On Oct. 31, the Utah department demanded that Commercial Surety deliver the GNMA's or an equal amount of cash to a federally insured bank by Nov. 2. The insurer failed to comply with this demand, though, prompting regulators to issue a cease-and-desist order.

Several days later, Mr. Wyshak and Mr. Eggleston also failed to produce the GNMA's or substitute securities as they had promised regulators they would, Insurance Department documents say.

Mr. Wyshak referred questions on this story to Mr. Eggleston, who could not be reached.

Commercial Surety was placed under state supervision Nov. 7, and a Utah judge granted the Utah department's petition to liquidate the insurer two months later.

Commercial Surety wrote about \$860,000 in surety bond premiums and related fees in 1990. The company was found insolvent by about

\$1.5 million as of Oct. 31, 1990.

Before Commercial Surety ran into trouble with its GNMA investments, Mr. Borcherts had negotiated a similar GNMA infusion with Mr. Wyshak to resolve Utah regulators' objections to a Southern American unit's heavy investment in mortgage loans.

Southern American withdrew the GNMA proposal, though, after the Utah department warned Mr. Borcherts last October—amid the search for Commercial Surety's purported GNMA's—that the securities would not be approved without confirmation of their ownership and value, said Billy W. Lovelady, the department's chief examiner.

Mr. Borcherts confirmed that he withdrew the GNMA proposal, but he said he was already having doubts about the deal before being warned by Utah regulators.

"We wasted two damn months on that," he said of the proposal. ■

1075V

DRUE -

RE: SB 251 CHANGES

THE HOUSE CHANGE MAKES DIRECT REFERENCE TO THE STATUTES GOVERNING
INVESTMENT BY INSURANCE COMPANIES.

NO SUBSTANTIVE CHANGES IN THE BILL.

Alaska State Legislature

HOUSE OF REPRESENTATIVES

Office of the Chief Clerk

MESSAGE TO THE SENATE

May 18, 1991

Mr. President:

The House has passed SENATE BILL NO. 251 with the following amendment:

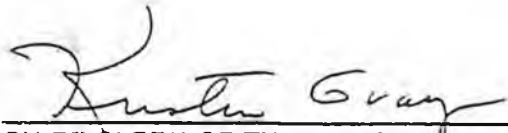
HOUSE CS FOR SENATE BILL NO. 251 (L&C)

"An Act relating to regulation of securities held by insurers;
and providing for an effective date."

and it is transmitted for consideration.

ØFN

ok to concur
Pearce


CHIEF CLERK OF THE HOUSE

Alaska State Legislature

Senator Drue Pearce, Chair
Senator Virginia Collins, Vice Chair
Senator Dick Eliason
Senator Rick Halford
Senator Jay Kerttula



SENATE LABOR AND COMMERCE COMMITTEE

WHILE IN JUNEAU
P.O. BOX V
JUNEAU, ALASKA 99811
(907) 465-3844

3111 C STREET, SUITE 150
ANCHORAGE, ALASKA 99504
(907) 561-2018

TO: ALL SENATORS

FROM: Senator Drue Pearce, Chair
Labor & Commerce Committee *Drue Pearce*

DATE: April 27, 1991

RE: SB 251 - "An Act relating to regulation of securities held by insurers; and providing for an effective date."

AS 21.21 was amended last session to set limits on investments by the Alaskan domestic insurance industry. The intent of that legislation was to prevent an Alaskan insurer from concentrating its investments in a single type of investment. A diverse investment policy helps insure total solvency should a single investment type fail.

In order to increase the market for federal agency mortgage backed securities, congress passed legislation a few years ago that would allow an insurer to concentrate their investments in federal agency backed mortgages. The states were provided a window period to adopt statute that allowed the state's investment policies to override this federal policy.

Given the recent collapse of real estate values in the Lower 48, Alaska's diverse investment policy is preferential to a policy that would allow an insurer to concentrate in a single type of investment.

SB 251 allows the state's diverse investment policy to prevail.

I urge your support.

SENATE COMMITTEE REPORT
FIRST COMMITTEE OF REFERENCE

DATE: 4/12/91

FURTHER:

Date of 5-Day Notice: 4-11-91
(in accordance with Uniform Rule 23)

DATE TURNED
INTO OFFICE: _____

L&C Committee considered SB 251

Regulation of securities held by insurers; efd.

and recommended:

- replace with _____ CS _____ same title
- attached amendment(s) new title
- _____ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to _____

ATTACHES NEW FISCAL NOTE(S):

Department(s)/Date:

Department(s)/Date:

fiscal note(s) _____

zero fiscal note(s) _____
COMMERCE / 4-16-91

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

[Handwritten signatures]

OTHER RECOMMENDATIONS:

c

[Handwritten signature]
Chair: Signature and Recommendation

April 2, 1991

Drue -

Re: Junk Bond Investments

Dave Walsh brought this over this morning. He says a loop hole in state law may allow insurance companies to place over 5% of their investments in "junk bonds". This would close that loop hole.

The state has known about this potential for the last seven years and has taken no action. This is the last year we can take action. Dave only became aware of the situation in the last couple of weeks.

Dave knows of no one who opposes this action.

Should I have it drafted?

4/2

T Rod

FREE LIFE
JULY 1991

WALSH

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act for the purpose of preventing federal preemption of state limitations on investments by insurance companies"

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

* Section 1. The federal preemption provided in the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. Section 77r-1 does not apply to prohibitions or limitations on the purchase of, holding of, or investment in securities by persons transacting the business of insurance in Alaska under AS 21.

* Section 2. This Act takes effect immediately.

GS 4.110: 98-440

PUBLIC LAW 98-440—OCT. 3, 1984

98 STAT. 1689

Public Law 98-440
98th Congress

An Act

To amend the Securities Exchange Act of 1934 with respect to the treatment of mortgage backed securities, to increase the authority of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, and for other purposes.

Oct. 3, 1984
[S. 2040]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Secondary Mortgage Market Enhancement Act of 1984".

Secondary
Mortgage
Market
Enhancement
Act of 1984
12 USC 1701
note.
Banks and
banking
Real property
Personal
property.

TITLE I—SECURITIES LAWS AMENDMENTS

MORTGAGE RELATED SECURITY

Sec. 101. Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended by adding the following new paragraph at the end thereof:

"(41) The term 'mortgage related security' means a security that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization, and either:

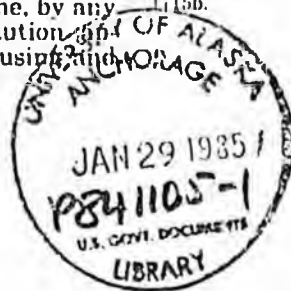
"(A) represents ownership of one or more promissory notes or certificates of interest or participation in such notes (including any rights designed to assure servicing of, or the receipt or timeliness of receipt by the holders of such notes, certificates, or participations of amounts payable under, such notes, certificates, or participations), which notes:

"(i) are directly secured by a first lien on a single parcel of real estate, including stock allocated to a dwelling unit in a residential cooperative housing corporation, upon which is located a dwelling or mixed residential and commercial structure, or on a residential manufactured home as defined in section 603(6) of the National Manufactured Housing Construction and Safety Standards Act of 1974, whether such manufactured home is considered real or personal property under the laws of the State in which it is to be located; and

12 USC 5102.

"(ii) were originated by a savings and loan association, savings bank, commercial bank, credit union, insurance company, or similar institution which is supervised and examined by a Federal or State authority, or by a mortgagee approved by the Secretary of Housing and Urban Development pursuant to sections 203 and 211 of the National Housing Act, or, where such notes involve a lien on the manufactured home, by any such institution or by any financial institution approved for insurance by the Secretary of Housing and

12 USC 1709, 1715b.



12 USC 1703.

Urban Development pursuant to section 2 of the National Housing Act; or

"(B) is secured by one or more promissory notes or certificates of interest or participations in such notes (with or without recourse to the issuer thereof) and, by its terms, provides for payments of principal in relation to payments, or reasonable projections of payments, on notes meeting the requirements of subparagraphs (A) (i) and (ii) or certificates of interest or participations in promissory notes meeting such requirements.

For the purpose of this paragraph, the term 'promissory note', when used in connection with a manufactured home, shall also include a loan, advance, or credit sale as evidence by a retail installment sales contract or other instrument."

APPLICABILITY OF MARGIN REQUIREMENTS

SEC. 102. Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended by adding the following new subsection at the end thereof:

Credit
Prohibition

"(g) Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no member of a national securities exchange or broker or dealer shall be deemed to have extended or maintained credit or arranged for the extension or maintenance of credit for the purpose of purchasing a security, within the meaning of this section, by reason of a bona fide agreement for delayed delivery of a mortgage related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation."

BORROWING IN THE COURSE OF BUSINESS

Prohibition.

SEC. 103. Section 8(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78h(a)) is amended by adding the following new sentence at the end thereof: "Subject to such rules and regulations as the Board of Governors of the Federal Reserve System may adopt in the public interest and for the protection of investors, no person shall be deemed to have borrowed within the ordinary course of business, within the meaning of this subsection, by reason of a bona fide agreement for delayed delivery of a mortgage related security against full payment of the purchase price thereof upon such delivery within one hundred and eighty days after the purchase, or within such shorter period as the Board of Governors of the Federal Reserve System may prescribe by rule or regulation."

MORTGAGE RELATED SECURITIES AS COLLATERAL

SEC. 104. Section 11(d)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78k(d)(1)) is amended by—

- (1) inserting "(i)" between "of" and "any"; and
- (2) inserting the following immediately after "thirty-five days after such purchase": "or (ii) any mortgage related security against full payment of the entire purchase price thereof upon such delivery within one hundred and eighty days after such

purchase, or within such shorter period as the Commission may prescribe by rule or regulation".

INVESTMENT BY DEPOSITORY INSTITUTIONS

SEC. 105. (a) Section 5(c)(1) of the Home Owner's Loan Act of 1933 (12 U.S.C. 1464(c)(1)) is amended by adding at the end thereof the following:

"(S) MORTGAGE BACKED SECURITIES.—Investments in securities that—

"(i) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

"(ii) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both."

Ante, p. 1689.

(b) Section 107 of the Federal Credit Union Act (12 U.S.C. 1757) is amended—

(1) by redesignating paragraph (15) as paragraph (16); and
(2) by inserting after paragraph (14) the following:

"(15) to invest in securities that—

"(A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or

"(B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Board may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both;"

(c) Section 5136 of the Revised Statutes (12 U.S.C. 24) is amended by adding at the end of paragraph Seventh the following: "The limitations and restrictions contained in this paragraph as to an association purchasing for its own account investment securities shall not apply to securities that (A) are offered and sold pursuant to section 4(5) of the Securities Act of 1933 (15 U.S.C. 77d(5)); or (B) are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), subject to such regulations as the Comptroller of the Currency may prescribe, including regulations prescribing minimum size of the issue (at the time of initial distribution) or minimum aggregate sales prices, or both."

PREEMPTION OF STATE LAW

SEC. 106. (a)(1) Any person, trust, corporation, partnership, association, business trust, or business entity created pursuant to or existing under the laws of the United States or any State shall be authorized to purchase, hold, and invest in securities that are—

15 USC 77r-1.

(A) offered and sold pursuant to section 4(5) of the Securities Act of 1933,

(B) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

to the same extent that such person, trust, corporation, partnership, association, business trust, or business entity is authorized under any applicable law to purchase, hold or invest in obligations issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

~~(2) Where State law limits the purchaser~~ holding, or investment in obligations issued by the United States by such a person, trust, corporation, partnership, association, business trust, or business entity, such securities that are—

15 USC 77d. (A) offered and sold pursuant to section 4(5) of the Securities Act of 1933,

Ante. p. 1689. (B) mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))), or

(C) securities issued or guaranteed by the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association,

shall be considered to be obligations issued by the United States for purposes of the limitation.

Prohibitions. (b) The provisions of subsection (a) shall not apply with respect to a particular person, trust, corporation, partnership, association, business trust, or business entity or class thereof in any State that, prior to the expiration of seven years after the date of the enactment of this Act, enacts a statute that specifically refers to this section and either prohibits or provides for a more limited authority to purchase, hold, or invest in such securities by any person, trust, corporation, partnership, association, business trust, or business entity or class thereof than is provided in subsection (a). The enactment by any State of any statute of the type described in the preceding sentence shall not affect the validity of any contractual commitment to purchase, hold, or invest that was made prior thereto and shall not require the sale or other disposition of any securities acquired prior thereto.

Exemption. (c) Any securities that are offered and sold pursuant to section 4(5) of the Securities Act of 1933 or that are mortgage related securities (as that term is defined in section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41))) shall be exempt from any law of any State with respect to or requiring registration or qualification of securities or real estate to the same extent as any obligation issued by or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. ~~Any State may, prior to the expiration of seven years after the date of the enactment of this Act, enact a statute that specifically refers to this section and requires registration or qualification of any such security on terms that differ from those applicable to any obligation issued by the United States.~~

Statute enactment period.

TITLE II—SECONDARY MORTGAGE MARKET PROGRAMS

LIMITATIONS ON PARTICIPATION AGREEMENTS

12 USC 1717. SEC. 201. (a) The sixth sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended to read as follows: "The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages

that are purchased by it; in any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the corporation."

(b) The fifth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended to read as follows: "The Corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages that are purchased by it; in any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of the mortgage and not merely with respect to the interest purchased by the Corporation."

12 USC 1451

AUTHORITY OF FEDERAL HOME LOAN MORTGAGE CORPORATION TO PURCHASE LOANS ON MANUFACTURED HOMES

SEC. 202. (a) Section 302(d) of the Federal Home Loan Mortgage Corporation Act is amended by inserting after "located" the following: "or a manufactured home that is personal property under the laws of the State in which the manufactured home is located".

12 USC 1451.

(b) Section 302(h) of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof the following new sentence: "The term 'residential mortgage' also includes a loan or advance of credit secured by a mortgage or other lien on a manufactured home that is the principal residence of the borrower, without regard to whether the security property is real, personal, or mixed."

(c) Section 302 of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof the following new subsection:

"(1) The term 'mortgage insurance program' includes, in the case of a residential mortgage secured by a manufactured home, any manufactured home lending program under title I of the National Housing Act."

12 USC 1702.

PURCHASE OF SECOND MORTGAGES

SEC. 203. (a) Section 302(b) of the Federal National Mortgage Association Charter Act is amended by adding at the end thereof the following new paragraph:

Secured loans.
12 USC 1717.

"(5)(A) The corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) until October 1, 1987, conventional mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) until October 1, 1985, conventional mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the corporation, pursuant to paragraphs (1) through (4), shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

Expiration dates.

"(B) The corporation shall establish limitations governing the maximum original principal obligation of conventional mortgages

Principal limitations.

described in subparagraph (A). In any case in which the corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage described in subparagraph (A) and not merely with respect to the interest purchased by the corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

Prohibitions

"(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the corporation in the event that the mortgage is in default. The corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (ii) of such sentence."

12 USC 1451

(b)(1) Section 302(h) of the Federal Home Loan Mortgage Corporation Act is amended—

(A) in the first sentence, by striking out "first"; and

(B) by striking out "The maximum principal obligation" and all that follows through "associations." and inserting in lieu thereof the following: "Such term shall also include other secured loans that are secured by a subordinate lien against a property as to which the Corporation may purchase a residential mortgage as defined under the first sentence of this subsection."

Expiration dates.

12 USC 1451.

(2) Section 305(a) of such Act is amended by adding at the end thereof the following new paragraph:

"(4)(A) The Corporation is authorized to purchase, service, sell, lend on the security of, and otherwise deal in (i) until October 1, 1987, residential mortgages that are secured by a subordinate lien against a one- to four-family residence that is the principal residence of the mortgagor; and (ii) until October 1, 1985, residential mortgages that are secured by a subordinate lien against a property comprising five or more family dwelling units. If the Corporation shall have purchased, serviced, sold, or otherwise dealt with any other outstanding mortgage secured by the same residence, the aggregate original amount of such other mortgage and the mortgage authorized to be purchased, serviced, sold, or otherwise dealt with under this paragraph shall not exceed the applicable limitation determined under paragraph (2).

Principal limitations.

"(B) The Corporation shall establish limitations governing the maximum original principal obligation of such mortgages. In any case in which the Corporation purchases a participation interest in such a mortgage, the limitation shall be calculated with respect to the total original principal obligation of such mortgage secured by a subordinate lien and not merely with respect to the interest pur-

chased by the Corporation. Such limitations shall not exceed (i) with respect to mortgages described in subparagraph (A)(i), 50 per centum of the single-family residence mortgage limitation determined under paragraph (2); and (ii) with respect to mortgages described in subparagraph (A)(ii), the applicable limitation determined under paragraph (2).

"(C) No subordinate mortgage against a one- to four-family residence shall be purchased by the Corporation if the total outstanding indebtedness secured by the property as a result of such mortgage exceeds 80 per centum of the value of such property unless (i) that portion of such total outstanding indebtedness that exceeds such 80 per centum is guaranteed or insured by a qualified insurer as determined by the Corporation; (ii) the seller retains a participation of not less than 10 per centum in the mortgage; or (iii) for such period and under such circumstances as the Corporation may require, the seller agrees to repurchase or replace the mortgage upon demand of the Corporation in the event that the mortgage is in default. The Corporation shall not issue a commitment to purchase a subordinate mortgage prior to the date the mortgage is originated, if such mortgage is eligible for purchase under the preceding sentence only by reason of compliance with the requirements of clause (iii) of such sentence."

Prohibitions.

AUTHORITY OF FEDERAL HOME LOAN MORTGAGE CORPORATION TO PURCHASE STATE AGENCY INSURED MORTGAGE LOANS

Sec. 204. Section 302(i) of the Federal Home Loan Mortgage Corporation Act is amended by striking out "a State or any agency or instrumentality of either" and inserting in lieu thereof "any of its agencies or instrumentalities".

12 USC 1451.

MULTIFAMILY MORTGAGE LOAN-TO-VALUE RATIO

Sec. 205. (a) The second sentence of section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended by inserting after "mortgage" the first place it appears the following: "secured by a property comprising one- to four-family dwelling units".

12 USC 1717.

(b) The first sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended by inserting after "mortgages" the first place it appears the following: "secured by a property comprising one- to four-family dwelling units".

12 USC 1454.

LIMITATIONS ON PURCHASE OF CONVENTIONAL MORTGAGES ON MULTIFAMILY PROPERTIES

Sec. 206. (a) Section 302(b)(2) of the Federal National Mortgage Association Charter Act is amended by striking out the penultimate sentence and inserting in lieu thereof the following: "With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 207(c)(3) of this Act, except that such limitations may be increased by the corporation (taking into account construction costs) to not to exceed 240 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section."

Ante, p. 1692.

12 USC 1713.

(b) Section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act is amended by striking out the penultimate sentence and inserting in lieu thereof the following: "With respect to mortgages secured by property comprising five or more family dwelling units, such limitations shall not exceed 125 per centum of the dollar amounts set forth in section 207(c)(3) of the National Housing Act, except that such limitations may be increased by the Corporation (taking into account construction costs) to not to exceed 210 per centum of such dollar amounts in any geographical area for which the Secretary of Housing and Urban Development determines under such section that cost levels require any increase in the dollar amount limitations under such section."

BOARD OF DIRECTORS OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

President of U.S.
12 USC 1723. SEC. 207. The first sentence of section 308(b) of the Federal National Mortgage Association Charter Act is amended to read as follows: "The Federal National Mortgage Association shall have a board of directors, which shall consist of eighteen persons, five of whom shall be appointed annually by the President of the United States, and the remainder of whom shall be elected annually by the common stockholders."

ANNUAL REPORT OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT ON ACTIVITIES OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

12 USC 1723a. SEC. 208. Section 309(h) of the Federal National Mortgage Association Charter Act is amended by striking out the last two sentences and inserting in lieu thereof the following: "Pursuant to the authority provided in this subsection, the Secretary shall, not later than June 30 of each year, report to the Congress on the activities of the corporation under this title."

PERIOD FOR APPROVAL OF ACTIONS OF FEDERAL NATIONAL MORTGAGE ASSOCIATION

12 USC 1723a. SEC. 209. Section 309 of the Federal National Mortgage Association Charter Act is amended by adding at the end thereof the following new subsection:

Report.
Ante, p. 1689. Extension. "(i) If the Federal National Mortgage Association submits to the Secretary of Housing and Urban Development, after the date of the enactment of the Secondary Mortgage Market Enhancement Act of 1984, a request for approval or other action under this title, the Secretary shall, not later than the expiration of the forty-five-day period following the submission of such request, approve such request or transmit to the Congress a report explaining why such request has not been approved. Such period may be extended for an additional fifteen-day period if the Secretary requests additional information from the corporation. If the Secretary fails to transmit such report to the Congress within such forty-five-day period or sixty-day period, as the case may be, the corporation may proceed as if such request had been approved."

FEDERAL HOME LOAN MORTGAGE CORPORATION GUARANTEE OF
MORTGAGE-BACKED SECURITIES ISSUED BY OTHERS

SEC. 210. Section 306 of the Federal Home Loan Mortgage Corporation Act is amended by adding at the end thereof the following new subsection:

97 Stat. 198.
12 USC 1455.
Prohibition.

"(h) The Corporation may not guarantee mortgage-backed securities or mortgage related payment securities backed by mortgages not purchased by the Corporation."

PREFERRED STOCK OF FEDERAL HOME LOAN MORTGAGE CORPORATION

SEC. 211. Section 306(f) of the Federal Home Loan Mortgage Corporation Act is amended—

12 USC 1455.

(1) by inserting before the period at the end of the last sentence the following: ", and shall not be entitled to vote with respect to the election of any member of the Board of Directors"; and

(2) by adding at the end thereof the following new sentence: "Such preferred stock, or any class thereof, may have such terms as would be required for listing of preferred stock on the New York Stock Exchange, except that this sentence does not apply to any preferred stock, or class thereof, the initial sale of which is made directly or indirectly by the Corporation exclusively to any Federal Home Loan Bank or Banks."

STUDY OF PREPAYMENT PENALTIES AND THE SECONDARY MORTGAGE
MARKET

SEC. 212. Not later than one hundred and eighty days after the date of the enactment of this Act, the Secretary of Housing and Urban Development, following consultation with the Board of Directors of the Federal National Mortgage Association, the Board of Directors of the Federal Home Loan Mortgage Corporation, the President of the Government National Mortgage Association, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, the Comptroller of the Currency, and the National Credit Union Administration Board, shall submit to the Congress a report regarding mortgage prepayment penalties and their impact on secondary mortgage market activities. Such report shall include—

Report.

(1) a review of State laws and regulations regarding prepayment penalties;

(2) an evaluation of the impact of prepayment penalties on the ability to attract investors to the secondary mortgage market;

(3) an analysis of existing authority for lenders to offer mortgage instruments containing prepayment penalties; and

(4) a proposal for federally standardized mortgage instruments that would contain prepayment penalties in combination with features that would be attractive to prospective purchasers of homes, including below-market interest rates and prohibitions on nonrisk related settlement charges normally incurred by homeowners upon refinancing.

AUTHORITY OF SECRETARY OF HOUSING AND URBAN DEVELOPMENT
REGARDING FEDERAL NATIONAL MORTGAGE ASSOCIATION OBLIGATIONS*Ante*, p. 1696

SEC. 213. (a) The second sentence of section 309(h) of the Federal National Mortgage Association Charter Act is amended by inserting "before October 1, 1985," after "corporation".

12 USC 1723c

(b) The last sentence of section 311 of the Federal National Mortgage Association Charter Act is amended by inserting after "issuances" the following: "by the Association and all issuances of stock, and debt obligations convertible into stock, by the corporation".

Approved October 3, 1984.

LEGISLATIVE HISTORY—S. 2010 (H.R. 4557):

HOUSE REPORT No. 98-994, Pt. 1, accompanying H.R. 4557 (Comm. on Energy and Commerce).

SENATE REPORT No. 98-293 (Comm. on Banking, Housing, and Urban Affairs).

CONGRESSIONAL RECORD:

Vol. 129 (1983): Nov. 17, considered and passed Senate.

Vol. 130 (1984): Feb. 9, earlier passage vitiated; considered and passed Senate.

Sept. 11, considered and passed House, amended.

Sept. 26, Senate concurred in House amendment.

○

WORK ORDER REQUEST FORM

W.O. [17] LS-1187

KEYWORDS: INSURANCE ASSIGNED: Ford

INVESTMENTS

REQUEST FOR: New Bill TAKEN BY: Barnes

SUBJECT: Limitations on Investments by Insurance Co's

REQUESTED FOR: SC SL&C BY: Rod Mourant PHONE: 465-3844

DELIVER TO: Sen. Pearce, Cap 101

INSTRUCTIONS: Draft bill relating to federal preemption of state limitations on investments by insurance companies.

OBTAIN	SPECIAL DRAFTING INSTRUCTIONS ATTACHED []
	AUTHORIZED TO CONFER WITH _____
	RETURN _____
	_____ TO REQUESTOR
	APPROVED: <u>X</u> DIRECTOR, LEGAL SERVICES

REVIEWED _____	SPECIAL INSTRUCTIONS to TYPING/PROOFING
IN <u>04/09/91</u> DUE _____	
TYPED: Draft _____ Date _____	
Final _____ Date _____	
PROOFED _____ DELIVERED _____	Request for DRAFT

TO: Mike Ford, Legislative Counsel
Legal Services Division

FROM: Rod R. Mourant, Legislative Aide
Senate Labor & Commerce Committee

DATE: April 9, 1991

RE: Legislation - Investment Limitations

Mike, please draft the attached with the appropriate statutory references. The measure is self explanatory. Please show Senate Labor & Commerce as the sponsor.

Thanks.

Attachment

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act for the purpose of preventing federal preemption of state limitations on investments by insurance companies"

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

* Section 1. The federal preemption provided in the Secondary Mortgage Market Enhancement Act of 1984, 15 U.S.C. Section 77r-1 does not apply to prohibitions or limitations on the purchase of, holding of, or investment in securities by persons transacting the business of insurance in Alaska under AS 21.

* Section 2. This Act takes effect immediately.