

HB

310

FISCAL NOTE

STATE OF ALASKA
2000 LEGISLATIVE SESSION

BILL NO. HB 310

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Economic Development
 Title An Act relating to the Alaska Insurance Guaranty BRU Insurance
 Association; and amending Rule 24, Alaska Rules of Civil Procedure. Component Insurance
 Sponsor H L&C
 Requester H L&C Component No. 354

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

OPERATING EXPENDITURES	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants & Claims						
Miscellaneous						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGE IN REVENUES ()						
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FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	3.0	0.0	0.0	0.0

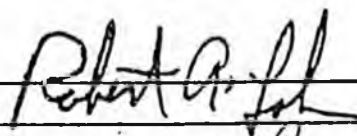
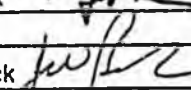
Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

This bill has no fiscal impact on this component.

Prepared by: Robert A. Lohr  Phone 269-7900
 Division Insurance Date/Time 2-18-00 1:59 PM
 Approved by Commissioner Deborah B. Sedwick  Date 2-18-00
 Agency Community & Economic Development

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SPONSOR STATEMENT FOR CSHB 310

This bill amends the Alaska Insurance Guaranty Association Act, AS 21.80.010 *et seq.* The Act provides a mechanism to protect policyholders and claimants in the event of the insolvency of a property and liability insurer licensed to sell policies in Alaska. The current statutory scheme was enacted in 1970 and was based on the 1969 National Association of Insurance Commissioners' (NAIC) State Post-Assessment Insurance Guaranty Association Model Bill. The NAIC model act has undergone a series of amendments to reflect lessons learned at a nationwide level from application of the model act to actual insolvencies during the ensuing years. CSHB 310 updates the Alaska Act to bring it into conformance with the 1996 NAIC Post-Assessment Property and Liability Insurance Guaranty Association Model Act. In so doing, the Act becomes better suited to meet its intended purpose of protecting Alaska policyholders and claimants. Updating the Act to comply with the model act provides the added benefit of uniformity among the states in terms of this type of legislation. The Alaska Division of Insurance and the Alaska Insurance Guaranty Association support CSHB 310.

Submitted by: Alaska Guaranty Association
February 2, 2000

SECTION-BY-SECTION ANALYSIS OF CSHB 310

As used herein, "the Alaska Act" or "Act" refers to the Alaska Insurance Guaranty Association Act, AS 21.80.010 *et seq.*

As used herein, "the Model Act" refers to the National Association of Insurance Commissioners' 1996 Post-Assessment Property and Liability Insurance Guaranty Association Model Act.

As used herein, "the AIGA" refers to the Alaska Insurance Guaranty Association created by AS 21.80.040.

Section 1.

A.mends AS 21.80.010, "Purpose," to bring into conformance with Section 2 of the Model Act. The primary change is to specify an intent to minimize, consistent with the limitations contained in the Act, a claimant's or policyholder's financial loss related to an insolvency. Prior national litigation experience under the existing language ("avoid financial loss") showed insureds were trying to argue that the language should be read to avoid *any* financial loss, despite limitations within the Act. The phrase regarding detection and prevention of insolvencies is being deleted consistent with changes to AS 21.80.110, whereby the AIGA's role in that regard is reduced.

Section 2.

Repeals and reenacts AS 21.80.020, "Applicability," to bring into conformance with Section 3 of the Model Act. Experience has shown the existing language is not definite enough in specifying what types of insurance are not covered by the Act. The amendment expands on the categories of insurance and other indemnity agreements not covered by the Act. As explained by the NAIC's comment to Section 3:

This bill focuses on property and liability kinds of insurance and therefore exempts those kinds of insurance deemed to present problems quite distinct from those of property and liability insurance. The bill further precludes from its scope certain types of insurance that provide protection for investment and financial risks.

The Alaska Life and Health Insurance Guaranty Insurance Association Act, AS 21.79.010 *et seq.*, provides coverage for some of the lines excluded by this provision. Unlike the Model Act, the amendment preserves existing coverage under the Alaska Act for ocean marine insurance, and preserves an existing exclusion for a risk retention group formed under 15 U.S.C. 3901-3906. Subsection (10) adds an exclusion not found in the Model Act. It is adopted from an Idaho statute, and indicates that for policy reasons, there is no coverage for any type of insurance written on a retroactive basis to cover known losses which existed when the insurance was bound.

Section 3.

Amends AS 21.80.030, "Construction," to bring into conformance with Section 4 of the Model Act. The amendment deletes the word "liberally." Prior national litigation experience showed courts were using the presence of this word to justify the extension of coverage under similar acts in such a manner as to disrupt the balance between reducing the financial loss of claimants/policyholders of an insolvent insurer and increasing the expense of insurance coverage to the purchasers of insurance generally.

Section 4.

Amends AS 21.80.040, "Creation of association," to simply rename "board of directors" to "board of governors," which is consistent with the appellation used in the Alaska Life and Health Insurance Guaranty Insurance Association Act. It also avoids confusion with references within the Act to the Director of Insurance. This change is also seen in subsequent sections where the board members are presently referred to as "directors."

Section 5.

Amends AS 21.80.040, "Creation of association," by adding a new subsection. The language comes from the definition of "member insurer" in Section 5.H(2) of the Model Act. The language is placed here to avoid putting substantive law in a definition section. It makes clear when a member insurer is no longer liable for assessments as to new insolvencies, and when it remains liable even though its license has expired or been terminated. The intent is to eliminate certain objections by members as to their liability for assessments.

Section 6.

Amends AS 21.80.050, "Board of governors," to bring into conformance with Section 7 of the Model Act. The primary change is to allow for up to two public members to be appointed to the board at the discretion of the Director of Insurance. Limitations on who can serve as a public member are given. There are related changes on how vacancies on the board are to be filled, with the board filling vacancies of member insurers, and the Director filling public member vacancies. The existing language provides that the board consists of between five and nine members. This amendment adds a requirement for the plan of operation to establish the exact number of members currently comprising the board within that range. This will allow the Director of Insurance to know whether vacancies exist on the board. "Persons" is changed to "members" to reflect the actual practice that AIGA members, and not individual persons, serve as board members.

Section 7.

Amends AS 21.80.060, "Powers and duties of the association," to bring into general conformance with Section 8 of the Model Act. Subsection (a)(1) removes past ambiguity by providing a bright line test for when the AIGA becomes obligated, i.e., when an order of

liquidation is entered. A policy decision regarding the allocation of the AIGA's limited resources is reflected by removal of the requirement for a claim to exceed \$100 to be covered, and the addition of a limitation that a claim for unearned premiums may not exceed \$10,000 per policy. A deadline, or bar date, is also added for when a claim must be filed with the AIGA to be covered. This prevents a situation the AIGA has faced in the past where a claim is made against it after the time when the AIGA can make a subrogation claim against the insolvent estate for reimbursement. A bar date is found in virtually every other state's insurance guaranty acts.

Subsection (a)(3) deletes existing language referencing AS 21.80.110 because it is superfluous. An existing ambiguity is also cured by specifying that the applicable "preceding year" to be used in calculating assessments is the calendar year "preceding the assessment." This also reflects the AIGA's actual practice. Language allowing a financially-troubled member to be "exempt" from an assessment is deleted as unnecessary given the fact assessments in Alaska are passed through directly to insureds, and thus, an assessment would not impair the financial position of the member. Language is also added to make clear the AIGA is empowered to decide in what order claims are paid. This reduces the risk of suits stemming from dissatisfaction with the order chosen. New language also addresses the AIGA's ability to collect on assessments that had been deferred because of a member insurer's financial condition, and how other member insurers who have to cover a deferred assessment can later recoup the excess assessment they may have paid. An assessment should not be paid where it would drive an insurer closer to insolvency, and a member who has to pay extra because of some other member's inability to do so should be able to get paid back when the deferment ends.

Subsection (a)(5) deletes certain existing language given a corresponding deletion to AS 21.80.080. The deleted language is replaced with new language recognizing the right of the AIGA to control the defense of a covered claim. If the AIGA is the one paying the claim, it should be allowed to control the direction of the defense of the claim, including identity of defense counsel. This reflects the AIGA's existing practice.

Subsection (b)(7) is deleted. It has never been part of the Model Act, and it is uncertain what it adds beyond what would be authorized under subsection (b)(3).

Section 8.

Amends AS 21.80.070(c), "Plan of operation," to bring into conformance with Section 9 of the Model Act. Requires the plan of operation to establish procedures for handling assets received from the estate of an insolvent insurer, and to require board members to designate an individual as their representative on the board, as well as the alternate or substitute representative for the appointed person. Such requirements place reasonable bounds on the discretion of the board in its operations.

Section 9.

Amends AS 21.80.080, "Duties and powers of the director," to bring into conformance with Section 10 of the Model Act. In so doing, the former requirement for the AIGA to notify insureds

of insolvent insurers of the insolvency and their rights under the Act is deleted. This role has historically been accomplished by the Division of Insurance itself, or through the receiver for the estate of the insolvent insurer.

Section 10.

Amends AS 21.80.090(a), "Effect of paid claims," to bring into conformance with Section 11.A of the Model Act. The changes are limited to stylistic clarifications and cross-referencing changes in the next section.

Section 11.

Amends AS 21.80.090(b), "Effect of paid claims," to bring into conformance with Section 11.C of the Model Act. Adds language recognizing the AIGA's status as a claimant in the estate of the insolvent insurer as to amounts paid out by the AIGA to satisfy covered claims against the insolvent insurer, and also grants the AIGA the right to receive distributions under applicable liquidation statutes with a priority equal to what the claimant would have been entitled. Such rights allow the AIGA to recoup some or all of the amounts it pays to satisfy covered claims, and thus not overburden the system or Alaska insureds. A clarification is made that although a receiver is bound by the AIGA's determinations or settlements which release the AIGA's liability to a claimant, this does not extend to claim amounts alleged to exceed the AIGA's statutory limit. This primarily comes up when there is a dispute as to the amount of the AIGA's statutory limit as to certain claims. If the receiver contends the AIGA paid more than its statutory limit, the amendment makes clear the receiver may seek review of the issue by the court, and is not automatically bound by the amount of the AIGA's payment.

Section 12.

Creates new section AS21.80.095, "Prohibited claims." The language comes from the Model Act's definition of "covered claim," and is also present in existing AS 21.80.180(3). The language is placed in a separate section to avoid putting substantive law in a definition section.

Section 13.

Amends AS 21.80.100(a), "Nonduplication of recovery," to bring into conformance with Section 12.A of the Model Act. Makes clear that the obligation of a claimant to exhaust other available insurance coverage before seeking a recovery from the AIGA extends to insurance available from insurers other than those who are members of the AIGA.

Section 14.

Repeals and reenacts AS 21.80.110, "Prevention and detection of insolvencies," to bring into conformance with Section 13 of the Model Act. Makes the AIGA's role in advising the Director on insurer insolvency and reporting discretionary. The changes reflect actual practice and avoid the appearance of any conspiracy by the board against an impaired member.

Section 15.

Amends AS 21.80.120, "Examination of the association," to change the due date for the AIGA to file its certified financial report. The report is prepared by an outside auditing firm. By not having it due until after April 15, the AIGA obtains the report at a cheaper price. The due date also coincides with the board's annual meeting, when the report is provided to the Director.

Section 16.

Amends AS 21.80.150, "Immunity," to bring into conformance with Section 17 of the Model Act. Clarifies that immunity is provided not only for action taken, but for any failure to act. Also expressly extends immunity to an alternate or substitute representative of a board governor.

Section 17.

Amends AS 21.80.160, "Stay of proceedings and reopening of default judgments," to bring into general conformance with Section 18 of the Model Act, except it was felt a 90-day stay, rather than the six months specified in the Model Act, would be sufficient as the remaining language would allow extensions to be sought. Also gives the AIGA the right to waive a stay of proceedings. Under this section, a stay of proceedings is automatic. The waiver option provides a quick and easy way to allow a suit to continue where the AIGA sees that to be advantageous.

Sec 18.

Repeals and reenacts AS 21.80.180, "Definitions," to bring into conformance with Section 5 of the Model Act. Adds definitions for "affiliate," "claimant," "control," and "resident." These terms are contained within language being added to the Act under previous sections.

Section 19.

This section provides a transitional provision regarding how the amendments will affect the existing terms of the board of governors.

**ALASKA INSURANCE GUARANTY ASSOCIATION
HB 310**

The AIGA is a statutory association of insurance companies (carriers) who are licensed (or "admitted") to write property and casualty insurance, including Workers Compensation, in the state of Alaska. Some classes of insurance are excluded. All licensed insurance companies are required to be members under the Act.

The AIGA functions through a Board of Directors. The Board has contracted with a third party to administer the day-to-day operation of the AIGA under a written Plan of Operations.

In general, the AIGA provides a mechanism to pay certain covered claims of those insurance carriers who have been declared insolvent by a court. An amount is assessed to each member of the Association and the collected assessment is used to pay the claims of the insolvent carrier. The assessment is based on the amount of premium a company collects on Alaskan insurance policies.

A receiver is generally appointed by the Court in the insolvent carrier's state of domicile. The receiver, similar to an executor, of the estate of the insolvent company attempts to sell off the assets of the carrier and gather liquid assets from all possible sources. The receiver also sets a date after which he/she will not allow any additional claims against the estate. This date is referred to as the *bar date*. The deadline is typically less than a year.

By comparison, no deadline exists for insureds or claimants to file a claim against the AIGA. In the past the lack of a deadline, or "bar date," has resulted in situations where the AIGA was still receiving and paying claims after the deadline for filing claims for recovery against the estate of the insolvent insurer had passed. In such situations, the cost of these old claims is borne solely by subsequent purchasers of insurance through premium surcharges

After paying expenses and claims of the estate, the receiver distributes funds to the AIGA to reimburse for claims and administrative expenses paid. A receiver will review each claim submitted by the AIGA for reimbursement and denies recovery on claims filed with the AIGA after the bar date established by the receiver. This is necessary to allow a fixed date on which to calculate the prorata amounts to be distributed to each creditor of the estate.

When collected assessments and recovered funds from the receiver exceed the amount needed to pay claims and administrative expenses of the AIGA for that particular insolvency, then the excess funds are refunded to the membership in proportion to the amount originally assessed.

The act allows members to recoup the assessments they pay through surcharges on insurance premiums charged policyholders. Historically, the AIGA has recovered millions of dollars from liquidators/receivers of insolvent members. The recovery is rarely 100% on the dollar. Thus, recovery of assets from the estate of insolvent insurers plays a direct role in reducing the cost of property and casualty insurance to Alaska policyholders.

Received from: Dwight Perkins, Deputy Commissioner
Department of Labor & Workforce Development

RECEIVED
FEB 08 2000

MEMO

This is in response to your request to review House Bill 310, a proposal to amend AS 21.80.010, et seq., relating to the Alaska Insurance Guaranty Association (AIGA). This bill was introduced into the Alaska House on 1/21/2000, and referred to the Labor and Commerce and the Judiciary Committees. As you requested, I examined it only in light of the Alaska Workers' Compensation Act (AWCA) (AS 23.30) and the regulations and case law relating to workers' compensation in Alaska.

Although the proposed legislation appears to provide for coverage of the full benefit amount of most workers' compensation claims against insolvent member insurers, it does not appear to provide coverage for all workers' compensation claims. Specifically, proposed AS 21.80.060(a)(1)(B) contains time limits on the filing of claims with the AIGA, which would bar certain (otherwise compensable) workers' compensation claims.

Proposed AS 21.80.060(a)(1) places a \$10,000.00 maximum cap on the AIGA's liability for claims against an insolvent member insurer. However, this section specifically exempts workers' compensation claims from this monetary amount limit, permitting the AIGA to meet liability for full benefits provided under the AWCA.

Proposed AS 21.80.060(a)(1)(B) exempts the AIGA from liability for claims filed with the AIGA more than 18 months after the order liquidating the insolvent member insurer, or the liquidation order's final date for filing claims (whichever is earliest). The AWCA at AS 23.30.105(a) specifically permits workers' compensation claims to be filed more than two years after a work injury for "latent defects pertinent to and causing compensable disability." In plainer English, an injured worker can file a claim more than two years after a work injury, if that injury later progresses into a disabling condition. It is also worth noting that the AWCA provides that even very late notice-of-injury reports will not bar a claim under certain, enumerated, circumstances. AS 23.30.100(d).

In the proposed legislation, there appears to be no workers' compensation exception to the AIGA liability time limits. From our years of experience, we know that a fair number of compensable claims are filed more than two years after a work injury. H.B. 310 appears to have a significant gap in the AIGA's proposed coverage of the workers' compensation liability of insolvent member insurers. If the proposed legislation contained a workers' compensation exception to the claim time limits, similar to the proposed exception to the monetary limits, this gap in liability would presumably close.