

HB

398



ALASKA STATE LEGISLATURE
REPRESENTATIVE JOHN HARRIS
STATE CAPITOL 110, JUNEAU, ALASKA 99801-1182 (907) 465-4859

Sponsor Statement

HB 398

"An Act relating to the Alaska Life and Health Insurance Guaranty Association."

The purpose of HB 398 is to make changes to the Alaska Life and Guaranty Association Act (AS 21.79), which provides a mechanism to protect policyholders and claimants in the event of the insolvency of a life and health insurer licensed to sell policies in Alaska.

The Alaska Life and Health Guaranty Association membership is mandatory for every life and health insurer licensed to sell policies in the state. The association, to fund certain outstanding obligations of life and health insurers that have been put into receivership, assesses its members. The Association works closely with the Director of Insurance, who is the receiver for insolvent insurers.

Alaska's current law is based on an earlier version of a national Association of Insurance Commissioners model Act. HB 398 updates Alaska statutes to bring them into close conformity with the most recent National Association of Insurance Commissioners model Act. The NAIC model Act has been updated to reflect lessons learned at a nationwide level from application of the model Act to actual insolvencies experienced since the last revision. HB 398 will allow the Alaska Guaranty Association to better meet its intended purpose of protecting Alaska policyholders and claimants. Updating the Act to comply with the latest model Act provides the added benefit of uniformity among the states in responding to insurer insolvencies.

The Alaska Life and Health Guaranty Association supports passage of HB 398.

FISCAL NOTE

No: 1

Bill Version: CSHB 398 (L&C)

(H) Publish Date: 3/6/00

**STATE OF ALASKA
2000 LEGISLATIVE SESSION**

Revision Date/Time (Note if correction) _____ Dept. Affected Community & Economic Development
 Title An Act relating to the Alaska Life and Health BRU Insurance
Insurance Guaranty Association. Component Insurance
 Sponsor Representative Harris
 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)

FUND SOURCE	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006
1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1037 GF/Mental Health						
Other (Specify Type)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

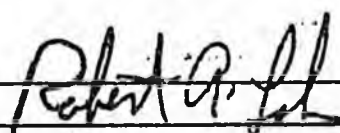
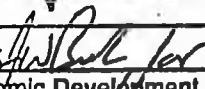
Estimate of any current year (FY2000) cost: 0.0

POSITIONS

Full-time						
Part-time						
Temporary						

ANALYSIS: (Attach a separate page if necessary)

No fiscal impact on this component.

Prepared by: Robert A. Lohr 
 Division Insurance
 Approved by Commissioner Deborah B. Sedwick 
 Agency Community & Economic Development

Phone 269-7900
 Date/Time 2-28-00 12:17 PM
 Date 2-28-00

PREPARER TO PROVIDE ALL DISTRIBUTION COPIES TO GOVERNOR'S LEGISLATIVE OFFICE

Summary of Public Safety Testimony on HB 292 by Ken Bischoff, Director, Division of Administrative Services (465-5488)

HB 292 Does not: change who has access to criminal justice information, state or national. Requestors of this information will still require a basis authorized in law to receive this information.

HB 292 does the following:

1. Section 2 contains the language necessary to adopt the National Crime Prevention and Privacy Compact. The National Crime Prevention and Privacy Compact allows states to get national criminal history records by exchanging state records directly with other states, instead of relying on the FBI to keep duplicate records of all state criminal records. Because not all states manage to send duplicates of all their records to the FBI, exchanging records directly between states will provide more complete and timely access to criminal justice information for the purposes of licensing and employment. The Department of Public Safety will be better able to respond to employers and licensing agencies that are attempting to comply with Alaska Statutes and federal laws. Examples include:

- ✓ Alaska Bar Association (AS 08.08)
- ✓ Alaska Securities Act (AS 45.55)
- ✓ Assisted Living Homes (AS 47.33)
- ✓ Certification of Teachers (AS 14.20)
- ✓ Child Care, Child Placement and Maternity Homes (AS 07.35)
- ✓ Collection agencies (AS 08.24)
- ✓ Concealed handgun permits (AS 18.65.700)
- ✓ HUD Housing Opportunity Program (PL 104-120)
- ✓ Licensing of School Bus Drivers (AS 28.17)
- ✓ National Child Protection Act (PL 18.20)
- ✓ Regulation of Hospitals (AS 18.20)
- ✓ Security Guard Licensing (AS 18.65.410)
- ✓ Any agency that employs or licenses persons to be in authority over children or vulnerable adults (AS 12.62.160)

The Department performs approximately 20,000 of these types of checks each year.

2. Section 1 makes two house-keeping changes to AS 12.62 to provide more appropriately, all relevant information contained in a criminal history record to authorized employers and regulatory agencies. This would include arrest information without court dispositions and information beyond the ten year "unconditional discharge date" that is difficult to compute.

This change is needed to mitigate research and costs associated with filtering specific information to be able to respond to Alaska's 20,000 requests as well as national requests which will be received as a result of adoption of the compact.

3. Section 3 updates the definition of serious offense referenced by AS 12.62 regarding release of criminal justice information.

SUMMARY OF PRINCIPAL CHANGES TO THE NAIC LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION MODEL ACT

In 1997, the NAIC adopted a number of changes to the NAIC Life and Health Insurance Guaranty Association Model Act (Model Act). Taken together, these changes:

- A. Facilitate the implementation of guaranty association benefits more promptly and efficiently, thereby providing benefits to policyholders more expeditiously and at less cost.
- B. Clarify a number of provisions which could foster delay by promoting litigation.
- C. Provide additional benefits to policyholders.

In 1999, the ACLI proposed, and the NAIC subsequently adopted other amendments to the Model Act. These amendments clarified the appropriate coverage limits on equity indexed products and included a non-controversial provision noting that guaranty association coverage is not afforded to charitable gift annuities issued by entities that are not member insurers.

Amendments to the Model Act include changes in the following areas:

I. Coverage Issues

- a. A shift in the responsible guaranty association for structured settlement annuities from the state of the residence of the owner to the state of the residence of the payee. The shift mitigates possible issues regarding a guaranty association's capacity to assess and make payments to policyholders.
- b. A shift in the responsible guaranty association for unallocated annuity contracts from the state of the residence of the owner to the state of the residence of the plan sponsor.
- c. A provision allowing all guaranty associations to take action with respect to an impaired insurer.
- d. Extension of coverage to residents of foreign countries.
- e. Provisions clarifying or codifying guaranty association positions and practices, including (i) the determination of guaranty association limits, (ii) no payments to those who are offered a plan which fulfills guaranty association obligations but who decline to participate, (iii) exclusion of obligations not arising under the express written terms of the contract, (iv) the exclusion of claims covered by the PBGC, and (v) a definition of policy ownership (which excludes beneficial ownership).

- f. Exclusion of coverage of (i) synthetic GICs, (ii) economically immaterial policy guarantees, and (iii) benefits exceeding \$5,000,000 on COCI/BOLI products.

II. Fulfillment of Obligations

- a. The domiciliary Insurance Director or Commissioner and the Receivership Court may approve alternative policies and rates, thereby allowing for a nationwide rehabilitation plan.
- b. The Association may provide substitute coverage of annuities.
- c. Deferral of payments of cash values during moratorium periods (except for hardships).
- d. The Guaranty Association Board of Directors has discretion, and may exercise reasonable business judgment, to determine means to provide benefits in an economical and efficient manner.

III. Rights to Assets

- a. Provisions giving the guaranty associations rights under specified circumstances to reinsurance proceeds on claims arising after the insolvency, thereby allowing for the reinsurance to continue.
- b. Rights to a specified portion of special deposits.
- c. Rights to early access and to propose an early access plan.
- d. Clarification to subrogation rights, including a right to recover from a person that is paid amounts to which a guaranty association has subrogation rights.

IV. Assessments

- a. Guaranty association may authorize and call an assessment at different times.
- b. Clarification regarding the 2% cap with respect to two or more insurers that become insolvent or impaired in different years.
- c. Eliminates requirement that other accounts be assessed once a line of business has been subject to a 1% assessment.

V. Miscellaneous

- a. Clarifications regarding the public representatives of the board of directors.
- b. Right to organize as a corporation or other legal form.
- c. Right to request information from a person seeking coverage and from member insurers.
- d. Elimination of the liberal construction rule.

Alaska House Bill 398, a bill designed to update Chapter 79, The Alaska Life and Health Insurance Guaranty Association Act.

(Please note that references to the Model Act are to the NAIC Life and Health Insurance Guaranty Association Model Act, which is the basis for all proposed revisions to Chapter 79.)

Section 1.

Would amend the *Purpose Section of Chapter 79* to reflect non-substantive differences between current law and the NAIC Life and Health Insurance Guaranty Association Model Act. The changes, while not changing the underlying law, will help to promote uniformity and consistency.

Section 2. - Section 4.

Would amend the *Scope Section of Chapter 79* to, among other things, exclude unallocated annuities and structured settlement annuities from the general rule that coverage is provided to owners; clarify circumstances under which a guaranty association provides coverage to non-resident policyowners; clarify coverage for equity indexed products; and, change the situs of guaranty association coverage for unallocated annuities.

Section 5. - Section 6.

Would amend the *Liability Limits Section of Chapter 79* to set forth the state life and health guaranty association's liability limits for health insurance benefits, disability insurance and unallocated annuities; and, clarifies that the state life and health insurance guaranty association is responsible only for the shortfall in estate assets within covered limits and, therefore, estate assets attributable to covered policies may reduce the amounts for which the guaranty association is responsible within such covered limits.

Section 7. - Section 8

Would amend the *Construction Section of Chapter 79* to clarify that, while the chapter should be construed to effect the purposes under Section 1., it should not be construed to provide coverage where none was intended.

Section 9.

Would amend the *Association Established Section of Chapter 79* to clarify those insurance products contained in the annuity and unallocated annuity accounts of the state life and health insurance guaranty association.

Section 10. - Section 11.

Would amend the *Board of Governors Section of Chapter 79* to clarify the director's role in appointing members to serve on the Alaska Life and Health Insurance Guaranty Association Board of Directors.

Section 12. - Section 24.

Would amend the *Powers and Duties of the Association Section of Chapter 79* to include foreign insurers; permit the domiciliary insurance director and the receivership court to approve different premium rates for re-issued policies, thereby providing full and complete regulatory and judicial review of any proposed changes; and, set forth the rights of the state life and health insurance guaranty association.

Section 25. - Section 31.

Would amend the *Assessments Section of Chapter 79* to allow the state life and health insurance guaranty association's board of directors flexibility in authorizing assessments by board resolution in one year, thereby utilizing available assessment capacity before year end; require the life and health insurance guaranty association to notify member insurers of all authorized assessments that have not been called; and, sets forth further procedures for assessing member insurers.

Section 32. - Section 34.

Would amend the *Plan of Operation Section of Chapter 79* by setting forth guidelines for the adoption of a plan of operation not disapproved by the director; and, expressly permits the life and health insurance guaranty association to conduct meetings telephonically.

Section 35.

Would amend the *Prevention of Insolvencies Section of Chapter 79* by setting forth the state life and health insurance guaranty association's authority and ability to make reports to the director.

Section 36. - Section 38.

Would amend the *Miscellaneous Provision of Chapter 79* to confirm the state life and health insurance guaranty association's entitlement to the receipt of assets out of the marshalled assets available to it as credits against paid contractual obligations; and, sets forth further rights and obligations of the state life and health insurance guaranty association.

Section 39.

Would amend the *Examination of the Association, Annual Report Section of Chapter 79* to state that the state life and health insurance guaranty association shall provide a copy of the report to a member insurer upon request.

Section 40.

Would amend the *Civil Immunity Section of Chapter 79* to clarify that the association, its agents, and the director and the director's agents are not civilly liable for actions taken in carrying out their duties, including participating in one or more life and health insurance guaranty associations.

Section 41.

Would amend the *Stay of Proceedings; Default Judgement Section of Chapter 79* to conform with technical changes to the Model Act.

Section 42.

Would add a new section to *Chapter 79* regarding the prohibition on advertising the existence of the state life and health insurance guaranty association for marketing purposes.

Section 43. - Section 44.

Would amend the *Definitions Section of Chapter 79* to reflect recent changes to the Model Act, and incorporate appropriate definitions for changes made in earlier sections of the chapter.

The remaining sections of House Bill 398 reflect technical changes necessary to adopt revisions to Chapter 79.

A M E N D M E N T

OFFERED IN THE HOUSE

TO: CSHB 398(L&C)

1 Page 3, line 9, following "chapter":

2 Insert "whichever occurs first"

3 Page 27, line 20, through page 28, line 12:

4 Delete all material and insert:

5 "Sec. 21.79.170. Determination of principal place of business. The
6 principal place of business of a plan sponsor consisting of

7 (1) a single employer or an employee organization is that state in
8 which the plan sponsor exercises the direction, control, and coordination of the
9 operations of the entity, as determined by the association in its reasonable judgment
10 by considering the following factors: (A) the state in which the primary executive
11 and administrative headquarters of the entity are located; (B) the state in which the
12 principal office of the chief executive officer of the entity is located; (C) the state in
13 which the board of directors or a similar governing body of the entity conducts the
14 majority of its meetings; (D) the state in which the executive or management
15 committee of the board of directors or a similar governing body of the entity conducts
16 the majority of its meetings; (E) the state from which the management of the overall
17 operations of the entity is directed; and (F) in the case of a benefit plan sponsored by
18 affiliated companies making up a consolidated corporation, the state in which the
19 holding company or controlling affiliate has its principal place of business as
20 determined using the factors described in (A) - (E) of this paragraph; however, if
21 more than 50 percent of the participants in the benefit plan are employed in a single
22 state, that state is considered to be the principal place of business of a plan sponsor
23 that is a single employer or an employee organization;

24 (2) two or more employers or employee organizations is that state in

1 which the employers or employee organizations have the largest investment in the
2 benefit plan."