(2) Any insurer or local insurer making application to the Corporation in the prescribed manner shall be granted permanent guaranty status if that application is certified by the State supervisory authority in the domiciliary State of the applicant and if that State supervisory authority has met certain national insurance regulation standards established by the Corporation in accordance with the provisions of this Act: *Provided,* That any such State supervisory authority can request that any insurer be retained on temporary status.

(e) Establishment of standards.—The Corporation shall establish by regulation, after opportunity for hearing, standards for insurance regulation that must be met by a State supervisory authority before an insurer can be granted permanent guaranty status in the Corporation. No such standards shall become effective until approved by a majority of the Advisory Committee: *Provided,* That in promulgating standards for State insurance regulation the Corporation shall incorporate as part of its national standards, insofar as appropriate, the standards for regulation, rehabilitation, and liquidation embodied in chapter 89, Wisconsin Session Laws of 1967.

(f) Corporation examination of participating insurers assigned temporary status.—

(1) The Corporation, through appointed examiners,

shall have the power to examine any insurer or local insurer whose policies are temporarily guaranteed under this Act, whenever in the judgment of the Corporation such examination is necessary. In making necessary examinations of such participating insurers, the Corporation shall have the power to make examinations as if it were a State supervisory authority complying with national standards.

(2) All examiners appointed by the Corporation shall cooperate as far as practicable with the appropriate State supervisory authorities in conducting any necessary examinations under this Act. Copies of reports of examinations by examiners appointed by this subsection shall be furnished by the Corporation to the appropriate State supervisory authorities which shall be afforded the opportunity to comment thereon.

(g) Reports to the Corporation.—Each participating insurer shall make to the Corporation reports of condition which shall be in such form, at such time, and shall contain such information as the Administrator may require. The Administrator may require reports of condition to be published in such manner, not inconsistent with any applicable law, as it may direct. Every participating insurer which fails to make or publish any such report within ten days of its due date shall be subject to a penalty of not more than $1,000 for

each day of such failure, which penalty shall be recoverable by the Corporation for its use.

(h) Revocation of guaranty status.—

(i) Any participating insurer who has attained permanent guaranty status may have its guaranty status revoked if its State supervisory authority so recommends or if the State supervisory authority concurs in a motion of revocation made by the Corporation. The Corporation shall give any participating insurer who has attained permanent guaranty status thirty days written notice of intention to terminate its guaranty status and opportunity to correct the deficiencies of its operation which are stated in that notice as grounds for termination. Any participating insurer, prior to termination, shall upon request be granted an opportunity for a hearing which shall be conducted in accord with the provisions hereinafter provided.

(2) Any participating insurer who has been granted only temporary guaranty status may have its guaranty status revoked whenever the Administrator, with the concurrence of a majority of the Advisory Committee, shall find that such participating insurer or its directors or officers have engaged or are engaging in unsafe or unsound practices in conducting the business of the insurer, the insurer is in an unsafe or unsound condition to con-

tinue operations as a participating insurer, or the insurer has violated any provisions of this Act or any rule, regulation, or order issued pursuant to this Act. Prior to revocation the Administrator shall give the insurer and the State supervisory authority a statement with respect to such practices or violations for the purpose of securing the correction thereof. Unless correction shall be made within one hundred and twenty days from receipt of such statement, or such shorter period as may be fixed by the Corporation (but in any event not less than twenty days) in any case where the Administrator in his discretion has determined that the insurance risk of the Corporation is unduly jeopardized, or unless within such time the Corporation shall have received acceptable assurances that such correction will be made within a time and in a manner satisfactory to the Corporation, or in the event such assurances are submitted to and accepted by the Corporation but are not carried out in accordance with their terms, the Administrator, if he shall determine to proceed further, shall give to the insurer not less than thirty days' written notice of intention to terminate its guaranteed status. Such notice shall contain a statement of the facts constituting the alleged violation or unsafe or unsound practice or condition and shall fix a time and place for a hearing before the Administrator or before a

person, designated by him to conduct such hearing, at which evidence may be produced, and upon such evidence the Administrator shall make written findings which shall be conclusive, subject to right of review as hereinafter provided for. If the Administrator shall find that any unsafe or unsound practice or condition or violation specified in such statement has been established and has not been corrected within the time above prescribed in which to make such corrections, the Administrator may terminate guaranteed status of the insurer on a date subsequent to such finding and to the expiration of the time specified in such notice of intention. Unless the insurer shall appear at the hearing by a duly authorized representative, it shall be deemed to have consented to the termination of its guaranteed status and termination of such status thereupon may be ordered. Any insurer whose guaranteed status has been terminated by order of the Administrator under this subsection shall have the right of judicial review of such order only to the same extent as provided for the review of orders under subsection (i) of this section. The Corporation may publish notice of such termination and the insurer shall give notice of such termination to each of its policyholders at his last address of record on the books of the insurer, in such manner and at such time as the Adminis-

trator may find to be necessary and may order for the protection of policyholders. In the event of failure to give the notice to policyholders as herein provided, the Corporation is authorized to give such notice. An order terminating the guaranteed status of any participating insurer shall not affect any guaranteed policy issued by such insurer prior to the date on which the order was issued, but shall be effective with respect to (1) the renewal of such policy, and (2) any property, casualty, or surety insurance policy thereafter issued by such insurer.

(i) Hearings and judicial review.—

(1) Any hearings provided for in this Act shall be held in the Federal judicial district or in the territory in which the principal officer of the insurer is located unless the party afforded the hearing consents to another place, and shall be conducted in accordance with the provisions of chapter 5 of title 5, United States Code. Such hearing shall be public, unless the Corporation, in its discretion, after fully considering the views of the party afforded the hearing, determines that a private hearing is necessary to protect the public interest. After such hearing, and within ninety days after the Corporation has notified the parties that the case has been sub-

mitted to it for final decision, the Corporation shall render its decision (which shall include findings of fact upon which its decision is predicated) and shall issue and cause to be served upon each party to the proceeding an order or orders consistent with the provisions of this section. Judicial review of any such order shall be exclusively as provided in this subsection. Unless a petition for review is timely filed in a court of appeals of the United States, as hereinafter provided in paragraph (2) of this subsection, and thereafter until the record in the proceeding has been filed as so provided, the Corporation may at any time, upon such notice and in such manner as it shall deem proper, modify, terminate, or set aside any such order. Upon such filing of the record, the Corporation may modify, terminate, or set aside any such order with permission of the court.

(2) Any party to the proceeding may obtain a review of any order by filing in the court of appeals of the United States for the circuit in which the principal office of the insurer is located, or in the United States Court of Appeals for the District of Columbia Circuit, within thirty days after the date of service of such order, a written petition praying that the order of the Corporation be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court

to the Corporation, and thereupon the Corporation shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, such court shall have jurisdiction, which upon the filing of the record shall, except as provided in the last sentence of said paragraph (1), be exclusive, to affirm, modify, or set aside, in whole or in part, the order of the Corporation. Review of such proceedings shall be had as provided in chapter 7 of title 5, United States Code. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section 1254 of title 28 of the United States Code.

(3) The commencement of proceedings for judicial review under paragraph (2) of this subsection shall not, unless specifically ordered by the court, operate as a stay of any order issued by the Corporation.

PENALTIES

SEC. 7. (a) Any insurer (other than a local insurer) issuing any property, casualty, or surety insurance policy which is required to be but is not guaranteed under this Act shall forfeit to the United States a sum of not more than $1,000 for each and every day that such policy is in effect and is not guaranteed under this Act. Such forfeiture shall be

payable to the Corporation for its use. The Corporation is authorized to collect any unsatisfied forfeiture claim from the directors and officers of the Corporation individually. This subsection shall take effect upon the expiration of one year after the effective date of this Act.

(b) Whoever falsely advertises or otherwise misrepresents by any device whatsoever that any property, casualty, or surety insurance policy is guaranteed by the Federal Insurance Guaranty Corporation, or by the Government of the United States, or by any instrumentality thereof, shall be fined not more than $1,000, or imprisoned not more than one year, or both.

PAYMENT OF GUARANTY

SEC. 8. (a) Participating insurers assigned permanent guaranty status.—Whenever any such insurer is placed in liquidation, the Corporation shall pay all justified loss claims, unearned premium and small loss claims, judgments, interest thereon, including the first $50 of such claims.

(1) The liquidator appointed by the State supervisory authority will present such claims to the Corporation which is authorized to investigate, examine, adjust, compromise, or settle any such claim.

(2) The Corporation shall investigate, examine, adjust, compromise, or settle such claims as quickly as possible in order to provide the public the insurance

protection that would have been available but for the liquidation.

( ) The Corporation shall present the liquidator with a complete report of the disposition of such claims and [illegible] by the Corporation.

( ) The Corporation is authorized to defend any action pending or brought against the policyholder or the insured for an insurable event occurring before or fifteen days after the date of issuance of the liquidation order.

(5) The Corporation shall be entitled to any valid claim against the liquidator up to an amount equal to the liabilities of such insurer paid by the Corporation. Payment of such claim shall follow the normal order of distribution of the liquidation laws of the State.

(b) Participating insurers assigned temporary guaranty status—

(1) The Corporation shall assume and perform all the obligations of a participating insurer under policies which are guaranteed under this Act, if such insurer is placed in liquidation and cannot perform its insurance function by paying valid claims of policyholders and insureds or their claimants or providing contracted for legal services of policyholders and insureds. In such a situation the receiver or liquidator shall make all books

and records (including claim files) available to the Corporation; and the Corporation shall file forthwith a certificate of assumption with the court having jurisdiction over such insurer.

(2) Upon the filing of a certificate of assumption, all proceedings pending in any court against the insured or the insurer arising out of an occurrence within the coverage of a policy guaranteed under this title shall be stayed automatically for a period of thirty days.

(3) The Corporation shall be subject to the same obligations, liabilities, terms, conditions, and waivers of the insurer and shall have available any defense or defenses (including that of policy limits) which would be available to the insurer.

(4) The Corporation is authorized to investigate, examine, adjust, compromise, or settle any claim pending against the insured or the insurer on or after the date of the filing of a certificate of assumption. The Corporation is authorized to defend any action pending or brought against the policyholder or the insured on or after the date of the filing of such certificate.

(5) The Corporation shall be entitled to valid claim against the insurer, or its liquidator, rehabilitator, conservator, receiver, or trustee in bankruptcy, in an amount equal to the liabilities of such insurer paid from the Fund.

(c) When the Corporation has determined that a participating insurer is in danger of becoming insolvent, in order to prevent such insolvency the Corporation, in the discretion of the Administrator, is authorized to make loans to such insurer upon such terms and conditions as the Administrator, in consultation with the State supervisory authority, may prescribe.

(d) Any person (including any individual, partnership, association, or corporation) having a claim against his insurer under any insolvency protection provision contained in his insurance policy, which claim arises out of the insolvency of a participating insurer, may file a claim with the liquidator or Corporation for the total amount of the alleged loss without first proceeding against the insurer. If any person having a claim against his insurer under any insolvency protection provision contained in his insurance policy first proceeds against the liquidator or the Corporation, the Corporation is subrogated to the rights of that person against his insurer. If any person first proceeds against his insurer, any valid claim against the liquidator or Corporation will be reduced by the amount recovered from his insurer under any insolvency protection provision contained in his insurance policy.

(e) When a participating insurer who has issued assessable policies is liquidated, the Corporation shall exercise

discretion when claiming against the assets of the liquidated insurer in order to avoid, so far as possible, the imposition of unreasonable assessments on policyholders who were unaware of the assessment exposure.

FINANCING

SEC. 9. (a) CAPITAL STOCK.—The Corporation shall have a capital stock of $10,000,000 which shall be divided into shares of $1,000 each. The total amount of such capital stock shall be subscribed to by the Secretary of the Treasury. For the purpose of making payments for such stock the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, and the purpose for which securities may be issued under such Act are extended to include such purchases. The Corporation shall make annual payments to the Secretary of the Treasury as interest on the amounts advanced to the Corporation on stock subscription, from the time of such advance until the amounts thereof are repaid, at a rate determined annually by the Secretary of the Treasury, taking into consideration the current average market yields on outstanding marketable obligations of the United States.

(b) GUARANTY FUND.—

(1) Funds obtained by the Corporation from the sale of its capital stock, as provided in subsection (a) of

this section, and from guaranty fees collected pursuant to subsection (c) of this section shall be deposited in the Guaranty Fund which is hereby established. The Fund shall be held by the Corporation and used by it for carrying out its guaranty functions under this Act, and for operating expenses arising in connection therewith not to exceed $7,500,000 per year.

(2) Whenever after retirement of the outstanding Treasury shares issued pursuant to subsection (a) of this section the net asset value of the Fund exceeds one-eighth of 1 per centum of the annual net direct premiums written by all participating insurers, the Corporation shall waive the requirements for fees as herein stated: *Provided,* That such requirement shall be reinstated whenever the net asset value of such Fund is less than one-eighth of 1 per centum of the annual net direct written premiums written by all participating insurers: *Provided further,* That no distribution or rebate shall be made by reason of the fact that the total amount in fees collected by the Corporation at any time exceeds one-eighth of 1 per centum of such annual direct written premiums. In determining net asset value for the purposes of this paragraph, the Board shall include estimated liabilities that may be chargeable to such Fund.

(3) The Corporation shall retire as rapidly as

practicable, having due regard to the need to maintain at all times the solvency of the Fund, the capital stock of the Corporation which is held by the Treasury.

(4) In the event that the Congress should repeal this Act, any moneys remaining in such Fund at that time, after redemption of any outstanding capital stock, repayment of any outstanding loans from the Treasury under subsection (c) of this section and discharge of all expenses and obligations under this Act, shall be returned to the participating insurers pro rata in accordance with the guaranty fees they have paid into the Fund.

(5) In the event that the Congress should reduce the size of the Fund specified in subsection (b) of this section, any excess in the Fund above the new statutory limit shall be returned to the participating insurers pro rata in accordance with the guaranty fees they have paid into the Fund.

(c) Assessments.—

(1) National assessments —

(i) Each calendar year following the year in which the application of a participating insurer was certified, such participating insurer shall pay to the Corporation at guaranty fee. This fee, which shall be equal to one twenty-fifth of 1 per centum of the net

direct premiums written by the participating insurer during the year, shall be assessed semiannually, based on net direct premiums written during the periods January 1 through June 30 and July 1 through December 31.

(ii) On or before the last day of the first month following each of the above-mentioned semiannual periods, each participating insurer shall file with the Corporation a certified statement showing the net direct premiums written by such insurer during that period. In the event that accurate information is not available at that time, an estimate may be filed: *Provided, however,* That a final certified statement must be filed not later than sixty days from the last day of the reporting period.

(iii) The certified statements required to be filed with the Corporation under subparagraph (ii) of this paragraph shall be in such form and set forth such supporting information as the Administrator shall prescribe and shall be certified by the president of the insurer or any other officer designated by its board of directors to be, to the best of his knowledge and belief, true, correct, and complete and in accordance with this Act and regulations issued thereunder. The assessment payments required from par-

ticipating insurers under subparagraph (i) of this paragraph shall be made in such manner and at such time or times as the Administrator shall prescribe, provided the time or times so prescribed shall not be later than sixty days after filing the certified statement setting forth the amount of assessment.

(iv) Except as otherwise provided in this subsection, the Administrator shall prescribe all needful rules and regulations for the enforcement of this subsection. The Administrator may limit the retroactive effect, if any, of any of its rules or regulations.

(v) The Corporation may (1) refund to a participating insurer any payment of assessment in excess of the amount due to the Corporation, or (2) credit such excess toward the payment of the assessment next becoming due from such insurer and upon succeeding assessments until the credit is exhausted.

(vi) Any participating insurer which fails to make any report of condition under subsection (g) of section 6 of this Act or to file any certified statement required to be filed by it in connection with determining the amount of any assessment payable

by the insurer to the Corporation may be compelled to make such report or file such statement by mandatory injunction or other appropriate remedy in a suit brought for such purpose by the Corporation against the insurer and any officer or officers thereof in any court of the United States of competent jurisdiction in the district or territory in which such insurer is located.

(vii) The Corporation, in a suit brought at law or in equity in any court of competent jurisdiction, shall be entitled to recover from any participating insurer the amount of any unpaid assessment lawfully payable by such insurer to the Corporation, whether or not such insurer shall have made any such report of condition under subsection (g) of section 6 of this Act or filed any such certified statement and whether or not suit shall have been brought to compel the insurer to make any such report or file any such statement. No action or proceeding shall be brought for the recovery of any assessment due to the Corporation, or for the recovery of any amount paid to the Corporation in excess of the amount due to it, unless such action or proceeding shall have been brought within five years after the right accrued for which the

claim is made, except where the participating insurer has made or filed with the Corporation a false or fraudulent certified statement with the intent to evade, in whole or in part, the payment of assessment, in which case the claim shall not be deemed to have accrued until the discovery by the Corporation that the certified statement is false or fraudulent.

(viii) Should any participating insurer fail to make any report of condition under subsection (9) of section 6 of this Act or to file any certified statement required to be filed by such insurer under any provision of this section, or fail to pay any assessment required to be paid by such insurer under any provision of this Act, and should the insurer not correct such failure within thirty days after written notice has been given by the Corporation to an officer of the insurer, citing this subparagraph, and stating that the insurer has failed to file or pay as required by law, all the rights, privileges, and franchises of the insurer granted to it under this Act shall be thereby forfeited. Whether or not the penalty provided in this subparagraph has been incurred shall be determined and adjudged after hearing in the manner provided in section 6(i) of this

Act. The remedies provided in this subparagraph and in the two preceding subparagraphs shall not be construed as limiting any other remedies against any participating insurer, but shall be in addition thereto.

(ix) Any participating insurer which willfully fails or refuses to file any certified statement or pay any assessment required under this Act shall be subject to a penalty of not more than $1,000 for each day that such violations continue, which penalty the Corporation may recover for its own use.

(2) State contributions and assessments.—

(i) Whenever the Corporation has advanced funds in excess of those available from the sale of its capital stock and collected guaranty fees in order to perform its guaranty function under this Act and has not recovered said funds (including any interest due because of such advancement) from the assets of the insurer upon final liquidation, then the Corporation shall seek recovery of said funds in the domiciliary State through the appropriate insurance insolvency protection plan.

(ii) If the domiciliary State cannot provide for the recovery of said funds, then the Corporation, in order to recover such funds, is authorized to assess

participating insurance companies doing business in the domiciliary State on a pro rata basis relative to the net direct premiums written in the State. No such assessment shall exceed 1 per centum of the net direct premiums written in any one year. Participating insurers assessed by the Corporation in the domiciliary State shall be subject to the same rules and regulations during the State assessment process as they are during the national assessment process.

(3) Nothing in this Act shall be construed to deny the several States the right to levy taxes or require license fees for insurers doing business within their jurisdiction: *Provided, however,* That no participating insurer shall be required automatically to pay any annual or other periodic or continuing assessment or fee under any State insurers insolvency or liability security fund law for any period during which the insurance policies of that insurer are guaranteed pursuant to this Act.

(d) Treasury loans.—The Corporation is authorized to borrow from the Treasury, and the Secretary of the Treasury is authorized and directed to loan to the Corporation on such terms as may be fixed by the Corporation and the Secretary, such funds in the judgment of the Administrator of the Corporation is from time to time required for insurance purposes,

not exceeding in the aggregate $100,000,000 outstanding at any one time, or such further sum as the Congress, by joint resolution, may from time to time determine: *Provided*, That each loan made pursuant to this subsection shall bear interest at a rate determined by the Secretary of the Treasury taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturity of such loans. For such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds of the sale of any securities hereafter issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under the Second Liberty Bond Act, as amended, are extended to include such loans. Any such loan shall be used by the Corporation solely in carrying out its functions with respect to such insu ance. All loans and repayments under this subsection shall be treated as public debt transactions of the United States.

CORPORATION MONEYS; INVESTMENT

SEC. 10. Money of the Corporation not otherwise employed shall be invested in obligations of the United States or in obligations guaranteed as to principal and interest by the United States: *Provided*, That the Corporation shall not sell or purchase any such obligations for its own account and

in its own right and interest, at any one time aggregating in excess of $100,000 without the approval of the Secretary of the Treasury: *And provided further*, That the Secretary of the Treasury may waive the requirement of his approval with respect to any transaction or classes of transactions subject to the provisions of this section for such period of time and under such conditions as he may determine.

EXEMPTION FROM TAXATION

SEC. 11. All notes, debentures, bonds, or other such obligations issued by the Corporation shall be exempt, both as to principal and interest, from all taxation (except estate and inheritance taxes) now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority: *Provided*, That interest upon or any income from any such obligations and gain from the sale or other disposition of such obligations shall not have any exemption, as such, and loss from the sale or other disposition of such obligations shall not have any special treatment, as such, under the Internal Revenue Code, or laws amendatory or supplementary thereof. The Corporation, including its franchise, its capital, reserves, and surplus, and its income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local

taxing authority, except that any real property of the Corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

FORMS OF OBLIGATIONS

SEC. 12. In order that the Corporation may be supplied with such forms of notes, debentures, bonds, or other such obligations as it may need for issuance under this Act, the Secretary of the Treasury is authorized to prepare such forms as shall be suitable and approved by the Corporation, to be held in the Treasury subject to delivery, upon order of the Corporation. The engraved plates, dies, bed pieces, and other material executed in connection therewith shall remain in the custody of the Secretary of the Treasury. The Corporation shall reimburse the Secretary of the Treasury for any expenses incurred in the preparation, custody, and delivery of such notes, debentures, bonds, or other such obligations.

REPORTS; AUDITS

SEC. 13. (a) The Corporation shall annually make a report of its operations to the Congress as soon as practicable after the 1st day of January in each year. Such report shall include a statement with respect to the status of the fund established pursuant to section 9, together

with such recommendations concerning its adequacy or inadequacy as the Corporation deems necessary or desirable.

(b) The financial transactions of the Corporation shall be audited by the General Accounting Office in accordance with the principles and procedures applicable to commercial corporate transactions and under such rules and regulations as may be prescribed by the Comptroller General of the United States. The audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation pertaining to its financial and other operations and determined necessary by the Comptroller General to facilitate the audit, and they shall be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians. All such books, accounts, records, reports, files, papers, and property of the Corporation shall remain in possession and custody of the Corporation.

(c) The fiscal year of the Corporation shall be the calendar year. A report of the audit for each calendar year shall be made by the Comptroller General to the Congress not later than July 15 following the close of the calendar year. The report shall also show specifically any program,

expenditure, or other financial transaction or undertaking observed in the course of the audit, which, in the opinion of the Comptroller General, has been carried on or made without authority of law. A copy of each report shall be furnished to the President and to the Corporation at the time submitted to the Congress.

GOVERNMENT CORPORATION CONTROL ACT

SEC. 14. (a) Section 101 of the Government Corporation Control Act, as amended (31 U.S.C. 846), is amended by adding after "Federal Housing Administration", the following: "Federal Insurance Guaranty Corporation".

(b) To the extent of any inconsistency between the provisions of this Act and the provisions of the Government Corporation Control Act, the provisions of this Act shall govern.

SEPARABILITY CLAUSE

SEC. 15. If any provision of this Act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Act and the applicability thereof to other persons and circumstances shall not be affected thereby.

[CONFIDENTIAL COMMITTEE PRINT NO. 1]

MARCH 10, 1970

Calendar No.

91ST CONGRESS
2D SESSION

S. 2236

[Report No. 91–]

A BILL

To create a Federal Insurance Guaranty Corporation to protect the American public against certain insurance company insolvencies.

By Mr. MAGNUSON, Mr. DODD, Mr. HART, Mr. HOLLINGS, Mr. INOUYE, Mr. MOSS, and Mr. PASTORE

MAY 23, 1969

Read twice and referred to the Committee on Banking and Currency

MAY 27, 1969

The Committee on Banking and Currency discharged, and referred to the Committee on Commerce

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200 NATIONAL BANK OF ALASKA BLDG.
PHONE 586-3340
CABLE ADDRESS: ROMEA

April 2, 1970

Hon. Barry W. Jackson, Chairman
House Judiciary Committee
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801

Re: House Bill No. 782

Dear Chairman Jackson:

As I understand your instructions, I am to submit a short statement of the position of American Insurance Association with respect to HB 782 now being considered by your Committee.

AIA agrees with the concept embodied in S. 2236 that if the insuring public is to be provided the protection it deserves in a timely fashion, action at the federal level is needed.

It agrees also with the concept that the protection is required in the property, casualty and surety fields.

As to the terms of S. 2236, and the amendments offered by the Administration on March 16, I have been advised by telegram that copies of both are on the way to me.

The Administration amendments are represented as creating a federal agency operating on a significantly reduced scale both in size and scope with that proposed in S. 2236; and, would limit the role of the federal agency to that of a vehicle for compensating the insolvency of claimants and policyholders while leaving full responsibility for insurance regulation in the hands of state authorities.

The states would continue to have sole authority for examination of insurers for solvency and would retain full and exclusive regulatory powers.

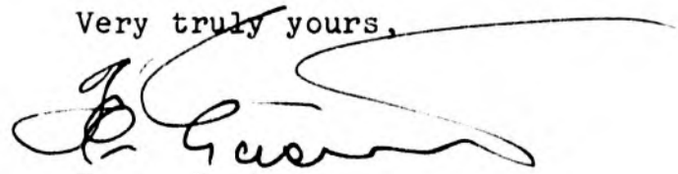
I suggest, without the ability to demonstrate, that the opposition of the NAIC to the federal approach was formulated prior to the proposed amendments to S. 2236, and

that if the opposition is not eliminated or reduced by the amendments, the Committee is left to appraise the benefits of a uniform federal act as compared to a variety of state acts.

As already mentioned in my testimony to the Committee the AIA is opposed to the creation of a number of State funds for security of policyholders against insolvencies, such as the New York State fund of some $125 million with a ceiling of $200 million. The AIA is of the opinion that the federal approach will give wider and more uniform security, without encroachment upon state regulatory powers, and at less cost to the policyholders.

I will provide the Committee with copies of S. 2236 and the proposed amendments as soon as received.

Very truly yours,



FOE:bh

F. O. Eastaugh

Xerox copies for committee

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MICHAEL M. HOLMES

March 20, 1970

The Honorable Barry W. Jackson
Chairman, Judiciary Committee
House of Representatives
Juneau, Alaska 99801

Re: House Bill No. 782, to Guarantee Certain Insurance Contracts

Dear Mr. Chairman:

As a representative of American Mutual Insurance Alliance I am interested in appearing before the Judiciary Committee of the House when you consider House Bill No. 782 which was reported favorably by the Commerce Committee of the House today and is next referred to your committee.

If this bill is enacted it will incorporate a corporation consisting of members. Every insurance company doing business in Alaska in the kinds of insurance covered by the Act will be required to be members of the corporation in order to continue doing business in Alaska. The insurance companies would elect a Board of Directors and if they failed to do so, the Insurance Commissioner would appoint directors.

In the event any insurance company which does business in Alaska is declared insolvent in Alaska or elsewhere, the corporation would go into action to reimburse anyone insured by that company who had suffered a loss prior to or within thirty days after the decree of insolvency is entered by any court. Moreover, the policyholder whose policies would otherwise be worthless have thirty days within which to turn in their policies and get a refund of the unearned premium from this corporation. One of the duties of the corporation is to give public notice of the insolvency of any insurance company declared to be insolvent by any competent court anyplace in the United States. Otherwise persons holding policies from such companies which may be doing only a small amount of business in Alaska may have no knowledge of the insolvency until some official notice is received from a trustee in bankruptcy. Until they get new insurance they would be otherwise uninsured. The policyholders in Alaska

would have thirty days from the date of the decree of insolvency within which to replace their insurance with some other company, get a refund of their unearned premium and recover for any loss suffered whether before the decree or within thirty days thereafter.

The corporation would make an assessment on its members after the insolvency occurred. In Alaska we are proposing the alternative provision which would set up three separate accounts which would be as follows: workmen's compensation, automobile insurance and all other insurance coming under the act. If the insolvent insurance company was writing only automobile and workmen's compensation insurance in Alaska there would be separate assessments against every company in Alaska writing these two kinds of insurance. Payment of the assessments would be a condition to the continuance of doing business in Alaska. From the fund raised thereby the unearned premiums of the worthless policies and accumulated claims would be paid.

All kinds of insurance companies except life, title, security, disability, credit, mortgage guarantee and ocean marine insurance would participate as members.

No claim would be paid amounting to less than $100 and claims would be paid up to a limit of $300,000 except workmen's compensation claims would be fully paid including claims for permanent disability or death which run for long periods of time.

This bill is a model bill approved by the National Association of Insurance Commissioners on December 4, 1969, after which time it became available to the various state legislatures and being promoted by the Insurance Commissioners of the various states. It has already been adopted by South Dakota, Georgia, Iowa, West Virginia, Idaho and because of the need for this legislation it has probably been adopted by other states without my knowledge.

The model bill was revised by the Local Affairs Agency for the Commerce Committee to the extent necessary to make it conform to the style used in Alaska. After this was done I checked the bill against the model bill and found that it conforms to the model bill.

During the past few years we have had no losses by policyholders as a result of insolvency of insurance companies but in the not too distant past we have had several companies registered to do business in Alaska who were declared insolvent elsewhere and the policyholders had to go to court to fight over the bond posted by the Insurance Commissioner. Although the industry is closely regulated it is a hazardous industry as evidenced by the fact that the Wall Street Journal carried an article last Monday to the effect that State Farm Insurance Company lost $91,000,000 in 1969 in the automobile casualty business.

This bill is a foolproof system of guaranteeing that the other insurance companies admitted to do business in Alaska will pay the claims and redeem the policies for their unexpired premiums of any company which does business in Alaska in the lines of insurance covered by the bill provided the policyholders will surrender their policies and present their claims within thirty days of the date of insolvency.

It is a system in which the Director of Insurance sits on the sidelines and polices the operation but the insurance companies do the work through their own board of directors and at their own expense except that directors can be repaid for their actual expenses in connection with their duties out of the corporation funds. The insurance companies would be allowed to take any losses into consideration in determining their premiums thereafter.

It is unfortunate that this bill is coming to your committee so late in the session and still must go to the Senate in order to be enacted. It is, therefore, requested that you give this matter your attention as soon as possible and let me know when it will be considered.

Yours very truly,

N. C. Banfield

NCB:db

cc: Chas. A. Brown
Kenneth Nails
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200 NATIONAL BANK OF ALASKA BLDG.
PHONE 586-3340
CABLE ADDRESS: ROMEA

March 23, 1970

Hon. Barry W. Jackson, Chairman
House Judiciary Committee
Alaska State Legislature
Capitol Building
Juneau, Alaska 99801

Re: House Bill No. 782

Dear Chairman Jackson:

Here are the following enclosures which have an important bearing on the subject bill:

1. Key excerpts from Nixon Administration Testimony before Senate Commerce Committee

2. Statement of T. Lawrence Jones, President, American Insurance Association with respect to S. 2236 providing a Federal Insurance Guaranty Corporation Act, before Senate Commerce Committee.

I understand that Director Fritz and Mr. Banfield for the Mutual Alliance testified in favor of HB 782 and it was reported out favorably by the House Commerce Committee.

The American Insurance Association opposes HB 782 in favor of the federal approach in S. 2236 by Senator Magnuson. I would like to appear to answer the proponents of the bill at such time as your Committee considers it. In the meantime perhaps you and members of your Committee would like to review the enclosed material.

Very truly yours,

F. O. Eastaugh

FOE:bh
Encs.

KEY EXCERPTS FROM NIXON ADMINISTRATION TESTIMONY
BEFORE SENATE COMMERCE COMMITTEE
ON S.2236 TO CREATE A FEDERAL INSURANCE GUARANTY CORP.
JOINT STATEMENT OF DEPARTMENTS OF COMMERCE AND TRANSPORTATION
FEBRUARY 10, 1970

This Administration is strongly in support of federal legislation to guarantee that every citizen, every policyholder and every claimant is properly and fully compensated for his insured losses. We will present an Administration proposal for your consideration next month . . .

* * * *

With more than $25 billion of premiums written annually, something less than $25 million of insured property and casualty losses are going unmet each year as a result of insurer insolvencies . . .

Together, we speak for the Administration when we say that while the problem area is modest in comparison with the insurance in force nationwide, the adverse impact of insurer insolvency especially on individuals and smaller insureds, warrants federal legislation.

* * * *

It is impossible not to be impressed by the remarkable consensus regarding the importance of the problem shared among those whose views as to its solution are divergent . . .

* * * *

We believe that action is needed now. Even though some states have enacted insolvency plans and a number of others are considering doing so,

the continuing lack of adequate protection for many consumers from the financial consequences of insolvencies is incompatible with the interests of either the public or the insurance industry . . .

We also agree that if the insuring public is to be provided the protection it deserves in a timely fashion, action at the federal level is needed. We are prepared to cooperate in taking that action. . .

* * * *

The Administration believes that consumers should be protected from the financial consequences of insolvencies of insurance companies in the property, casualty and surety fields. Such protection can be afforded through a guaranty mechanism. . .

* * * *

The Administration does not favor the enactment of S.2236 in its present form. We will submit a proposal next month. . .

The Administration believes that a measure can be developed and enacted which can effectively accommodate the needs and interests of the consumer public, the insurance industry, state supervisory authorities and state governments generally . . .

* * * *

The activities of the federal agency should be those only of an administrator of the guaranty mechanism and not a regulator of the insurance industry. The basic supervisory function should remain the province of state

supervisory authorities. The federal agency should work through the state supervisory authorities whenever any question arises as to the solvency of a specific company.

There should be an assessment mechanism to meet reasonable and validated claimant and policyholder losses created by insolvency through a post-insolvency assessment technique. Such assessment mechanism should be compatible with programs which have been or may be adopted by any of the several states to meet the insolvency problems on a state basis and at the same time avoid the immobilization of insurance capital which is needed to supply the economy's growing demands for insurance and for the constructive employment of capital . . .

The federal agency contemplated by the Administration's proposal would operate on a significantly reduced scale both in size and scope compared with that currently provided in S.2236. The Administration proposal would limit the role of the federal agency to that of a vehicle for compensating the insolvency losses of claimants and policyholders while leaving full responsibility for insurance regulation in the hands of state authorities.

The states would continue to have sole authority for examination of insurors for solvency and would retain full and exclusive regulatory powers.

THE NEED FOR PROTECTION AGAINST INSURANCE COMPANY INSOLVENCIES

The Problem:

- Insurance company insolvency continues to be a problem for the public, state regulators and the insurance industry itself. It has cost the public over $135,000,000 during the last twelve years in loss claims and premiums, plus additional indirect losses that are difficult to measure exactly.

- Present systems of surveillance and regulation have not been able to ameliorate the problem. Some insolvencies occur every year and an average of more than ten have occurred every year in the last twelve years.

- Victims of insurance company insolvency are not generally guaranteed reimbursement. For their benefit and for the health and strength of the industry, a system of prompt payment of innocent victims is needed, as is an improved system of detection of faulty insurance company operation..

The Background:

Public officials, legislators and the insurance industry itself have been concerned with the problem of insurance company insolvency for more than ten years.

All three groups agree that the prime consideration must be protection of the public in the event of an insurance company insolvency.

All three groups agree that a key objective of legislation or regulatory procedures should be the prevention of insurance company insolvencies.

Various Suggested Proposals:

1. Expansion of uninsured motorist endorsement.

2. State pre - insolvency assessment fund laws.

3. State post - insolvency assessment laws.

4. Private national or regional insurance guaranty facility.

5. National guaranty facility through a governmental corporation (Federal Insurance Guaranty Corporation).

The Solution:

WE BELIEVE THAT A FEDERAL INSURANCE GUARANTY CORPORATION -- PATTERNED AFTER THE HIGHLY - SUCCESSFUL FEDERAL DEPOSIT INSURANCE CORPORATION IN THE BANKING FIELD -- IS CLEARLY PREFERABLE TO ALL OTHER PROPOSALS.

The Reason:

Only the Federal Insurance Guaranty Corporation meets all of the essential requirements of:

- Strengthening the insurance regulatory process by supplementing state examination authority and responsibility, otherwise leaving state regulatory authority and responsibility and state taxation unchanged;
- Assisting in the detection of the interstate shifting of a company's assets, which has been a factor in many insolvencies; and,
- Prohibiting proliferation of state insolvency funds which are unsound and unfair in the concept.

The Shortcomings of the Other Suggested Proposals:

1. Expansion of the uninsured motorist insolvency coverage places the financial burden of insurance company insolvency where it does not belong, that is, on the responsible individual who selected a strong company. He pays for his own insurance and then has to insure himself against the unwise selection of another person. This coverage is slow to respond and cumbersome to administer. Lengthy procedures must be followed before insolvency is established and right to reimbursement is determined. There are significant "gaps" in the extent of coverage; many innocent victims of insolvency have no uninsured motorist coverage against which to proceed.

2. Pre - insolvency assessment laws in all states would add up to an unrealistic liability that would constrict the capacity of insurance companies and, therefore, the amount of insurance they would be able to make available. Such laws also create funds that can be diverted by the states to meet other financial obligations.

3. State post - insolvency assessment laws place the total economic burden on the solvent and well managed insurers. They are governmentally unsound in that they give the state regulator a "blank check" with which to cover the damage arising from failures of performance. And, they put a contingent liability on well managed companies that will make it difficult to portray and evaluate the exact financial condition of insurance companies.

   Neither the pre - insolvency nor the post - insolvency assessment laws, as presently written, provide complete or prompt guarantee of reimbursement to the victims of insurance company insolvency and neither make any sound and workable contribution to the prevention of insolvency.

4. Private insurance guaranty facility would require extensive rewriting of the federal laws, including possible expansion of anti - trust exemptions, and would pose problems of practicality and propriety in requiring competitors to police one another.

AMERICAN INSURANCE ASSOCIATION
85 JOHN STREET · NEW YORK · N. Y. 10038

November 18, 1969

To the EXECUTIVES:

Gentlemen:

Attached is a copy of the statement we will give on Wednesday, November 19, before the Senate Commerce Committee with respect to S. 2236, providing for a Federal Insurance Guaranty Corporation.

Sincerely,

T. Lawrence Jones

T. Lawrence Jones
President

TLJ:SSJ

enclosure

Statement of T. Lawrence Jones, President
American Insurance Association
With Respect to S. 2236, Providing A
Federal Insurance Guaranty Corporation Act,
Before Senate Commerce Committee
November 19, 1969

My name is T. Lawrence Jones and I am President of American Insurance Association, an organization of insurance companies writing all kinds of property and casualty insurance throughout this country. Our member companies have a premium volume of over $7 billion. We are pleased to have this opportunity to appear before the Senate Commerce Committee to present our views on the general problem of insurance company insolvency, and more particularly on S. 2236. This bill, introduced by Senator Magnuson and co-sponsored by Senators Dodd, Hart, Hollings, Inouye, Moss and Pastore, would create a Federal Insurance Guaranty Corporation for the purpose of protecting the American public against insurance company insolvencies.

Public officials, legislators and the insurance industry itself have been concerned with the problem of insurance company solvency for many years. As could be expected, the intensity of concern has varied substantially as the number of company insolvencies rose and fell and as reports of insurance company liquidations increased and decreased.

Regardless of the understandable ups and downs of public concern, American Insurance Association is convinced that there is a real problem to which a solution must be found.

Historical Position of Insurance Industry

Some years ago the insurance industry held to the position that all measures by which insurance companies collectively helped, in

one way or another, to defray the losses of insolvent insurance companies were unsound. It was argued that these measures put weak companies on a parity with strong ones and tolerated, if not encouraged, bad management. It was further argued that these plans removed incentives on the part of agents and brokers to be sure they were placing their business with responsible and reputable insurance companies. We cannot disagree with the logic of these arguments, but times have changed. Today, such arguments are outweighed by social considerations and we believe the prime consideration is that the public must be protected in the event of an insurance company insolvency. In addition, the nagging insolvency problem damages the industry as a whole and each company suffers in public esteem.

The Dimensions of the Problem

There has been considerable debate as to the size of the problem.[1] Some have endeavored to treat it as de minimis. It is our view that the figures should speak for themselves, but in any event we have concluded that one insurance company insolvency is one too many, especially if there is no way to reimburse the victims of that insolvency.

The only question open for discussion, in our judgment, is what solution will best serve the public interest.

Solutions

Expansion of Uninsured Motorist Endorsement

American Insurance Association has been seeking the

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[1] See New York Insurance Department Report to Governor Rockefeller, The Public Interest Now in Property and Liability Insurance Regulation, January 7, 1969 and Report of NAIC Special Committee on Automobile Insurance Problems, June 16, 1969.

best solution over a period of years and with renewed intensity since the introduction in January 1967 of S. 688, providing for a Federal Motor Vehicle Insurance Guaranty Corporation.[2]

Until recently the discussion has centered on automobile insurance. In fact, the earlier bills, such as S. 688, would have provided protection only against the insolvency of automobile insurers. The focus on automobile insurance suggested to some the desirability of expanding the uninsured motorist coverage specifically to include insurance company insolvencies.

All states, except Maryland and North Dakota, now have mandatory uninsured motorist laws.[3] Most of these laws are specifically applicable in cases where the insurer is insolvent but, even in those states where the law is silent as to coverage in case of insurer insolvency, there is a strong likelihood that the laws would be construed to apply. In fact, practically all auto insurers today have voluntarily included provisions in their uninsured motorist coverage making the coverage specifically applicable to insolvencies.

American Insurance Association has never regarded the uninsured motorist endorsement with coverage for insolvency as either an adequate or effective answer to insurance company insolvencies.

These uninsured motorist laws are confined to automobile insurance and therefore do not provide protection to other claimants and policyholders who may be the victims of an insurer insolvency.

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[2]A similar bill, S. 3919, was introduced in 1965 by Senators Dodd, Clark, Magnuson and Hart.

[3]See attached American Insurance Association Chart Analysis, October 1969.

Even in the area of automobile accidents they do not protect the non-car-owning pedestrian who has the misfortune of being injured by a motorist whose insurance company has become insolvent.

The uninsured motorist insolvency coverage is an obvious example of placing the financial burden of insurance company insolvency where it does not belong. It is not a valid solution and we doubt whether anyone today will seriously contend otherwise.

State Security Funds

A number of states have endeavored to meet the problem by the enactment of laws providing for state security or insolvency funds. These laws were originally enacted to protect employees under state workmen's compensation laws. (See attached list of states having workmen's compensation security funds.) Most of these laws were enacted during the 1930 depression years. Legislators were concerned that workers injured in industrial accidents might find their workmen's compensation benefits endangered by insurance company insolvencies.[4]

Most of these workmen's compensation security funds were of the pre-insolvency assessment type - i.e. they required the collection of funds by assessing insurers prior to a company insolvency. Two of them (Maryland and Minnesota) are post-assessment insolvency funds, which means insurers are assessed only after the insolvency has occurred.

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[4] The workmen's compensation laws, as originally enacted, made the employer liable for workmen's compensation benefits in the event the insurer became insolvent. This provision was eliminated in a few states which subsequently enacted security fund statutes.

The security-fund solution for automobile liability insurance companies was first enacted by the State of New York in 1947.[5] This law (Section 333 of the New York Insurance Law) was amended in 1969 to make the New York security fund applicable to all property and casualty lines other than workmen's compensation which continues to have its own security fund law.

In the 1950's Maryland and New Jersey enacted automobile liability insurance security fund laws of the pre-insolvency assessment type. In subsequent years some state legislatures, from time to time, considered insolvency fund legislation but no additional states enacted these laws until the renewed interest this year when California, Michigan, New Hampshire and Wisconsin enacted post-insolvency assessment laws and, as noted above, New York expanded its law to cover other property and casualty lines. In addition, New York has also placed a much needed ceiling of $200 million on the fund.[6] This year Maryland amended its law to make the fund applicable to automobile physical damage insurance.[7]

This renewed interest in state insolvency fund legislation has been caused by a recent flurry of insolvencies, some of which

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[5] In 1939 New York had established an insolvency fund to protect persons who had claims against a company providing the compulsory coverage for public motor vehicles.

[6] Under the New York law, before the 1969 amendment, the method of assessing insurers provided no realistic limitation on the size of the fund. It had grown to an amount in excess of $125 million. For a number of years AIA and others have urged a limitation be placed on the size of this fund.

[7] See the attached AIA Special Management Legislative Bulletin summarizing insolvency fund legislation in 1969. See also attached summary of Property and Liability Security Fund laws.

have been widely publicized. In addition, the introduction of legislation in the Congress, patterned after the Federal Deposit Insurance Corporation Act with strong support in both the Senate and House of Representatives, has rekindled interest in legislation at the state level.

The position of American Insurance Association on state pre-insolvency assessment funds (Maryland, New Jersey and New York) and state post-insolvency assessment laws (California, Michigan, New Hampshire and Wisconsin) is clear-cut. Neither, in our judgment, provides a sound solution to the problems and we do not think the public interest is well served by such legislation.

State Pre-Insolvency Fund Laws

The pre-insolvency assessment type of law creates a fund in anticipation of some possible future insolvency. The proliferation of such funds in each of the fifty states to protect policyholders and claimants from insolvencies in a business which is transacted across state lines would be difficult to justify from the standpoint of efficient and sound public administration. In the years following the Southeastern Underwriters Association decision by the United States Supreme Court in 1944, it was recognized that a sure way to encourage federal action would be for a number of states to enact pre-insolvency security fund laws. It did not make sense then, and it makes no sense today, to have fifty states amass such funds, administer them and make payments to claimants and policyholders. If one accepts the hypothesis that pre-insolvency funding is more effective and equitable than post-insolvency laws, then clearly one fund is preferable to the establishment of fifty funds.

There is valid concern that these state pre-insolvency funds which tend to reach amounts far in excess of foreseeable needs will be diverted to other purposes. This fear has been ridiculed by some public officials but the plain fact is that such diversion has happened in the past few years. Twice the New Jersey automobile security fund monies have been diverted into the New Jersey Claim and Unsatisfied Judgment Fund (Chapter 241, Laws of 1967 and Chapter 322, Laws of 1968). So this is not a fanciful fear; it is a real possibility.

A major weakness in the state pre-insolvency fund legislation is that it is solely a "bail-out" remedy. It does absolutely nothing to bolster and strengthen regulatory procedures in order to prevent insolvencies. Some have even suggested that these pre-insolvency funds may accelerate the number of insolvencies because state regulatory authorities may become complacent and less diligent in exercising their supervisory functions, knowing that the funds will take care of policyholders and claimants. We disagree with that view. There are far too many other discomforting consequences which will beset an insurance commissioner in the event of an insolvency - including market restrictions, loss of jobs, loss of tax revenue and all the other heartaches associated with a liquidation proceeding. While regulatory bodies will not relax their vigilance in regulating to preserve solvency, these security fund laws in no way help to prevent insolvencies. The industry has long held the view, and I believe it does today, that any solution to the insolvency problem which provides financial assistance to policyholders and claimants must be accompanied

by additional affirmative regulatory procedures to prevent insolvencies. American Insurance Association still holds to that proposition.

State Post-Insolvency Assessment Laws

The post-insolvency assessment law avoids, or at least lessens, some of the defects inherent in pre-insolvency assessment fund laws. Large sums are not accumulated and thus do not remain idle and unproductive long before they are needed. Also, since no funds are accumulated, there is no enticing opportunity for diversion to other purposes. However, like the pre-insolvency laws, post-insolvency assessment laws do not make any sound and workable contribution to the prevention of insolvency.

The post-insolvency assessment plan has other serious defects. It exposes insurers to unknown liabilities which could occur at a time when they might be least able to sustain such additional liabilities, even though there are annual limitations on assessments.

There is no way the post-insolvency assessment plan can soften the patent inequity of placing the total economic burden on solvent and well-managed insurers. The post-insolvency law, as we have noted, does nothing to prevent insolvencies and then compounds this inadequacy by making the strong and reputable companies pay for the sins of the mis-managed and weak, including a number whose managements might have engaged in highly questionable, if not at times clearly fraudulent, practices.

The post-insolvency assessment concept is embodied in model state legislation being proposed by the American Mutual Insurance Alliance. The AMIA model bill, as we understand it, places some regulatory power in an insolvency board composed of the insurance commissioner and representatives of insurance companies, thereby recognizing that something more than a financial rescue is needed. Whether it is a proper responsibility for the private sector to become involved in this kind of industry policing, is debatable. It is noteworthy that up to the present time, no post-insolvency assessment law has bestowed any such authority on insurance companies.

Summarizing our views on state security fund laws, American Insurance Association is completely opposed to a solution which would establish security funds in each state by means of an annual assessment on insurers. We are also opposed to the post-insolvency assessment plan although we recognize that it is probably the least objectionable remedy available at the state level. An additional reason that these state post-insolvency assessment laws are less objectionable than some of the other state proposals is that they can be effectively meshed into a national solution should a national plan prove to be the ultimate answer.

Alternative Measures

Since the American Insurance Association companies have realized the shortcomings of the conventional state-oriented solutions, we have explored alternatives to the Federal Deposit Insurance Corporation approach in order to see if we could develop a national plan which could be administered largely, if not solely, by the industry.

In this phase of our study, we were guided by the following basic criteria:

1. Any such plan must provide additional safeguards to prevent insolvencies; bail-out alone would be unacceptable.
2. It should include a private guaranty facility, national in scope.
3. In order to avoid further echelons of regulation, the role of state and federal regulation should be as little as legally possible.
4. All insurers should be compelled or strongly induced to participate in the facility.

Within the context of these criteria, we studied the concept of a private facility along the lines of the National Association of Securities Dealers (NASD) which is authorized by the 1938 amendments to the Securities Exchange Commission Act of 1934 to regulate over-the-counter brokers. Such a plan would have contemplated one or more private facilities guaranteeing the policies of its members. All insurers would be required to belong to a facility which would have certain examination powers over its members.

In the course of our study of this proposal we were advised by counsel that a purely private facility without federal legislation could present problems. It was recommended to us that it might be necessary to have some federal supervisory power over the private facility and that members of the facility should have the right to appeal the action of the facility to the supervising federal body. It

was further suggested that it might be necessary to have some exemption from the federal antitrust laws. Part of the reasoning for this suggestion was that the activities of the facility would include the policing of insurers and this could be construed to constitute, "boycott, coercion and intimidation" which are expressly excluded from the scope of the exemption contained in the McCarran-Ferguson Act.

If it were necessary to obtain federal legislation to permit the operation of a private insurance guaranty facility, three practical questions had to be answered.

1. Could we reasonably anticipate that the Congress would favorably consider legislation authorizing a private facility to exercise a policing function, albeit a limited one?
2. Would the Congress be likely to expand the present antitrust exemption even for such a worthy purpose as providing policyholder and claimant security against insolvencies?
3. Against the background of the highly successful Federal Deposit Insurance Corporation Act, is there any reasonable likelihood that the Congress would consider a different approach in the insurance area?

We have endeavored to analyze realistically and objectively these three questions and have concluded that they must be answered in the negative.

One other consideration has affected our view of the private facility approach. Some of our member companies do not believe that private insurers should become involved in the policing of their competitors.[8] Even if there were no federal legislative problems, they would be opposed to a private facility with policing powers. Additionally, we should reiterate that American Insurance Association is opposed to any solution which does not make a workable contribution to the prevention of insolvencies.

Although we have concluded that the private facility approach is not feasible, if we could be convinced that it did not necessitate far-reaching federal legislation, we would be willing to re-evaluate our position. The one caveat would be the practicality and propriety of any device requiring competitors to police one another.

We have examined other variations of the private facility approach, including the private insurance guaranty corporation proposal outlined in the June 16, 1969 Automobile Insurance Study Background Memorandum, prepared by the staff of the National Association of Insurance Commissioners' Central Office for consideration by the NAIC Special Committee on Automobile Insurance Problems.

We believe that our comments with respect to a private facility suggested by present regulation of over-the-counter brokers by NASD is applicable to the proposal suggested by staff of the NAIC Central Office.

Proposal of Economic Regulation Advisory Committee to the DOT Auto Insurance and Compensation Study

The Economic Regulation Advisory Committee to the Department of Transportation Auto Insurance and Compensation Study under date of

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[8]Some have attempted to compare this private industry role to insurance industry organizations which assist law enforcement authorities. We believe this is a far-fetched analogy and not at all relevant in the area of competitors.

July 8, 1969 submitted a report to the DOT on S. 2236. This advisory committee suggested its own proposal in lieu of S. 2236. Their plan would provide for the enactment by the Congress of a law providing for the imposition of a "substantial federal general revenue tax on insurance premiums derived within each state." It would further provide that the tax be forgiven in full as to all states which have in effect an insolvency guaranty law meeting certain criteria specified in the federal law. The purpose of this proposal is to apply maximum pressure on "state legislatures and regulators to have adequate legal requirements and adequate administrative supervision of insurers." The proposal contemplates the possibility of state enactment of insolvency fund laws similar to the New York law or a post-insolvency assessment law such as those enacted in four states this year.

This plan has all the weaknesses of the state insolvency measures and it is hard to see what it does to improve state regulatory machinery to prevent insolvencies.

We have great respect for the members of this advisory committee but we cannot convince ourselves that a tax threat proposal of this sort is a workable solution.

S. 2236

We come now to S. 2236, the consideration of which is the reason for the hearings of your committee.

S. 2236 is patterned on the highly successful federal legislation establishing the Federal Deposit Insurance Corporation which insures the deposits of all its member banks. The bill establishes a corporation to be known as the Federal Insurance Guaranty Corporation, to which practically all insurers are required to belong. Only a small number

of insurers would not be required to join since very few companies are not in one way or another engaged in interstate commerce.

Each insurer would pay an annual fee equal to one-eighth of one percent of its net direct premiums. These fees would be continued only to the extent it would be necessary to keep the net asset value of the fund at an amount not less than two percent of the annual direct premiums written by all participating insurers. Before this cut-off the corporation would have to retire the outstanding Treasury shares amounting to $50 million which supply the initial financing.

The FIGC would be empowered to settle or adjust any claim against an insolvent member insurer. Claims for return premiums would not be allowed in excess of fifty percent of unearned premiums. The bill would require claimants to exhaust their claims against state insolvency funds before receiving payment from FIGC. No further fees or assessments under any state insolvency law would be permitted for any period during which the insurance policies of that insurer are guaranteed under this legislation.

In the case of insolvency protection under the uninsured motorist endorsement, a policyholder would first have to exhaust his remedies against any applicable state insolvency fund and then against the FIGC before receiving any payment from his insurer.

It is clear, therefore, that the bill seeks to establish a single program for providing payments to those who have claims against an insolvent insurance company.

The bill grants broad examination powers to the corporation. All such examinations are required to be coordinated as far as practicable

with appropriate state supervisory authorities and the National Association of Insurance Commissioners. It authorizes the corporation to terminate the guaranteed status of an insurer if it finds:

1. That the insurer is engaging in unsafe or unsound practices,
2. The insurer is in unsafe or unsound condition, or
3. The insurer has violated this law or any rule or regulation issued under it.

The corporation also has power to bring cease-and-desist proceedings if it believes an insurer is enaging in an unsafe or unsound practice or is violating the law.

American Insurance Association, as previously stated, recognizes that a problem exists and a solution must be found. We have shared with this committee our analysis and conclusions with respect to the various proposals which are under consideration. It is our view that S. 2236, patterned after the Federal Deposit Insurance Corporation Act, is clearly preferable to all other proposals and we endorse this legislation.

It should be noted that S. 2236 provides a sure way to protect members of the public against the possibility of insurance company insolvency. It also prohibits the proliferation of state insolvency funds which, in our judgment, is a totally unacceptable solution. Finally, unlike all the other solutions under discussion, S. 2236 strengthens the regulatory process. It should prove to be especially helpful in preventing the interstate shifting of company assets, which has been beyond the reach of state regulatory power and which has been such a significant factor in a number of insolvencies.

We disagree with those who contend that this legislation portends the end of state regulation or that it diminishes the important role of state regulation. On the contrary, we believe it compliments and supplements state supervision. It will, in fact, strengthen state regulation by removing a long-standing source of criticism.

We have reached our decision supporting S. 2236 only after the most careful study. We are well aware that in varying degree a number of segments of the industry are opposed to this legislation. We also know that the National Association of Insurance Commissioners has adopted a resolution against this legislation. Our decision to support this bill reflects our considered judgment that the FDIC approach offers the most effective and workable solution to the insolvency problem of a business which is extensively transacted across state lines.

Respectfully submitted.

T. Lawrence Jones

T. Lawrence Jones, President
American Insurance Association

MANDATORY UNINSURED MOTORIST PROVISIONS

(Compiled by the Law Department of the American Insurance Association)

October 1969

STATE	LIMITS	PROPERTY DAMAGE EXCLUSION	MAY INSURED REJECT COVERAGE?	UNINSURED MOTORIST FEE	APPLICABLE WHERE INSURER INSOLVENT?	UNUSUAL FEATURES
Alabama	10/20		Yes+	None	No prov.	
Alaska	15/30		Yes	None	No prov.	
Arizona	10/20		Yes+	None	No prov.	
Arkansas	10/20		Yes	None	Yes	
California	15/30		Yes	None	Yes	(b)(h)
Colorado	15/30*		Yes+	None	No prov.	
Connecticut	20/20(a)		No	None	Yes	(n)
Delaware	10/20		Yes+	None	Yes	
Florida	10/20		Yes+	None	Yes	
Georgia	10/20/5(m)	$250	Yes+	None	Yes	(e)(h)(j)
Hawaii	10/20		Yes	None	No prov.	
Idaho	10/20		Yes+	None	Yes	
Illinois	10/20		No	None	Yes	
Indiana	10/20		Yes+	None	Yes	
Iowa	10/20		Yes+	None	Yes	(j)
Kansas	10/20		Yes+	None	Yes	(n)
Kentucky	10/20		Yes+	None	Yes	(h)(q)
Louisiana	5/10		Yes	None	Yes	(n)
Maine	20/40		No	None	Yes	
Massachusetts	5/10		No	None	Yes	
Michigan	10/20		Yes+	$35	Yes	(o)
Minnesota	10/20(u)		(p)	None	Yes	
Mississippi	5/10		Yes+	None	Yes	(e)(j)
Missouri	10/20		Yes+	None	Yes	
Montana	10/20		Yes+	None	No prov.	
Nebraska	10/20		Yes+	None	Yes	
Nevada	15/30		Yes+	None	Yes	(e)(h)(j)(q)
New Hampshire	15/30(a)*		No	None	Yes	
New Jersey	10/20	$100	Yes++	None	No prov.	
New Mexico	10/20/5	$250	Yes+	None	No prov.	
New York	10/20		No	None	No prov.	(h)
North Carolina	10/20/5(k)	$100	Yes	None	Yes	(g)(k)
Ohio	12.5/25*		Yes+	None	No prov.	
Oklahoma	5/10/(r)		Yes+	None	Yes	(s)(t)
Oregon	10/20		No	None	Yes	(c)(h)
Pennsylvania	10/20		No	None	Yes	
Rhode Island	10/20		Yes	None	No prov.	
South Carolina	10/20/5	$200	No	$50 max**	Yes	(d)(e)(f)(g)(h)(j)
South Dakota	10/20		Yes+	None	Yes	
Tennessee	10/20		Yes+	None	Yes	(e)(q)
Texas	10/20		Yes+	None	Yes	
Utah	10/20		Yes+	None	No prov.	
Vermont	10/20		No	None	Yes	
Virginia	20/30/5(a)*	$200	No	$50**	No prov.	(e)(g)(h)
Washington	15/30		Yes+	None	Yes	
West Virginia	10/20/5	$300	No	None	Yes	(e)(j)
Wisconsin	10/20/(r)		Yes+	None	Yes	
Wyoming	10/20		Yes+	None	Yes	

* Effective January 1, 1970

** Fund distributed to insurers after deduction of administration expense.

e-Arbitration provision prohibited.
f-Insurer must give notice of termination of policy.
g-Insurer may defend uninsured motorist.
h-Also covers cases where insurer denies liability.
i-Requires contact in hit-and-run cases.

+ If rejected, insurer need not offer coverage on renewal unless requested

++ Insured must elect to accept or reject offer of coverage in writing.

a-Insured may require limits equal to his liability limits.

b-Failure to file evidence of financial responsibility under Financial Responsibility Law creates rebuttable presumption that vehicle was uninsured.

c-Coverage not required in policy covering trucks of combined weight and load capacity of more than 6000 operated by employees covered by workmen's compensation.

d-No charge to be made for coverage.

k-Person who carries liability limits of at least 15/30 is entitled to 15/30 coverage.

m-Insured vehicle and contents only.

n-Arbitration optional with insured.

o-All policies to contain notice that coverage was explained and that insured may reject.

p-Coverage may not be rejected for policies covering private passenger vehicles or pick-up trucks. May be rejected as to others.

q-"Uninsured motor vehicle" includes vehicle insured in lower limits.

r-Insurer may make higher limits available.

s-If agreement by arbitration is not reached within 3 months from demand for arbitration insured may sue tortfeasor.

t-Inapplicable to motor carriers whose drivers are covered by workmen's compensation.

u-After 1970 insured may require limits equal to his liability limits.

WORKMEN'S COMPENSATION SECURITY FUNDS

Arizona - Uninsured Employers and 2nd Injury Special Fund. -§23-1065, Revised Statutes - Fund is maintained by a tax not to exceed 2% of premiums; also in no-dependency death cases, carriers shall pay $1,150 into fund. §23-907B authroizes payments out of special fund plus a 10% penalty on employer.

Connecticut - 2nd Injury & Compensation Assurance Fund - §§31-354 and 31-355-Gen. Stats.-1% of compensation paid during preceding year with payments to cease when fund reaches $100,000 and to be resumed when it falls below $100,000.

Maryland - §§85-89, Art. 101, Maryland Code-Post-insolvency assessment, pro-rata, upon all insurers not to exceed 1% of workmen's compensation premiums written during preceding calendar year.

Minnesota - §§79-28, 79-29, Minn. Stat. 1965. Assessment of other carriers for the payment of unpaid workmen's compensation awards of insolvent company. Pro-rata assessment in any one year in no case to exceed 1% of workmen's compensation premiums written during the preceding calendar year.

New Jersey - Sec. 34:15-103 ff. Revised Statutes of 1937. 1% of net written premiums payable bi-annually until fund, over and above liabilities, equals 5% of workmen's compensation loss reserves of all stock carriers as of December 31 next preceding; payments to be resumed when said fund falls below this figure.

New York - Art. 6-A (§§106-109) of Workmen's Compensation Law. One percent of net written premiums payable until fund, less liabilities, equals 5% of New York Workmen's Compensation loss reserves of all stock carriers as of December 31 next preceding, or equals $2,300,000, whichever sum is greater. Payments are resumed when fund is reduced below this amount. Payments to be made quarterly.

North Carolina - Art. 3, Chap. 97, §§97-105-97-117, Gen. Stats. One percent of net written premiums payable bi-annually until fund over and above liabilities equals 5% of workmen's compensation loss reserves of all stock carriers as of December 31 next preceding; payments to be resumed when said fund falls below this figure.

Oregon - Direct Responsibility Employer's Adjustment Reserve §656.614, Oregon Rev. Stats.-Pro-rata assessment upon (DRE) employers sufficient to pay unpaid claims because of insolvency of surety or guarantor of employer.

Pennsylvania - Act No. 470, Laws of 1937. One percent of net written premiums payable annually until fund, over and above liabilities, equals 5% of workmen's compensation loss reserves of stock carriers as of June 30 next preceding. Payments are to be resumed when the fund falls below this amount.

United States Longshoremen's and Harbor Worker's Act - Special Fund - §§18 (b) and 44 - $1,000 paid into Fund by employer in each no-dependency death case.

Wisconsin - Workmen's Compensation Law, Sec. 102.65. One percent of earned premiums payable annually until fund, over and above liabilities, equals 5% of the loss reserves of all stock carriers for the payment of benefits under said section as of December 31 next preceding. Payments are to be resumed when fund falls below this amount. Payments into stock fund are not to be discontinued unless said fund consists of at least $25,000 over and above its known liabilities. This fund has now been consolidated with the mutual and reciprocal funds and transformed into a temporary fund for payment of assessments into the newly created post assessment Insurance Security Fund which has broad coverage, including workmen's compensation (S.B. 525) Chapter 144, Laws of 1969.

Broad Guarantee Provisions Including Workmen's Compensation

California - Act 14.2 Sec. 1063 ff. of the Insurance Code. Provides for creation of California Insurance Guarantee Association to which all insurers, with certain exceptions life, title, etc. must belong. Workmen's compensation writers included as a separate category. Post insolvency assessment limited to 1% of net direct premium written in particular category (Chapter 1347, Laws of 1969, effective August 31, 1969).

Michigan - Secs. 7833 and 7901 ff. (compiled Laws of 1948, added by Act No. 277, Laws of 1969) creates Property and Casualty Guaranty Association to which all insurers, except life, must belong. Workmen's compensation writers included as a separate category. Post insolvency assessment limited to 1% net direct premium written in previous calendar year in particular category.

Wisconsin - described above.

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11/13/69

MANAGEMENT BULLETIN
American Insurance Association
85 John Street New York, N.Y. 10038

Date November 10, 1969

No. 69-11-2

Special Management Legislative Bulletin

INSOLVENCY FUND LEGISLATION-AS OF NOVEMBER 7, 1969

STATE	BILL NO.	BRIEF SUMMARY	STATUS
California	House 1310	Creates the Insurance Guarantee Ass'n, which will assess all insurers other than life or title; post assessment- maximum 1% in year.	LAW
Florida	Senate 920	Would have created security funds for casualty, property, surety and workmen's compensation insurance. Pre-assessment.	Died
	Senate 1523	Would have required insurers to pay 1% of premiums on post-assessment basis where insurer is insolvent, to defray losses to claimants.	Died
Maryland	Senate 199	Makes the Motor Vehicle Liability Security Fund applicable to physical damage	LAW
Michigan	House 3166	Would create the Property and Casualty Insurance Insolvency Fund, which would assess upon insurers the amount needed to pay for transfer by reinsurance or coinsurance of all policies in force on residents, and for cost of adjustment and payment of claims. Post assessment.	No Action
	House 3216	Would create the Michigan Casualty Assessment Association consisting of all insurers writing automobile and workmen's compensation insurance; the Association to assume obligations of any casualty insurer declared insolvent; post assessment- maximum 1% in year.	No Action
	House 3699	Creates an insolvency pool, and requires all insurers writing casualty, property and workmen's compensation insurance to assume obligations of insurer declared insolvent; post assessment- maximum 1% in year.	LAW

(over)

STATE	BILL NO.	BRIEF SUMMARY	STATUS
New Hampshire	House 668	Creates the N.H. Automobile Assessment Association to which all automobile insurers must belong. Upon determination that an insurer is insolvent, the Insurance Commissioner shall assess all members of the Association for payment of all bodily injury liability, property damage liability, medical payments, uninsured motorists, auto physical damage claims and claims for unearned premiums.	LAW
New York	Senate 3534	Broadens the Motor Vehicle Liability Security Fund to cover all property liability lines, payments to cease when Fund reaches $200,000,000.	LAW
Wisconsin	Senate 525	Creates a Security Fund; post assessment-Maximum 2% in year.	LAW
U.S. Congress	H.R. 1087	Creates the Federal Motor Vehicle Insurance Guaranty Corporation, based on the Federal Deposit Insurance Corporation Act.	No Action
	H.R. 1376	Same as Above	No Action
	H.R. 2656	Same as Above	No Action
	H.R. 3671	Same as Above	No Action
	H.R. 6475	Same as Above	No Action
	Senate 2236	Would create the Federal Insurance Guaranty Corporation, applicable to all lines other than life, accident and health and title. Pre-assessment.	Hearings scheduled for November 12, 19, and 20.
	H.R. 13428	Same as Above	No Action

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Property & Liability Security Funds

California - California Insurance Guaranty Association to which all insurers except those writing exclusively surety, credit, ocean, marine, life, title and certain other lines, must belong for purpose of providing each member with insolvency insurance. Post assessment, not more than 1% of net direct premium written in category (compensation, auto, other) in the State (Chapter 1347, Laws of 1969)

Maryland - Motor Vehicle Security Fund - for payment of allowed claims of injured parties and policyholders arising out of motor vehicle accidents by reason of insolvency or inability of insurer to meet its insurance obligations. Preassessment 1/4 of 1% net direct written auto liability and physical damage premiums. (§482A of Art. 48A, Annotated Code of Maryland)

Michigan - Property & Casualty Guaranty Association maintained by all authorized insurers, except life, which shall discharge obligations of insolvent insurers arising out of contracts issued or payable to residents Policy contracts covered: Auto insurance, workmen's compensation, basic property insurance, homeowners, farm owners and commercial multiple peril. Post-assessment not to exceed 1% of net direct premiums during previous calendar year. (Act 277, Acts of 1969)

New Hampshire - Auto Assessment Association to which all auto insurers are required to belong. Post insolvency assessment for payment to residents

of bodily injury liability, property damage, medical payments, U.M., physical damage and claims for unearned premiums. Maximum assessment in any calendar year shall not exceed 3% of total amount of all net direct premiums written by all licensed auto insurers having such business in the State in said calendar year. (Chapter 349, Laws of 1969, effective June 30, 1969)

New Jersey - Motor Vehicle Liability Security Fund for purpose of securing the benefits under policies of motor vehicle liability insurance by reason of the default of an insurer which becomes insolvent - 1/2% of direct gross motor vehicle premiums; ceases when net value of Fund reaches $6,000,000; resumes when Fund falls below such amount.(§§39:6-92 - 39:6-104 NJSA)

New York - Property & Liability Insurance Security Fund to be used in payment of allowed claims of residents by reason of the inability due to insolvency of an authorized insurer to meet its insurance obligations under generally all property and liability lines. Pre-assessment: 1% net direct written premiums until Fund reaches $200,000,000. (§334 N.Y. Insurance Law, as amended by Chapter 189, Laws of 1969)

Wisconsin - Wisconsin Insurance Security Fund - Applicable generally to all lines. Fund divided into three separate accounts, life, disability and all other covered insurance, for purpose of paying claims of residents arising out of policy issued by authorized insurer and which claim has been approved in the liquidation of the insurer issuing the policy. Post assessment, maximum 2% of the assessable premiums (Chapter 144, Laws of 1969, effective 8/22/69)

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Justice work copy

Fritz Div of Insurance

Introduced: 3/11/70
Referred: Commerce and Judiciary

IN THE HOUSE BY THE COMMERCE COMMITTEE

HOUSE BILL NO. 782

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTH LEGISLATURE - SECOND SESSION

A BILL

For an Act entitled: "An Act relating to guaranteeing certain insurance contracts."

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

* Section 1. AS 21 is amended by adding a new chapter to read:

CHAPTER 80. ALASKA INSURANCE GUARANTY ASSOCIATION ACT.

Sec. 21.80.010. PURPOSE. The purpose of this chapter is to provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment and to avoid financial loss to claimants or policyholders because of the insolvency of an insurer, to assist in the detection and prevention of insurer insolvencies, and to provide an association to assess the cost of this protection among insurers.

Sec. 21.80.020. SCOPE. This chapter applies to all kinds of direct insurance, except life, title, surety, disability, credit, mortgage guaranty, and ocean marine insurance.

Sec. 21.80.030. CONSTRUCTION. This chapter shall be liberally construed to effect the purpose under sec. 10 of this chapter which constitute an aid and guide to interpretation.

Sec. 21.80.040. CREATION OF ASSOCIATION. There is created a nonprofit incorporated legal entity to be known as the Alaska Insurance Guaranty Association. All insurers defined as member insurers in sec. 190(6) of this chapter shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation

established and approved under sec. 70 of this chapter and shall exercise its powers through a board of directors established under sec. 50 of this chapter. For purposes of administration and assessment, the association shall be divided into three separate accounts; the workmen's compensation insurance account; the automobile insurance account; and the account for all other insurance to which this chapter applies.

Sec. 21.80.050. BOARD OF DIRECTORS. (a) The board of directors of the association shall consist of not less than five nor more than nine persons serving terms as established in the plan of operation. The members of the board shall be selected by member insurers subject to the approval of the commissioner. Vacancies of the board shall be filled for the remaining period of the term in the same manner as initial appointments. If no members are selected within 60 days after the effective date of this chapter, the commissioner may appoint the initial members of the board of directors.

(b) In approving selections to the board, the commissioner shall consider among other things whether all member insurers are fairly represented.

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

Sec. 21.80.060. POWERS AND DUTIES OF THE ASSOCIATION. (a) The association shall

(1) be obligated to the extent of the covered claims existing prior to the determination of insolvency and arising within 30 days after the determination of insolvency, or before the policy expiration date if less than 30 days after the determination, or before the insured replaces the policy or causes its cancellation, if he does so within 30 days of the determination, but this obligation shall include

only that amount of each covered claim which is in excess of $100 and is less than $300,000, except that the association shall pay the full amount of any covered claim arising out of a workmen's compensation policy; in no event shall the association be obligated to a policy holder or claimant in an amount in excess of the obligation of the insolvent insurer under the policy form which the claim arises;

(2) be considered the insurer to the extent of its obligation on the covered claims and to that extent shall have all rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent;

(3) allocate claims paid and expenses incurred among the three accounts separately, and assess member insurers separately for each account amounts necessary to pay the obligation of the association under (a)(1) of this section subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, the cost of examinations under sec. 110 of this chapter and other expenses authorized by this chapter; the assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the preceding calendar year on the kinds of insurance in the account bears to the net direct written premiums of all member insurers for the preceding calendar year on the kinds of insurance in the account; each member insurer shall be notified of the assessment not later than 30 days before it is due; no member insurer may be assessed in any year on any account an amount greater than two per cent of the member insurer's net direct written premiums for the preceding calendar year on the kinds of insurance in the account. If the maximum assessment, together with the other assets of the association in any account, does not provide in any one year in any account an amount sufficient to make all necessary payments from that account, the funds available shall be

prorated and the unpaid portion shall be paid as soon thereafter as funds become available; the association may exempt or defer, in whole or in part, the assessment of any member insurer, if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; each member insurer may set off against an assessment, authorized payments made on covered claims and expenses incurred in the payment of these claims by the member insurer if they are chargeable to the account for which the assessment is made;

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

(5) notify persons as the commissioner directs under sec. 80(b)(1) of this chapter;

(6) handle claims through its employees or through one or more insurers or other persons designated as servicing facilities; designation of a servicing facility is subject to the approval of the commissioner, but designation may be declined by a member insurer;

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

(b) The association may

(1) employ or retain those persons necessary to handle

claims and perform other duties of the association;

(2) borrow funds necessary to effect the purposes of this chapter in accord with the plan of operation;

(3) sue or be sued;

(4) negotiate and become a party to those contracts as are necessary to carry out the purposes of this chapter;

(5) perform all other acts necessary or proper to effectuate the purposes of this chapter;

(6) refund to the member insurers in proportion to the contribution of each member insurer to that account that amount by which the assets of the account exceed the liabilities if, at the end of any calendar year, the board of directors finds that the assets of the association in any account exceed the liabilities of that account as estimated by the board of directors for the coming year;

(7) appear in, defend, and appeal any action on a claim brought against the association.

Sec. 21.80.070. PLAN OF OPERATION. (a) The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and amendments shall become effective upon approval in writing by the commissioner. If the association fails to submit a suitable plan of operation within 90 days following the effective date of this chapter or if at any subsequent time the association fails to submit suitable amendments to the plan, the commissioner shall, after notice and hearing, adopt and promulgate reasonable rules necessary or advisable to effectuate the provisions of this chapter. These rules shall continue in force until modified by the commissioner or superceded by a plan submitted by the association and approved by the commissioner.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation shall

(1) establish the procedures whereby all the powers and duties of the association under sec. 60 of this chapter will be performed;

(2) establish procedures for handling assets of the association;

(3) establish the amount and method of reimbursing members of the board of directors under sec. 50 of this chapter;

(4) establish procedures by which claims may be filed with the association and establish acceptable forms of proof of covered claims; notice of claims to the receiver or liquidator of the insolvent insurer shall be deemed notice to the association or its agent and a list of these claims shall be periodically submitted to the association or similar organization in another state by the receiver or liquidator;

(5) establish regular places and times for meetings of the board of directors;

(6) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(7) provide that any member insurer aggrieved by a final action or decision of the association may appeal to the commissioner within 30 days after the action or decision;

(8) establish the procedures whereby selections for the board of directors will be submitted to the commissioner;

(9) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under secs. 60(a)(3) and

60(b)(2) are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of this association, or its equivalent, in two or more states. Such a corporation, association or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection shall take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization which extends protection not substantially less favorable and effective than that provided by this chapter.

Sec. 21.80.080. DUTIES AND POWERS OF THE COMMISSIONER. (a) The commissioner shall

(1) notify the association of the existence of an insolvent insurer no later than three days after he receives notice of the determination of the insolvency;

(2) upon request of the board of directors, provide the association with a statement of the net direct written premiums of each member insurer.

(b) The commissioner may

(1) require that the association notify the insureds of the insolvent insurer and any other interested parties of the determination of insolvency and of their rights under this chapter; this notification shall be by mail at their last known address, when available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation shall be sufficient;

(2) suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any

member insurer which fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a fine on any member insurer which fails to pay an assessment when due; this fine may not exceed five per cent of the unpaid assessment per month, except that no fine may be less than $100 a month;

(3) revoke the designation of any servicing facility if he finds claims are being handled unsatisfactorily.

Sec. 21.80.090. EFFECT OF PAID CLAIMS. (a) A person recovering under this chapter shall be considered to have assigned his rights under the policy to the association to the extent of his recovery from the association. Every insured or claimant seeking the protection of this chapter shall cooperate with the association to the same extent as the person would have been required to cooperate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except those causes of action as the insolvent insurer would have had if the sums had been paid by the insolvent insurer. In the case of an insolvent insurer operating on a plan with assessment liability, payments of claims of the association shall not operate to reduce the liability of insured to the receiver, liquidator, or statutory successor for unpaid assessments.

(b) The receiver, liquidator, or statutory successor of an insolvent insurer shall be bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant these claims priority equal to that which the claimant would have been entitled in the absence of this chapter against the assets of the insolvent insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the liquidator's expenses.

(c) The association shall periodically file with the receiver or

liquidator of the insolvent insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association which shall preserve the rights of the association against the assets of the insolvent insurer.

Sec. 21.80.100. NONDUPLICATION OF RECOVERY. (a) A person having a claim against an insurer under a provision in an insurance policy other than a policy of an insolvent insurer which is also a covered claim, shall be required to exhaust first his right under the policy. Any amount payable on a covered claim under this chapter shall be reduced by the amount of recovery under the insurance policy.

(b) A person having a claim which may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured except that if it is a first party claim for damage to property with a permanent location, he shall seek recovery first from the association of the location of the property, and if it is a workmen's compensation claim, he shall seek recovery first from the association of the residence of the claimant. A recovery under this chapter shall be reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Sec. 21.80.110. PREVENTION AND DETECTION OF INSOLVENCIES. (a) It is the duty of the board of directors, upon majority vote, to notify the commissioner of information indicating that a member insurer may be insolvent or in a financial condition hazardous to the policyholders or the public.

(b) The board of directors may, upon majority vote, request that the commissioner order an examination of a member insurer which the board in good faith believes may be in a financial condition hazardous to the policyholders or the public. Within 30 days of the receipt of

the request, the commissioner shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners Examination or may be conducted by those persons the commissioner designates. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event may the examination report be released to the board of directors before its release to the public, but this does not preclude the commissioner from complying with (c) of this section. 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 before the release of the examination report to the public.

(c) It is the duty of the commissioner to report to the board of directors when he has reasonable cause to believe that a member insurer examined or being examined at the request of the board of directors may be insolvent or in a financial condition hazardous to the policyholders or the public.

(d) The board of directors may, upon majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation or conservation of a member insurer. These reports and recommendations shall not be considered public documents.

(e) The board of directors may, upon majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(f) The board of directors shall, at the conclusion of an insurer insolvency in which the association was obligated to pay covered claims, prepare a report on the history and causes of the insolvency, based on the information available to the association, and submit this report

to the commissioner.

Sec. 21.80.120. EXAMINATION OF THE ASSOCIATION. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit, not later than March 30 of each year, a financial report for the preceding calendar year in a form approved by the commissioner.

Sec. 21.80.130. TAX EXEMPTION. The association shall be exempt from payment of all fees and all taxes levied by the state or any of its subdivisions except taxes levied on real or personal property.

Sec. 21.80.140. RECOGNITION OF ASSESSMENTS IN RATES. The rates and premiums charged for insurance policies to which this chapter applies shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by the member insurer less any amounts returned to the member insurer by the association and these rates shall not be considered excessive because they contain an amount reasonably calculated to recoup assessments paid by the member insurer.

Sec. 21.80.150. IMMUNITY. There shall be no liability on the part of and no cause of action of any nature shall arise against a member insurer, the association or its agents or employees, the board of directors, or the commissioner or his representatives for action taken by them in the performance of their powers and duties under this chapter.

Sec. 21.80.160. STAY OF PROCEEDINGS AND REOPENING OF DEFAULT JUDGMENTS. All proceedings in which the insolvent insurer is a party or is obligated to defend a party in a court in this state shall be stayed for 60 days from the date the insolvency is determined to permit proper defense by the association for all pending causes of action as to any covered claims arising from a judgment under a decision, verdict or fi[illegible]based on the default of the insolvent insurer or its failure

to defend an insured. The association either on its own behalf or on behalf of the insured may apply to have this judgment, order, decision, verdict or finding set aside by the same court or administrator that ma d the judgment, order, decision, verdict or finding and shall be permitted to defend against the claim on the merits.

Sec. 21.80.170. TERMINATION AND DISTRIBUTION OF FUNDS. (a) The commissioner shall by order terminate the operation of the Alaska Insurance Guaranty Association as to any kind of insurance covered by this chapter with respect to which he has found, after hearing, that there is in effect a statutory or voluntary plan which

(1) is a permanent plan which is adequately funded or for which adequate funding is provided; and

(2) extends, or will extend to the Alaska policyholders and residents protection and benefits with respect to insolvent insurers not substantially less favorable and effective to the policyholders and residents than the protection and benefits provided with respect to the kinds of insurance under this chapter.

(b) The commissioner shall by the same order authorize discontinuance of future payments by insurers to the Alaska Insurance Guaranty Association with respect to the same kinds of insurance so long as the assessments and payments continue, as necessary, to liquidate covered claims of insurers adjudged insolvent before the order and the related expenses not covered by the other plan.

(c) If the operation of the Alaska Insurance Guaranty Association is terminated as to all kinds of insurance otherwise within its scope, the association, as soon as possible thereafter, shall distribute the balance of money and assets remaining (after discharge of the functions of the association with respect to prior insurer insolvencies not covered by the other plan, together with related expenses) to the

insurers which are then writing in this state policies of the kinds of insurance covered by this chapter and which had made payments to the association, pro rata upon the basis of the aggregate of the payments made by the respective insurers during the period of five years next preceding the date of the termination order. Upon completion of this distribution with respect to all of the kinds of insurance covered by this chapter, this chapter shall be considered to have expired.

Sec. 21.80.180. TITLE. This chapter may be known and cited as the Alaska Insurance Guaranty Association Act.

Sec. 21.80.190. DEFINITIONS. In this chapter, unless the context requires otherwise,

(1) "account" means any one of the three accounts created by sec. 40 of this chapter;

(2) "association" means the Alaska Insurance Guaranty Association;

(3) "commissioner" means the commissioner of the Department of Commerce or his representative;

(4) "covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer becomes an insolvent insurer after the effective date of this chapter and (A) the claimant or insured is a resident of this state at the time of the insured event; or (B) the property from which the claim arises is permanently located in this state; "covered claim" does not include any amount due a reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise;

(5) "insolvent insurer" means an insurer (A) authorized to transact insurance in this state either at the time the policy was

issued or when the insured event occurred and (B) determined to be insolvent by a court of competent jurisdiction;

(6) "member insurer" means a person who (A) writes any kind of insurance to which this chapter applies under sec. 20 of this chapter including the exchange of reciprocal or inter-insurance contracts, and (B) is licensed to transact insurance in this state;

(7) "net direct written premiums" means direct gross premiums written in this state on insurance policies to which this chapter applies, less return premiums thereon and dividends paid or credited to policyholders on direct business; "net direct written premiums" does not include premiums on contracts between insurers or re-insurers.

SB
589

Alaska State Legislature

House

JUNEAU ALASKA

May 26, 1970

Mr. John M. Elliott
Executive Director
Legislative Affairs Agency
Pouch Y
Juneau, Alaska 99801

Dear John:

Committee Substitute for Senate Bill 589 amended contains sections 19.40.034 through 19.40.037, relating to an oil and gas severance tax. Wording of these provisions of the bill has caused concern among several members of the House that the provisions are either unconstitutional or present serious legal ramifications. Among the more significant questions raised are the following:

1. Do the provisions violate the equal protection or due process clauses of the state and federal constitution by imposing a tax on all oil and gas production regardless of whether or not the producer benefits from the proposed pipeline or the road?

2. Are the provisions defective because of vagueness; i.e.,
   (a) Is the tax on North Slope production only or on all production in the state?

   (b) Does the tax terminate when the amount reimbursed plus interest is paid or the amount not reimbursed plus interest is paid?

3. If the tax is levied to obtain reimbursement of funds not required to be reimbursed by an agreement, does the tax constitute a breach of the agreement by the state?

4. Since the tax is imposed on all producers, if the road contractor does not make reimbursement does this constitute delegation of the state's taxing authority?

5. Does the tax constitute a violation of Article 9, section 7, relating to dedicated funds?

I would appreciate your immediate response to these questions in particular and your comments on these provisions of the bill in general.

Very truly yours,

Chancy Croft
State Representative