



re HB 289

COURSE OF THE VOYAGE. By this term is understood the regular and customary track, if such there be, which a ship takes in going from one port to another, and the shortest way. Marsh. Ins. 185; Phill. Ins. 981.

COURSE OF TRADE. What is customarily or ordinarily done in the management of trade or business.

COURSE OF VEIN. In mining, the "course of the vein" appearing on the surface is the course of its apex, which is generally inclined and undulated and departs more or less materially from the strike. *Stewart Mining Co. v. Bourne, C.C.A. Idaho, 218 F. 327, 329.*

COURSE OF VESSEL. In navigation, the "course" of a vessel is her apparent course, and not her heading at any given moment. *The Eastern Glade, C.C.A.N.Y., 101 F.2d 4, 6.* It is her actual course. *Liverpool, Brazil & River Plate Steam Nav. Co. v. U. S., D.C.N.Y., 12 F.2d 128, 129.*

COURT. A space which is uncovered, but which may be partly or wholly inclosed by buildings or walls. *Smith v. Martin, 95 Okl. 271, 219 P. 312, 313.* When used in connection with a street, indicates a short street, blind alley, or open space like a short street inclosed by dwellings or other buildings facing thereon. *City of Miami v. Saunders, 151 Fla. 699, 10 So.2d 326, 329.*

Legislation

A legislative assembly. Parliament is called in the old books a court of the king, nobility, and commons assembled. Finch, Law, b. 4, c. 1, p. 23; Fleta, lib. 2, c. 2.

The application of the term—which originally denoted the place of assembling—to denote the assemblage, resembles the similar application of the Latin term *curia*, and is readily explained by the fact that the earlier courts were merely assemblages, in the court-yard of the baron or of the king himself, of those who were qualified and whose duty it was so to appear at stated times or upon summons. Traces of this usage and constitution of courts still remain in the courts baron, the various courts for the trial of attachments in England and the United States, and in the control exercised by the parliament of England and the legislatures of the various states of the United States over the organization of courts of justice, as constituted in modern times. This meaning of the word has also been retained in the titles of some deliberative bodies, such as the "general court" of Massachusetts, *i. e.*, the legislature.

International Law

The person and suite of the sovereign; the place where the sovereign sojourns with his regal residence, wherever that may be. The English government is spoken of in diplomacy as the court of St. James, because the palace of St. James is the official palace.

Practice

An organ of the government, belonging to the judicial department, whose function is the application of the laws to controversies brought before it and the public administration of justice. *White County v. Gwin, 136 Ind. 562, 36 N.E. 237, 22 L.*

R.A. 402; Bradley v. Town of Bloomfield, 85 N.J. Law, 506, 89 A. 1009.

The presence of a sufficient number of the members of such a body regularly convened in an authorized place at an appointed time, engaged in the full and regular performance of its functions. *Brumley v. State, 20 Ark. 77; Wightman v. Karsner, 20 Ala. 446.*

A body in the government to which the administration of justice is delegated. A body organized to administer justice, and including both judge and jury. *Houston Belt & Terminal Ry. Co. v. Lynch, Tex.Com.App., 221 S.W. 959, 960; People ex rel. Thaw v. Grifenhagen, Sup., 154 N.Y.S. 965, 970; Peterson v. Fargo-Moorhead St. Ry. Co., 37 N.D. 440, 164 N.W. 42, 49.*

A tribunal officially assembled under authority of law at the appropriate time and place, for the administration of justice. *In re Carter's Estate, 254 Pa. 518, 99 A. 58.*

An agency of the sovereign created by it directly or indirectly under its authority, consisting of one or more officers, established and maintained for the purpose of hearing and determining issues of law and fact regarding legal rights and alleged violations thereof, and of applying the sanctions of the law, authorized to exercise its powers in due course of law at times and places previously determined by lawful authority. *Isbill v. Stovall, Tex.Civ.App., 82 S.W.2d 1067, 1070.*

An incorporeal, political being, composed of one or more judges, who sit at fixed times and places, attended by proper officers, pursuant to lawful authority, for the administration of justice. *State v. Le Blond, 108 Ohio St. 126, 140 N.E. 510, 512.* An organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this, its proper business, by its proper officers, viz., attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings. *Ex parte Gardner, 23 Nev. 280, 39 P. 570; Hertzon v. Hertzon, 104 Or. 423, 208 P. 580, 582.*

It is a passive forum for adjusting disputes and has no power to investigate facts or to initiate proceedings. *Sale v. Railroad Commission, 15 Cal.2d 612, 104 P.2d 38, 41.*

The place where justice is judicially administered. *Co. Litt. 58a; 3 Bl. Comm. 23. Railroad Co. v. Harden, 113 Ga. 456, 38 S.E. 950; Croft v. Croft, 119 N.J.Eq. 468, 182 A. 853.*

The judge, or the body of judges, presiding over a court.

The words "court" and "judge," or "judges," are frequently used in statutes as synonymous. When used with reference to orders made by the court or judges, they are to be so understood. *State v. Caywood, 96 Iowa, 367, 63 N.W. 385; Sale v. Railroad Commission, 15 Cal.2d 612, 104 P.2d 38, 41.*

The word "court" is often employed in statutes otherwise than in its strict technical sense, and is applied to various tribunals not judicial in their character. *State v. Howat, 107 Kan. 423, 191 P. 585, 589; for example, in New Jersey, the "court of pardons"; in re Court of Pardons, 97 N.J.Eq. 535, 129 A. 624, 625.*

Classification

Courts may be classified and divided according to several methods, the following being the more usual:

Courts of record and courts not of record. The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual

COURT — COURT-BARON

memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 Bl. Comm. 24; 3 Steph. Comm. 383; The Thomas Fletcher, C.C.Ga., 24 F. 481; Ex parte Thistleton, 52 Cal. 225; Erwin v. U. S., D.C.Ga., 37 F. 488, 2 L.R.A. 229; Heininger v. Davis, 96 Ohio St. 205, 117 N.E. 229, 231.

A "court of record" is a judicial tribunal having attributes and exercising functions independently of the person of the magistrate designated generally to hold it, and proceeding according to the course of common law, its acts and proceedings being enrolled for a perpetual memorial. Jones v. Jones, 188 Mo.App. 220, 175 S.W. 227, 229; Ex parte Gladhill, 8 Metc., Mass., 171, per Shaw, C. J. See, also, Ledwith v. Rosalsky, 244 N.Y. 406, 151 N.E. 688, 689.

Courts may be at the same time of record for some purposes and not of record for others. Lester v. Redmond, 6 Hill, N.Y., 590; Ex parte Gladhill, 8 Metc., Mass., 168.

Superior and inferior courts. The former being courts of general original jurisdiction in the first instance, and which exercise a control or supervision over a system of lower courts, either by appeal, error, or *certiorari*; the latter being courts of small or restricted jurisdiction, and subject to the review or correction of higher courts. Sometimes the former term is used to denote a particular group or system of courts of high powers, and all others are called "inferior courts."

To constitute a court a superior court as to any class of actions, within the common-law meaning of that term, its jurisdiction of such actions must be unconditional, so that the only thing requisite to enable the court to take cognizance of them is the acquisition of jurisdiction of the persons of the parties. Simons v. De Bure, 4 Bosw., N.Y., 547.

An inferior court is a court whose judgments or decrees can be reviewed, on appeal or writ of error, by a higher tribunal, whether that tribunal be the circuit or supreme court. Nugent v. State, 18 Ala. 521.

Civil and criminal courts. The former being such as are established for the adjudication of controversies between subject and subject, or the ascertainment, enforcement, and redress of private rights; the latter, such as are charged with the administration of the criminal laws, and the punishment of wrongs to the public.

Equity courts and law courts. The former being such as possess the jurisdiction of a chancellor, apply the rules and principles of chancery law, and follow the procedure in equity; the latter, such as have no equitable powers, but administer justice according to the rules and practice of the common law.

As to the division of courts according to their jurisdiction, see Jurisdiction.

As to several names or kinds of courts not specifically described in the titles immediately following, see Arches Court, Appellate, Circuit Courts, Consistory Courts, County, Customary Court-Baron, Ecclesiastical Courts, Federal Courts, Forest Courts, High Commission Court, Instance Court, Justice Court, Judiciary Court, Legislative Courts, Maritime Court, Mayor's Court,

Moot Court, Municipal Court, Orphans' Court, Police Court, Prerogative Court, Prize Court, Probate Court, Superior Courts, Supreme Court, and Surrogate's Court.

As to court-hand, court-house, court-lands, court rolls, courtyard, see those titles in their alphabetical order *infra*.

General

Court above, court below. In appellate practice, the "court above" is the one to which a cause is removed for review, whether by appeal, writ of error, or *certiorari*; while the "court below" is the one from which the case is removed. Going v. Schnell, 6 Ohio Dec. 933.

Court in bank. A meeting of all the judges of a court, usually for the purpose of hearing arguments on demurrers, points reserved, motions for new trial, etc., as distinguished from sessions of the same court presided over by a single judge or justice.

Court of competent jurisdiction. One having power and authority of law at the time of acting to do the particular act. Ex parte Plaistridge, 68 Okl. 256, 173 P. 646, 647.

One having jurisdiction under the state Constitution and laws to determine the question in controversy. Texas Employers' Ins. Ass'n v. Nunamaker, Tex.Civ.App., 267 S.W. 749, 751. A court for the administration of justice as established by the Constitution or statute. Bradley v. Town of Bloomfield, 85 N.J.Law, 506, 89 A. 1009.

Court of limited jurisdiction. When a court of general jurisdiction proceeds under a special statute, it is a "court of limited jurisdiction" for the purpose of that proceeding, and its jurisdiction must affirmatively appear. Osage Oil & Refining Co. v. Interstate Pipe Co., 124 Okl. 7, 253 P. 66, 71.

De facto court. One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a *de facto* government. 1 Bl. Judgm. § 173; In re Manning, 139 U.S. 504, 11 S.Ct. 624, 35 L.Ed. 264; Gildemeister v. Lindsay, 212 Mich. 299, 180 N.W. 633, 635.

Full court. A session of a court, which is attended by all the judges or justices composing it.

Spiritual courts. In English law. The ecclesiastical courts, or courts Christian. See 3 Bl. Comm. 61.

COURT-BARON. In English law. A court which, although not one of record, is incident to every manor, and cannot be severed therefrom. It was ordained for the maintenance of the services and duties stipulated for by lords of manors, and for the purpose of determining actions of a personal nature, where the debt or damage was under forty shillings. Wharton; 1 Poll. & Maitl. Hist. E. L. 580.

Customary court-baron is one appertaining entirely to copyholders. 3 Bl. Comm. 33.

44-289

April 1, 1971

MEMORANDUM

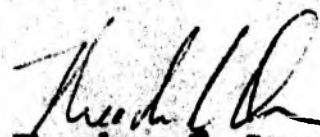
TO: Honorable William J. Moran
 Chairman, House Judiciary Committee

FROM: T. R. Dunn, Secretary
 Alaska Judicial Council

Following our conversation today regarding the effect of increasing District Court jurisdiction upon recording procedures, I reviewed applicable statutes and conferred with Chief Justice Boney, Chairman of the Judicial Council. It appears that the recording statutes apply to the District Court as well as the Superior Court. Specifically, the following statutes apply:

- (1) AS 09.30.010 which provides that upon recording a judgment of "a court of this state" with the recorder it becomes a lien upon real property in the recording district.
- (2) AS 09.45.790 provides for the filing of lis pendens with the recorder and does not distinguish between Superior and District Court actions.
- (3) AS 09.40.050 provides for recordation in the case of attachment of realty without distinguishing between District and Superior Court.
- (4) AS 35.35.005, et seq., provides for liens and lien foreclosures. In each case, the claim of lien, regardless of the court in which it would be enforced would have to be recorded in the district recording office.

It does not appear that any change in the recording laws would be necessary due to expanded District Court jurisdiction. The Chief Justice has been assured by his staff that any adjustments which are required in District Court recording procedures can be made by court rule, and he foresees no difficulty in this regard.


 Theodore A. Dunn
 Secretary
 Alaska Judicial Council

HB 287

April 16, 1971

To: Representative Moran

From: Senator Ziegler

Re: HB 289

Bill:

We passed your HB 289 unanimously on April 15th.

I am attaching copies of documents you might want to utilize in the future if the Supreme Court doesn't do as it has promised to do.

Bob

AL392

AFA039 NL PDF

ANCHORAGE ALASKA 9

ROBERT ZIEGLER

BARANOFF HOTEL JUN

THE SUPREME COURT WILL ENACT RULES TO COVER

REMAND REMOVAL AND CHALLENGE OF JUDGES IF DISTRICT

COURT JURISDICTION IS INCREASED

GEORGE F BONEY.

1971 APR 10 AM 7 28

TELEPHONE NO. 6-2600

TELEPHONED TO R-3

TIME 8:40 A

BY JF TO BE Emb02

Alaska State Legislature

SENATOR
ROBERT H. ZIEGLER, SR.
P. O. BOX 879
KETCHIKAN, ALASKA 99901

POUCH V
JUNEAU, ALASKA 99801

MEMBER
RULES
COMMERCE
LEGISLATIVE COUNCIL

CHAIRMAN

JUDICIARY

Sperts

April 13, 1971

The Alaska State Supreme Court
941 Fourth Avenue
Anchorage, Alaska 99501

All District Court Judges
State of Alaska

Anchorage Bar Association
c/o R. Everett Harris
1029 W. 3rd Avenue
Anchorage, Alaska 99501

Tanana Valley Bar Association
c/o Dallas Phillips
300 Barnette Street
Fairbanks, Alaska 99701

Juneau Bar Association
c/o William Ruddy
123 Seward Street
Juneau, Alaska 99801

Ketchikan Bar Association
c/o W.C. Stump
Box 2693
Ketchikan, Alaska 99901

Re: SB 152 and HB 289

Gentlemen:

It is the intent of the writer to bring everyone concerned with the two captioned bills up to date.

The Supreme Court for, in my opinion, many valid reasons, is highly desirous of having the jurisdiction of the district courts throughout the state increased from \$3000 to \$10,000.

April 13, 1971

Page Two

Those district court judges who have been courteous enough to write to the Senate Judiciary committee have overwhelmingly indicated their willingness to assume increased responsibility and presumably an increased work load.

The Ketchikan Bar Association has done a complete 180° and now endorses both bills.

The Juneau Bar Association recently unanimously endorsed both bills.

The Anchorage Bar favored the bills on a very close vote (29-26).

As of March 26, 1971, the Tanana Valley Bar had gone on record as being in opposition to the bills; I don't have the results of any further ballots.

I endeavor to refrain from taking hasty action, as a rule. Personally, I feel that by releasing either bill at this time we might be acting prematurely, but apparently the need is great enough to warrant the action. Let us hope we are not making a mistake; we can always gain some solace by remembering that we can undo next year what we are going to do this year.

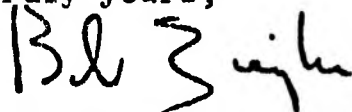
To those of you who oppose the bill, I can give you some consolation: 1) We have been assured by Chief Justice Boney of the Supreme Court that if the peremptory disqualification of district court judges bill, which has passed the Senate and which is expected to pass the House, does not in fact pass the House, then the Supreme Court will immediately promulgate a court rule authorizing peremptory disqualification procedures.

- 2) Remand removal will likewise be reserved by Supreme Court rule; that is to say, we can remand from the district court to the superior court in all actions involving more than \$3000.

On behalf of the members of the Senate Judiciary committee, I would like to take this opportunity to thank you one and all for your interest and expressions of opinion.

It might be a good idea if the Board of Governors of the Alaska Bar Association were to have this matter placed on the agenda for the May meeting in Anchorage. The good Lord knows a lively session would thereby be assured.

Very truly yours,



Robert H. Ziegler, Sr.

HB-290

City of Anchorage

MEMORANDUM

TO: Director of Public Works

DATE: March 19, 1971

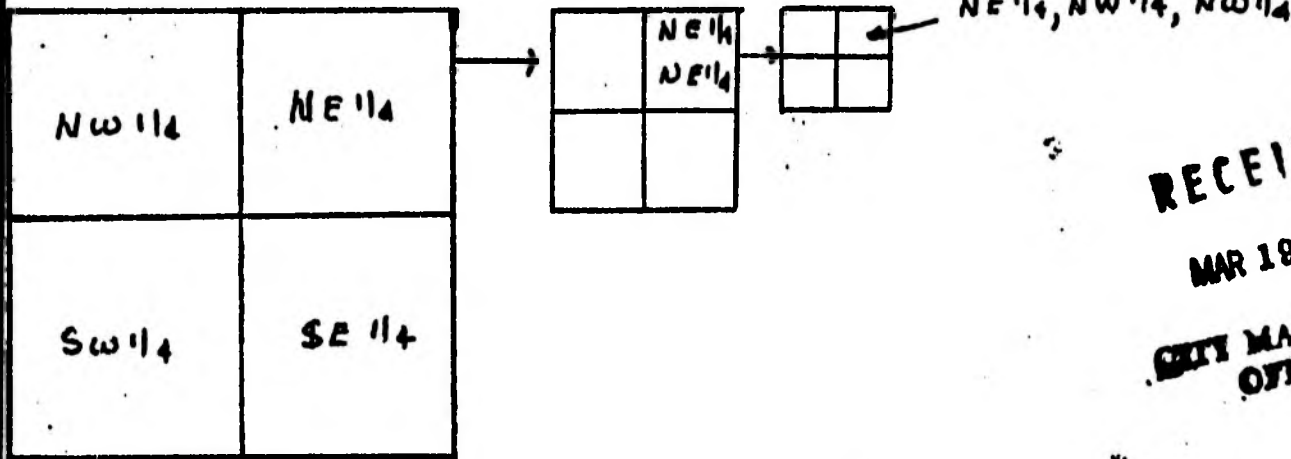
FROM: City Surveyor

SUBJECT: House Bill No. 290

The subject bill will enable a person to sell portions of his property without surveys or plats and would virtually eliminate the subdivision control of cities and borough planning commissions throughout the State.

By changing the "definition" of subdivision as per H.B. 290 a seller or his agent can divide his property into four or less parts and describe them by aliquot parts without any restrictions or control by any governmental agency, also it would leave the determination of what easements etc. to the sellers discretion without consulting or review of the requiring agencies of government.

Example -



RECEIVED
MAR 19 1971
CITY MANAGER'S
OFFICE

As you can see from the above the rule of "four or less" parcels can be carried out indefinitely.

The above is only an example, there could be countless variations such as 1/3 or 1/8 or 1/16 or the east 50 feet of the NW 1/4 of the E 1/3 etc. and could be applied to existing subdivisions, as well as sectionalized lands. In the end we would have complete breakdown and chaos in land subdivision in all developed areas in Alaska.

As a final comment, the subject bill is sponsored by the Board of Realtors and has been introduced in each session for the last three years and as far as I know, the Borough, City, Professional Land Surveyors, Engineers, and Local Engineering Firms have indicated that this bill does not serve the best interests of the people of Alaska in any way.



A.W. Lahnum
City Surveyor

AWL/bmm

MEMORANDUM

State of Alaska

TO:

The Honorable William J. Moran
Chairman, House Judiciary Committee

Through: Kenneth W. Kadow, Commissioner

Through: W. W. Fritz, Director of Ins.

DATE : April 20, 1971

FROM: Donald P. Koch
Insurance Rate Analyst

SUBJECT: HB-293

On March 18, 1971, during an appearance before your committee, you requested additional information on Surplus Line Law exemptions. The following represents our findings.

All states provide a method to license surplus line brokers. The surplus line broker is the one who can place insurance in non-admitted markets. This seems to be contradictory to what we have found in the laws of Illinois, Texas and Wisconsin, where it appears that a carrier (insuror) may not write unless admitted to do business in those states. Further, all states except Delaware, Kentucky, Texas and Wyoming provide for the taxation of the premiums of non-admitted (unauthorized) insurors.

Some states have specific acts that concern themselves with the mechanics of serving process on unauthorized insurors. Those states, numbering 22, are: Connecticut, Delaware, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, and West Virginia.

Other states have specific acts that concern themselves with not only the mechanics of serving process on unauthorized insurors, but also with taxation responsibility for insuror solvency, protection of authorized insurors (who are subject to strict regulation), and with the protection of the public. States having this type of act, numbering 17, are: Alaska, Alabama, Arizona, California, Florida, Georgia, Hawaii, Idaho, Iowa, Kentucky, Louisiana, Mississippi, Montana, Ohio, Oklahoma, Utah and Washington. Copies of the exemption section of the Unauthorized Insurors Act from these states are attached, except for Mississippi which has no exemption listed. A comparison of exceptions is also attached.

Of the seventeen states listed in the last paragraph, seven states exempt aircraft owned or operated by manufactures of aircraft. These are: Alaska, Alabama, Georgia, Idaho, Louisiana, Montana and Washington. Arizona and Hawaii have similar aircraft exemption sections but are silent as regards manufacturers aircraft. California exempts aircraft. Seven states: Florida, Iowa, Kentucky, Mississippi, Ohio, Oklahoma and Utah, do not provide exemptions for aircraft.

We have been unable to learn definitive reasons for the various differences in exemptions used by the various states. It appears that lobby groups account for many of the exemptions.

THE FOLLOWING DOCUMENT(S) MAY NOT FILM
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AIRCRAFT EXEMPTIONS

- 1. AIRCRAFT EXEMPTED FROM LIABILITY OF THE OWNERS OF AIRCRAFT; AIRCRAFT OPERATED IN CONNECTION WITH THE SERVICE OF GOVERNMENTAL FUNCTIONS; LIABILITY ON AIRCRAFT (INCLUDING WORKING OR CONFORMATION) ARISING OUT OF THE CARRIER'S SERVICE OR USE.
- 2. SAME AS ABOVE
- 3. AIRCRAFT EXEMPTED FROM LIABILITY OF THE OWNERS OF EACH AIRCRAFT, OR AGAINST LIABILITY OF OTHER THAN EMPLOYEES' LIABILITY, ARISING OUT OF THE CARRIER'S SERVICE, MAINTENANCE, REPAIRS OF EACH AIRCRAFT.
- 4. AIRCRAFT EXEMPTED
- 5. NO EXEMPTION
- 6. SAME AS ABOVE
- 7. SAME AS ABOVE
- 8. AIRCRAFT EXEMPTED FROM LIABILITY OF THE OWNERS OF "COMMERCIAL AIRCRAFT" AND "AIRCRAFT" IS DEFINED BY "COMMERCIAL AIRCRAFT"
- 9. NO EXEMPTION
- 10. NO EXEMPTION
- 11. SAME AS ABOVE
- 12. SAME AS ABOVE
- 13. NO EXEMPTION
- 14. NO EXEMPTION
- 15. SAME AS ABOVE

PROPERTY OR OPERATION OF RAILROADS ENGAGED IN INTERSTATE COMMERCE

ALABAMA EXEMPTED

ARIZONA EXEMPTED

ARKANSAS EXEMPTED

CALIFORNIA EXEMPTED

CONNECTICUT NO EXEMPTION

DELAWARE EXEMPTED

FLORIDA NO EXEMPTION

GEORGIA EXEMPTED

ILLINOIS NO EXEMPTION

INDIANA EXEMPTED

IOWA EXEMPTED

KANSAS EXEMPTED

KENTUCKY NO EXEMPTION

LOUISIANA NO EXEMPTION

MAINE NO EXEMPTION

MARYLAND EXEMPTED

INSURANCE ON SUBJECTS LOCATED, RESIDENT, OR TO BE PERFORMED WHOLLY OUTSIDE OF THE STATE, OR ON VEHICLES OR AIRCRAFT OWNED AND PRINCIPALLY GARAGED OUTSIDE OF THE STATE.

ALABAMA	EXEMPT
ALASKA	EXEMPT
ARIZONA	EXEMPT
CALIFORNIA	EXEMPT/ IMPLIED
FLORIDA	EXEMPT/ IMPLIED
GEORGIA	EXEMPT
ILLINOIS	EXEMPT
INDIANA	EXEMPT
IOWA	EXEMPT
KANSAS	EXEMPT
LOUISIANA	EXEMPT
MAINE	EXEMPT
MARYLAND	EXEMPT
MASSACHUSETTS	EXEMPT
MICHIGAN	EXEMPT
MINNESOTA	EXEMPT
MISSISSIPPI	EXEMPT
MISSOURI	EXEMPT
MONTANA	EXEMPT
NEBRASKA	EXEMPT
NEVADA	EXEMPT
NEW HAMPSHIRE	EXEMPT
NEW JERSEY	EXEMPT
NEW YORK	EXEMPT
NORTH CAROLINA	EXEMPT
NORTH DAKOTA	EXEMPT
OHIO	EXEMPT
OKLAHOMA	EXEMPT
OREGON	EXEMPT
PENNSYLVANIA	EXEMPT
RHODE ISLAND	EXEMPT
SOUTH CAROLINA	EXEMPT
TENNESSEE	EXEMPT
TEXAS	EXEMPT
UTAH	EXEMPT
VIRGINIA	EXEMPT
WASHINGTON	EXEMPT
WEST VIRGINIA	EXEMPT
WISCONSIN	EXEMPT
WYOMING	EXEMPT

REINSURANCE

ALASKA	EXEMPTED
ARIZONA	EXEMPTED
ARKANSAS	EXEMPTED
CALIFORNIA	EXEMPTED
FLORIDA	NO EXEMPTION
GEORGIA	EXEMPTED
ILLINOIS	EXEMPTED
INDIANA	EXEMPTED
IOWA	EXEMPTED
KANSAS	EXEMPTED
LOUISIANA	EXEMPTED
MARYLAND	EXEMPTED
MASSACHUSETTS	EXEMPTED
MICHIGAN	EXEMPTED
MINNESOTA	EXEMPTED
MISSISSIPPI	EXEMPTED
MISSOURI	EXEMPTED
MONTANA	EXEMPTED
NEBRASKA	EXEMPTED
NEVADA	EXEMPTED
NEW HAMPSHIRE	EXEMPTED
NEW JERSEY	EXEMPTED
NEW YORK	EXEMPTED
NORTH CAROLINA	EXEMPTED
NORTH DAKOTA	EXEMPTED
OHIO	EXEMPTED
OKLAHOMA	EXEMPTED
OREGON	EXEMPTED
PENNSYLVANIA	EXEMPTED
RHODE ISLAND	EXEMPTED
SOUTH CAROLINA	EXEMPTED
TENNESSEE	EXEMPTED
TEXAS	EXEMPTED
UTAH	EXEMPTED
VIRGINIA	EXEMPTED
WASHINGTON	EXEMPTED
WEST VIRGINIA	EXEMPTED
WISCONSIN	EXEMPTED
WYOMING	EXEMPTED

WET OR OCEAN MARINE

ALABAMA	EXEMPTED
ALASKA	EXEMPTED
ARIZONA	EXEMPTED
ARIZONA	EXEMPTED
FLORIDA	NO EXEMPTION
GEORGIA	EXEMPTED
ILLINOIS	EXEMPTED
INDIANA	EXEMPTED
LOUISIANA	EXEMPTED
MISSISSIPPI	NO EXEMPTION
MISSOURI	EXEMPTED
NEBRASKA	EXEMPTED
NEVADA	EXEMPTED
NEW YORK	NO EXEMPTION
OHIO	EXEMPTED
PENNSYLVANIA	EXEMPTED
RHODE ISLAND	EXEMPTED
TENNESSEE	EXEMPTED
TEXAS	EXEMPTED
VIRGINIA	EXEMPTED
WASHINGTON	EXEMPTED
WEST VIRGINIA	EXEMPTED
WISCONSIN	EXEMPTED
WYOMING	EXEMPTED

TRANSPORTATION INSURANCE

ALABAMA	EXEMPTED
ALASKA	EXEMPTED
ARIZONA	NO EXEMPTION
CALIFORNIA	EXEMPTED
FLORIDA	NO EXEMPTION
GEORGIA	NO EXEMPTION
ILLINOIS	NO EXEMPTION
INDIANA	NO EXEMPTION
IOWA	NO EXEMPTION
KANSAS	NO EXEMPTION
KENTUCKY	NO EXEMPTION
LOUISIANA	NO EXEMPTION
MAINE	EXEMPTED
MARYLAND	NO EXEMPTION
MASSACHUSETTS	NO EXEMPTION
MICHIGAN	NO EXEMPTION
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MISSOURI	NO EXEMPTION
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WEST VIRGINIA	NO EXEMPTION
WISCONSIN	NO EXEMPTION
WYOMING	NO EXEMPTION

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Division of Insurance

March 18, 1971

DNL

HB-293

Chapter 33 of the Alaska insurance law is the chapter dealing with unauthorized insurers and surplus lines. Insurance premium taxes due under this chapter are the responsibility of the surplus line broker who must collect same from the insured and remit to the Division of Insurance. In the case of admitted insurers the premium tax is collected as an integral part of the premium by the admitted insurer.

Several of our major aircraft operators in Alaska have been leasing aircraft from the manufacturer or purchasing aircraft on contract where title to the aircraft is retained by the manufacturer until equity of the operator reaches an agreed upon level. The operators furnish their own pilots and insurance but declare themselves exempt from the surplus line insurance premium tax due to the exemption found in AS 21.33.310 (4).

The section exempts "insurance of aircraft owned or operated by manufacturers of aircraft...". This wording allows the private operator of a manufacturer owned aircraft to avoid the premium tax on surplus line insurance. By changing the wording as indicated in HB-293 you would remove the loophole. In November of 1970 the Division of Insurance conducted an investigation which brought an actual case to light. The indicated tax loss to the State of Alaska for this one case was about \$50,000, so it can be seen that the loophole is substantial.

Upon checking into the reasons for the "manufacturers of aircraft" exemption, we found that the Alaska surplus line insurance law was modeled after the Washington law. This item appears in their law as a concession to Boeing Corporation. This information was developed in a conversation with Mr. Irwin Mesher who is the arbitrator for the surplus line association of Washington. It is his opinion that we would not accomplish a solution to a tax avoidance situation. He indicated the the lessor would merely negotiate with the lessee to place the insurance and make the costs a part of the lease contract. However, we feel that this action would not circumvent liability for this tax.

ment has been served as provided in this section, the court is considered to have jurisdiction in personam of the insurer.

(b) By issuing a policy under a surplus line contract, an unauthorized insurer authorizes service of process against it in the manner and to the effect as provided in this section. The policy shall contain a provision stating the substance of this section, and shall designate the person to whom the department shall mail process. (§ 1 ch 120 SLA 1966)

Sec. 21.33.310. Exemptions from surplus line law. The provisions of this surplus line insurance law controlling the placing of insurance with unauthorized insurers do not apply to reinsurance or to the following insurances when placed by licensed insurance agents of this state:

- (1) wet marine and transportation insurances;
- (2) insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;
- (3) insurance on property or operations of railroads engaged in interstate commerce;
- (4) insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of such aircraft, or insurance against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of the aircraft. (§ 1 ch 120 SLA 1966)

Sec. 21.33.320. Records of insureds. In order that the director may effectively administer this chapter, each person who has placed insurance with an unauthorized insurer shall, upon the director's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the director the amount of premiums paid or agreed to be paid for the insurance. For each refusal to obey the order the person, upon conviction, is guilty of a misdemeanor punishable by a fine of not more than \$500. (§ 1 ch 120 SLA 1966)

Sec. 21.33.330. Surplus line broker defined. A surplus line broker is an individual licensed to transact business in the state or on risks in the state for an unadmitted insurer. (§ 1 ch 120 SLA 1966)

*Submitted with memo from
Don Koch, Insurance Rate Analyst
#B-293 April 20, 1971*

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- (3) insurance on property or operations of railroads engaged in interstate commerce;
- (4) insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of such aircraft, or insurance against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of the aircraft. (§ 1 ch 120 SLA 1966)

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Sec. 21.33.330. Surplus line broker defined. A surplus line broker is an individual licensed to transact business in the state or on risks in the state for an unadmitted insurer. (§ 1 ch 120 SLA 1966)

Superintendent. As to the same unauthorized insurer and all insurance coverages issued or accepted by it under this Act, no more than one person shall at any one time be the designee to whom copies of process against the insurer, served upon the Superintendent, shall be forwarded.

(4) Where process is served upon the Superintendent as an insurer's process agent, the insurer shall not be required to answer or plead except within thirty (30) days after the date upon which the Superintendent mailed a copy of the process served upon him as required by subsection (2), above.

(5) Process served upon the Superintendent, and copy thereof forwarded as in this section provided, shall for all purposes constitute valid and binding service thereof upon the insurer.

Section 21. EXEMPTIONS. The provisions of this Unauthorized Insurers Act controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers or the ship building and/or repair industry of this State:

(1) Transportation insurance;

(2) Insurance on subjects located, resident, or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this state;

(3) Insurance on property or operation of railroads engaged in interstate commerce; and

(4) Insurance of aircraft owned or operated by manufacturers of aircraft or aircraft operated in scheduled interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and the employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(5) Life insurance, health and accident insurance, annuities, and disability insurance.

(6) The property and operations of the ship building and ship repair industry engaged in interstate or foreign commerce, and vessels, cargoes, watercraft, piers, wharves, graven docks, drydocks, marine railways and building ways, commonly known as wet marine.

Section 22. REPORT AND TAX OF INDEPENDENTLY PROCURED COVERAGES. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state so procures or continues excess loss, catastrophe or

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able as costs in the action. The director shall forthwith mail one copy of the process so served to the person designated by the insurer in the policy for the purpose, by registered mail with return receipt requested. The insurer shall have forty days after such date of mailing within which to plead, answer, or otherwise defend the action.

Sec. 20. EXEMPTIONS FROM SURPLUS LINES PROVISIONS. (a) The sections of this article relative to surplus line coverages shall not apply to reinsurance, nor to the following classes of insurance when placed by licensed agents or brokers of this state:

- (1) Ocean marine and foreign trade insurance.
- (2) Insurance on subjects located, resident, or to be performed wholly outside this state, or on vehicles or aircraft owned and principally garaged outside this state.
- (3) Insurance on property or operations of railroads engaged in interstate commerce.
- (4) Insurance on aircraft or cargo of such aircraft, or against liability, other than employer's liability, arising out of the ownership, maintenance, or use of such aircraft.

(b) Agents and brokers so placing any such insurance with an unauthorized insurer shall keep a record of each such coverage in detail as required of surplus line insurance by section 14 of this article. The record shall be preserved for not less than three years from the effective date of the insurance, and shall be so kept available in this state and open to the examination of the director.

Sec. 21. RECORDS OF INSURED. Upon the director's request any person in Arizona who is the insured under any policy issued by an unauthorized insurer upon a subject of insurance resident, located, or to be performed in Arizona at the time the policy was issued, shall produce for examination all policies and other documents evidencing and relating to the insurance, and shall disclose the amount of the gross premiums paid or agreed to be paid for the insurance, through whom the insurance was procured, and such other information relative to the placing of such insurance as may reasonably be required.

Sec. 22. ALIEN INSURANCE FOR COVERAGE IN MEXICO. (a) No person shall in Arizona solicit or accept applications for vehicle insurance, which insurance is to be effective in Mexico and only outside the geographical limits of Arizona and is to be issued by an alien insurer or insurer not authorized to transact insurance in Arizona, unless such person is a duly licensed surplus line broker.

lish different standards for such a certification the certificate shall become void and must be surrendered to the commissioner. In that case the fees for certification and examination under the new standards shall be the same as for original certification and examination. A person shall not hold a certificate under this section while licensed as a life agent, disability only agent, or life and disability agent.

(Added by Stats. 1967, Ch. 1707.)

CHAPTER 6. SURPLUS LINE BROKERS

1760. Any citizen of this State may negotiate and effect insurance on his own property with any nonadmitted insurer.

1760.5. The provisions of this chapter limiting the insurance which may be placed with nonadmitted insurers and requiring any report thereof shall not apply to:

(a) Reinsurance of the liability of an admitted insurer.

(b) Insurance against perils of navigation, transit or transportation upon hulls, freights or disbursements, or other shipowner interests; upon goods, wares, merchandise and all other personal property and interests therein, in course of exportation from or importation into any country, or transportation coastwise, including transportation by land or water from point of origin to final destination and including war risks; and marine builder's risks, drydocks and marine railways, including insurance of ship repairer's liability, and protection and indemnity insurance, but excluding insurance covering bridges or tunnels.

(c) Aircraft insurance.

(d) Insurance on property or operations of railroads engaged in interstate commerce.

The insurance specified in the foregoing paragraphs (b), (c), and (d), may be placed with a nonadmitted insurer only by and through a special lines' surplus line broker. The license of a special lines' surplus line broker shall be applied for and procured and shall be subject to the same fees for filing on issuance in the same manner as the license of a surplus line broker, except that in lieu of the bond required by Section 1765, there shall be delivered to the commissioner a bond in the form, amounts, and conditions specified in Sections 1663, 1664 and 1665 of this code and only one fee shall be collected from one person for both licenses. Such licensee in respect to such business shall be subject to all the provisions of this chapter except Sections 1761, 1763 and 1775.5.

The commissioner may, in respect to business written or placed under the provisions of this section, require such information and reports thereof as he considers necessary, convenient or advisable for tax or statistical purposes.

Each placing of insurance in violation of this chapter is a misdemeanor.

The commissioner may revoke, suspend or deny any license granted pursuant to this code in accordance with the procedure

provided in Article 13 of Chapter 5 of this part, or any certificate of authority granted pursuant to this code in accordance with the procedure provided in Section 704 whenever he finds that the licensee or holder of the certificate has committed a violation of this section.

The premium for insurance placed by or through a special lines' surplus line broker pursuant to this section shall not be subject to the tax imposed upon such broker based upon gross premiums paid for insurance placed under authority conferred by his license.

(Added by Stats. 1937, Ch. 729; amended by Stats. 1945, Ch. 901, by Stats. 1959, Ch. 4, and by Stats. 1961, Ch. 280.)

1761. Except as provided in Sections 1760 and 1760.5, a person within this State shall not transact any insurance on property located or operations conducted within, or on the lives or persons of residents of this State with nonadmitted insurers, except by and through a surplus line broker licensed under this chapter and upon the terms and conditions prescribed in this chapter.

(Amended by Stats. 1937, Ch. 729.)

1762. (Repealed by Stats. 1937, Ch. 729.)

1763. A surplus line broker may solicit and place insurance, other than as excepted in Section 1761, with nonadmitted insurers only if such insurance can not be procured from a majority of the insurers admitted for the particular class or classes of insurance. Such part of the insurance as can not be so procured may be procured from nonadmitted insurers, if the insurance is not placed in a nonadmitted insurer for the purpose of procuring a rate lower than the lowest rate which will be accepted by any admitted insurer. It shall be conclusively presumed that insurance is placed in violation of this paragraph where the insurance is actually placed with a nonadmitted insurer at a lower rate of premium or lower premium than the lowest rate of premium or the lowest premium which could be obtained from an admitted insurer unless, at the time such insurance attaches, there is filed with the commissioner a statement describing the insurance, specifying the rate and the nearest procurable rates from admitted insurers. Unless the commissioner within five days after such filing notifies the filing broker that in his opinion the placing of the insurance constitutes a violation of this section, the broker may thereafter maintain in effect such insurance. If within such five-day period the commissioner notifies the surplus line broker that such insurance is in violation of this section and orders the broker to effect termination of such insurance within 10 days from such notice, and the broker fails or refuses to effect such termination, such failure or refusal is a violation of this section. Statements filed under this section shall not be subject to public inspection unless the commissioner determines that the public interest or the welfare of the filing broker requires that any statement be made so subject. The commissioner may make and publish reasonable rules and regulations, consistent

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agent to be the true and lawful attorney of such unauthorized insurer upon whom may be served all lawful process in any action, suit or proceeding instituted by or on behalf of an insured or beneficiary arising out of any such contract of insurance and service of process effected on such commissioner, his successor or successors in office or such resident agent shall be deemed to confer complete jurisdiction over such unauthorized insurer in such action.

History.—§351, ch. 59-205.

Note.—Similar provisions found in former §625.33.

626.0510 Surplus lines law; short title; purposes.—

(1) Sections 626.0510 through 626.0534 constitute and may be referred to as "the surplus lines law."

(2) It is declared that the purposes of the surplus lines law are to provide orderly access for the insuring public of Florida to insurers not authorized to transact insurance in this state, through only qualified, licensed, and supervised surplus lines agents resident in Florida, for insurance coverages and to the extent thereof not procurable from authorized insurers; to protect such authorized insurers, which under the laws of Florida must meet certain standards as to policy forms and rates, from unwarranted competition by unauthorized insurers who, in the absence of this law, would not be subject to similar requirements; and for other purposes as set forth in this surplus lines law.

(3) This section, and this surplus lines law, do not apply as to insurance coverages which are subject to §626.0535 (report and tax of independently procured coverages).

History.—§352, ch. 59-205.

626.0511 Definitions.—As used in this surplus lines law:

(1) "Surplus lines agent" means an individual licensed as provided in part VI of this chapter to handle the placement of insurance coverages with unauthorized insurers; and to place such coverages with authorized insurers as to which the licensee is not licensed as an agent if so placed through a countersigning Florida licensed resident agent of such insurer.

(2) "Surplus lines insurer" means an unauthorized insurer in which an insurance coverage is placed or may be placed under this surplus lines law.

(3) To "export" means to place in an unauthorized insurer under this surplus lines law, insurance covering a subject of insurance resident, located, or to be performed in Florida.

History.—§353, ch. 59-205.

Note.—Similar provisions found in former §643.01.

626.0512 Surplus lines insurance authorized.—If certain insurance coverages of subjects resident, located, or to be performed in this state cannot be procured from authorized insurers, such coverages, hereinafter designat-

ed "surplus lines," may be procured from unauthorized insurers, subject to the following conditions:

(1) The insurance must be eligible for export under §626.0513 or §626.0514;

(2) The insurer must be an eligible surplus lines insurer under §626.0514 or §626.0515;

(3) The insurance must be so placed through a licensed Florida surplus lines agent resident in Florida; and

(4) The other applicable provisions of this surplus lines law must be complied with.

History.—§354, ch. 59-205.

626.0513 Eligibility for export.—

(1) No insurance coverage shall be eligible for export unless it meets all of the following conditions:

(a) The full amount of insurance required must not be procurable, after a diligent effort has been made to do so, from among the insurers authorized to transact and actually writing that kind and class of insurance in this state, and the amount of insurance exported shall be only the excess over the amount so procurable from authorized insurers.

(b) The premium rate at which the coverage is exported shall not be lower than that rate applicable, if any, and filed by and in actual and current use by a majority of the authorized insurers for the same coverage on a similar risk.

(c) The policy or contract form under which the insurance is exported shall not be more favorable to the insured as to the coverage or rate than under similar contracts on file and in actual current use in this state by the majority of authorized insurers actually writing similar coverages on similar risks; except, that a coverage may be exported under a unique form of policy designed for use with respect to a particular subject of insurance if a copy of such form is filed with the commissioner by the surplus lines agent desiring to use the same and is subject to the commissioner's disapproval within not less than ten days if he finds that use of such special form is not reasonably necessary for the principal purposes of the coverage or that its use would be contrary to the purposes of this surplus lines law with respect to the reasonable protection of authorized insurers from unwarranted competition by unauthorized insurers.

(d) Except as to extended coverage in connection with fire insurance policies and except as to windstorm insurance, the policy or contract under which the insurance is exported shall not provide for deductible amounts, in determining the existence or extent of the insurer's liability, other than those available under similar policies or contracts in actual and current use by one or more authorized insurers. This paragraph shall not apply with respect to workmen's compensation self-insurance qualified as such under chapter 440.

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(2) Except, that the commissioner may by rules and regulations declare eligible for export generally and notwithstanding the provisions of paragraphs (a), (b), (c) and (d) of subsection (1), any class or classes of insurance coverage or risk for which he finds, after a hearing, which he shall hold annually or more often, of which notice thereof was given to each insurer authorized to transact such class or classes in this state, that there is no reasonable or adequate market among authorized insurers. Any such rules and regulations shall continue in effect during the existence of the conditions upon which predicated, but subject to earlier termination by the commissioner.

(3) Subsection (1) does not apply to wet marine and transportation or aviation risks which are subject to §626.0514.

History.—§355, ch. 59-205.

Note.—Similar provisions found in former §645.05.

626.0514 Eligibility for export; wet marine, aviation.—

(1) Insurance coverage of wet marine and transportation or aviation risks of a class under the supervision and control of syndicate operations of authorized insurers, such as the American hull syndicate, the tugboat syndicate and other like constituted and recognized wet marine or aviation syndicate operations, may be exported under the following conditions:

(a) The insurance must be placed only by or through a licensed Florida surplus lines agent;

(b) The insurer must be one made eligible by the commissioner specifically for such coverages, based upon information furnished by the insurer and indicating that the insurer is well able to meet its financial obligations; and

(c) The surplus lines agent shall, within sixty days after procurement of the policy or contract, file with the commissioner a copy of the policy, cover note or contract.

(2) This section shall not apply as to boats under thirty-six feet in length, nor as to private aircraft owned by private owners for business and pleasure purposes only (excluding commercial), exclusive of check flight or ferry flight coverage only.

History.—§356, ch. 59-205.

Note.—Similar provisions found in former §645.05.

626.0515 Eligible surplus lines insurers.—

(1) No surplus lines agent shall place any coverage with any unauthorized insurer which is not then an eligible surplus lines insurer as provided for under this section.

(2) No unauthorized insurer shall be or become an eligible surplus lines insurer unless made eligible by the commissioner in accordance with the following conditions:

(a) Eligibility of the insurer must be requested in writing by a licensed surplus lines agent;

(b) The insurer must be currently an authorized insurer in the state or country of its

domicile as to the kind or kinds of insurance proposed to be so placed, and must have been such an insurer for not less than the three years next preceding; or must be the wholly-owned subsidiary of an already eligible surplus lines insurer that has been so eligible for a period of not less than the three years next preceding;

(c) Before granting eligibility the requesting surplus lines agent or the insurer shall furnish the commissioner with a duly authenticated copy of its current annual financial statement in the English language and with all monetary values therein expressed in United States dollars, at an exchange rate—in the case of statements originally made in the currencies of other countries—then current and shown in the statement, and with such additional information relative to the insurer as the commissioner may request;

(d) The insurer, if organized under the laws of a state of the United States, must have surplus as to policyholders of not less than the amount required under this code for a like authorized insurer; or, if an alien insurer, must have and maintain in the United States a trust fund for the protection of all its policyholders in the United States under terms deemed by the commissioner to be reasonably adequate, in the amount of not less than four hundred thousand dollars, or, in the alternative, such a trust fund in the amount of not less than two hundred fifty thousand dollars as part of surplus to policyholders maintained in the United States in amount not less than that required under this code for a like newly authorized insurer. Any such surplus as to policyholders or trust fund shall be represented by investments consisting of public obligations of the United States, or of any state, county, or municipality thereof, or by other investments of the same general character and quality as are eligible investments for like funds of like domestic insurers under part II of chapter 625 of this code;

(e) The insurer must be of good reputation as to the providing of service to its policyholders and the payment of losses and claims;

(f) The insurer must be eligible, as for authority to transact insurance in this state, under subsections (3) (management and affiliations), and (4) (voting control or operation by alien government or agency) of §621.0203; and

(g) This subsection does not apply as to unauthorized insurers made eligible under §626.0514 as to wet marine and aviation risks as in such section provided.

(3) The commissioner shall from time to time publish a list of all currently eligible surplus lines insurers, and shall mail a copy thereof to each licensed surplus lines agent at his office last of record with the commissioner.

(4) This section shall not be deemed to cast upon the commissioner any duty or responsibility to determine the actual financial condition or claim practices of any unauthorized insurer; and the status of eligibility, if granted

surer shall be sued, upon any cause of action arising in this State under any contract issued by it as a surplus line contract pursuant to this Chapter, in the superior court of the county in which the cause of action arose.

(2) Every unauthorized insurer issuing or delivering a surplus line policy through a surplus line broker in this State shall be deemed thereby to have appointed the Commissioner as its attorney for acceptance of service of all legal process issued in this State in any action or proceeding arising out of such policy, and service of such process upon the Commissioner shall be lawful personal service upon such insurer.

(3) Each surplus line policy shall contain a provision stating the substance of subsection (2) of this section, and designating the person to whom the Commissioner shall mail process as provided in subsection (4) of this section.

(4) Duplicate copies of legal process against such insurers shall be served upon the Commissioner, and at time of service the plaintiff shall pay the Commissioner two (\$2.00) dollars, taxable as costs in the action. The Commissioner shall forthwith mail one copy of the process so served to the person designated by the insurer in the policy for the purpose, by registered mail with return receipt requested. The insurer shall have thirty (30) days after such date of mailing within which to plead, answer, or otherwise defend the action.

56-627. Exemptions from Surplus Line Law.—The provisions of this Surplus Line Insurance Law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this State:

(1) Ocean marine and foreign trade insurances;

(2) Insurance on subjects located, resident, or to be performed wholly outside of this State, or on vehicles or aircraft owned and principally garaged outside this State;

(3) Insurances on property or operation of railroads engaged in interstate commerce;

(4) Insurance of aircraft owned or operated by manufacturers of aircraft or operated in scheduled interstate flight, or cargo of such aircraft or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

56-628. Report of and tax on independently procured coverages.—(1) Every insurer who in this State procures or causes to be procured or continues or renews insurance in an unauthorized insurer upon a subject of insurance resident, located, or to be performed within this State, other than insurance procured through a surplus line broker pursuant to the Surplus Lines Insurance Law of this State or exempted from such law under section 56-627, shall within thirty (30) days after the date such insurance was so procured, continued, or renewed, file a report of the same with the Commissioner, in writing and upon forms designated by the Commissioner and furnished to such an insured upon request. Such report shall state the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently paid thereon, and such additional information as reasonably requested by the Commissioner.

(2) For the general support of the Government of this State, there is levied and there shall be collected from every such insured in this State for the privilege of so insuring his property or interests, a tax at the rate of four (4%) percent of the gross premium paid for any such insurance, after deduction of return premiums, if any. Such tax shall be paid to the Commissioner, coincidentally with the filing of the report provided for in subsection (1) above.

(3) The tax imposed hereunder if delinquent shall bear interest at the rate of six (6%) percent per annum, compounded annually.

be recovered by an action instituted by the Commissioner in any court of competent jurisdiction.

Sec. 8463.15. Suspension or Revocation of License: 1. The Commissioner may suspend or revoke any surplus line broker's license:

(1) If the broker fails to file his annual statement or to pay the tax as required by sections 8463.12, 8463.13 and 8463.14, or

(2) If the broker fails to maintain an office in this Territory, or to keep the records, or to allow the Commissioner to examine his records as required by sections 8463.01 through 8463.17, or

(3) For any of the causes for which a general agent's license may be suspended or revoked.

2. The procedures provided by this chapter for the suspension or revocation of general agents' licenses shall be applicable to suspension or revocation of a surplus line broker's license.

3. No broker whose license has been so revoked shall again be so licensed within one year thereafter, nor until any fines or delinquent taxes owing by him have been paid.

Sec. 8463.16. Exemptions: 1. The provisions of sections 8463.01 through 8463.17 controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurance when so placed by licensed general agents of this Territory:

(1) Ocean marine insurance.

(2) Insurance on subjects located, resident, or to be performed wholly outside this Territory, or on vehicles or aircraft owned and principally garaged outside this Territory.

(3) Insurance of aircraft or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance, or use of such aircraft.

2. No provision of this chapter shall be construed as prohibiting any person from procuring any insurance which is, not, at the time of procuring such insurance, written by any insurer authorized to transact business in this Territory.

Sec. 8463.17. Legal Process against Unauthorized Insurer: 1. An unauthorized insurer shall be sued, upon any cause of action arising in this Territory under any contract issued by it as a surplus line contract, pursuant to sections 8463.01 through 8463.17, or otherwise, in the Circuit Court of this Territory.

2. Any of the following acts in this Territory, effected by mail or otherwise, by an unauthorized foreign or alien insurer:

(1) the issuance or delivery of contracts of insurance to residents of this Territory or to corporations authorized to do business therein,

(2) the solicitation of applications for such contracts,

(3) the collection for such contracts, or

(4) any other transaction of insurance business,

is equivalent to and shall constitute an appointment by such insurer

of this law would not be subject to similar requirements; and for other purposes as set forth in this law. [1961, ch. 330, § 255, p. 615.]

Comp. leg. Alaska, Comp. Laws 1958
Supp., §§ 42-2-13-42-2-13b.
Ariz. Rev. Stat., §§ 20-107-20-120.
Ark. Stat., 1947, §§ 66-208-66-225.
Cal. Deering's Codes, Insurance Code,
§§ 1769-1780.
Colo. Rev. Stat., 1953, §§ 72-14-1-72-
14-17.
Fla. Stat. Ann., §§ 629.0310-629.0534.
Ga. Code Ann., §§ 59-613-59-628.
Kan. Gen. Stat., 1949, §§ 40-216b-40-
216d.
Ky. Rev. Stat., §§ 301.596-301.596.
La. Rev. Stat., 1950, §§ 22-1267-22-
1288.
Mass. Code, 1942, §§ 1705.02-1705.04.
Mont. Rev. Codes, 1947, §§ 49-316a-
49-312b.
Nev. Rev. Stat., §§ 686.270-686.280.
N. Mex. Stat., 1953, §§ 58-5-31-58-5-
47.
N. Dak. Cent. Code, §§ 26-09B-61-25-
09B-13.
Ore. Rev. Stat., §§ 450.010-750.110.
Puerto Rico, Laws Ann., tit. 26,
§§ 1007-1019.
S. Dak. Code, 1960 Supp., §§ 31-14A01-
31-14A13.
Utah, Code Ann., 1953, §§ 31-15-1-31-
15-16.
W. Va. Code 1955, §§ 3472(32)-3472
639.
See, to sec. ref. This section is re-
ferred to in § 41-1394.

41-1212. Exemptions from surplus line law.—(1) The provisions of this surplus line law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or, except as to subsection (2) below, to the following insurances when so placed by licensed agents or surplus line brokers of this state:

- (a) Ocean marine and foreign trade insurances.
- (b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state.
- (c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.
- (d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in commercial interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in a file as required of surplus line insurance under this law. The record shall be preserved for not less than five (5) years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The broker shall furnish to the commissioner at his request and on forms as designated and furnished by him a report of all such coverages so placed in a designated calendar year. [1961, ch. 330, § 256, p. 616.]

See, to sec. ref. This section is re-
ferred to in §§ 41-1394, 41-1414, 41-1415.

41-1213. Definitions.—(1) "Broker" as used in this chapter means a surplus line broker duly licensed under this chapter.

(2) To "inspect" means to place in an unauthorized insurer under this surplus line law insurance covering a subject of insurance resident, located, or to be performed in Idaho. [1961, ch. 330, § 257, p. 615.]

See, to sec. ref. This section is re-
ferred to in §§ 41-1394, 41-1214.

41-1214. Conditions for export.—If certain insurance coverages cannot be procured from a licensed or authorized insurer, insurance designated "surplus line" may be procured from unauthorized insurers, subject to the following conditions:

- (1) The insurance must be procured through a licensed surplus line broker.

available to this state by virtue of Public Law 79-15, 79th Congress of the United States, Chapter 20, 1st Sess., S. 340, 59 Stat.L. 33; 15 U.S.C. 1011 to 1015 incl., as amended, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states. [Acts 1967 (62 G.A.) c365, §3]

507A.3 Definitions—scope. Unless otherwise indicated, the term “insurer” as used in this section includes all corporations, associations, partnerships and individuals engaged in the business of insurance. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer is defined to be doing an insurance business in this State.

1. The making of or proposing to make, as an insurer, an insurance contract.
2. The taking or receiving of any application for insurance.
3. The receiving or collection of any premiums, membership fees, assessments, dues or other considerations for any insurance.
4. The issuance or delivery of contracts of insurance to residents of this state or to corporations or persons authorized to do business in this state.
5. The doing of any kind of insurance business specifically recognized as constituting the doing of an insurance business within the meaning of the statutes relating to insurance.
6. The doing or proposing to do any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the insurance laws of this state.
7. Any other transactions of business relating directly to insurance in this state by an insurer.

The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. [Acts 1967 (62 G.A.) c365, §4]

507A.4 Transactions when law not applicable. The provisions of this chapter shall not apply to:

1. The lawful transaction of surplus lines insurance as permitted by sections five hundred fifteen point one hundred forty seven (515.147) through five hundred fifteen point one hundred fifty (515.150) of the Code.
2. The lawful transaction of reinsurance by insurers.
3. Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

Revised, May 1963

4. Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state, covering subjects of insurance not resident located, or expressly to be performed in this state at the time of issue, and which transactions are subsequent to the issuance of the policy.

5. Transactions in this state involving group or blanket insurance and group annuities where the master policy of such groups was lawfully issued and delivered in a state in which the company was authorized to do an insurance business.

6. Transactions in this state involving any policy of insurance issued prior to July 1, 1967.

7. Any life insurance company organized and operated, without profit to any private shareholder or individual, exclusively for the purpose of aiding educational or scientific institutions organized and operated without profit to any private shareholder or individual by issuing insurance and annuity contracts direct from the home office of the company and without agents or representatives in this state only to or for the benefit of such institutions and to individuals engaged in the services of such institutions; nor shall this chapter apply to any life, disability or annuity contracts issued by such life insurance company, provided such contracts otherwise comply with the statutes.

8. Insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity or other risk including strikes and war risks commonly insured under ocean or wet marine forms of policy.

9. Transactions involving risks located in this state where the policy or contract of insurance for such risk was principally negotiated and delivered outside this state and was lawfully issued in a state or foreign country in which the foreign or alien insurer was authorized to do an insurance business, and where such insurer has no contact with this state except in connection with inspections or losses required by virtue of the contract or policy of insurance covering the risk located in this state. [Acts 1967 (62 G.A.) c335, §3]

507A.5 Proscribed acts binding on insurer.

1. No person or insurer shall directly or indirectly perform any of the acts of doing an insurance business as defined in this chapter except as provided by and in accordance with the specific authorization by statute. However, should any unauthorized person or insurer perform any act of doing an insurance business as set forth in this chapter, it shall be equivalent to and shall constitute an irrevocable appointment by such person or insurer, binding upon him, his executor or

Revised, May 1, 1968

§ 304.597 KENTUCKY DEPARTMENT OF INSURANCE

requested. Upon service of process upon the commissioner and the commissioner mailing such process to the insurer's designee, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service or process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision stating the substance of this section, and designating the person to whom the commissioner shall mail process as provided in subsection (2) of this section. (1950, c. 21, § 1)

Actions against insurance companies, where may be brought. KRS 422.445

Corporations other than foreign insurance companies, agent for service of process. KRS 271.385

304.597 Exemptions concerning placing of insurance with unauthorized insurers; records. (1) The provisions of KRS 304.580 to 304.598 controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance, nor to the following insurance when so placed by licensed agents of this state:

(a) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;

(b) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations.

(2) Agents so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under KRS 304.580 to 304.598. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the commissioner's examination. The agent shall furnish to the commissioner at his request a report of all such coverages so placed in a designated calendar year. (1950, c. 21, § 1; 1951, c. 203, § 12; effective June 17, 1951)

304.598 Records of insureds. Every person for whom insurance has been placed with an unauthorized insurer pursuant to or in violation of KRS 304.580 to 304.598 shall, upon the commissioner's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the commissioner the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable to a fine of not more than five hundred dollars. (1950, c. 21, § 1)

a true copy thereof, to the person designated by the insurer in the policy for the purpose by prepaid registered mail with return receipt requested. The insurer shall have forty days from the date of service upon the Secretary of State within which to plead, answer, or otherwise defend the action. Upon service of process upon the Secretary of State in accordance with this provision, the court shall be deemed to have jurisdiction in personam over the insurer.

C. An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this Section. Any such policy shall contain a provision stating the substance of this Section, and designating the person to whom the Secretary of State shall mail process as provided in Subsection B of this Section.

§ 1269. Exceptions

A. The provisions of R.S. 22:1256 through 22:1268 and of 22:1270 controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed surplus line brokers of this state, except that on or before March 1st of each year a tax on the portion of the premiums received from ocean marine and foreign trade coverages which is properly allocable to the risks or exposures located in this state during the preceding calendar year shall be due at the rate of two and one-half percent per annum, such tax when collected to be paid to the State Treasurer and to be credited to the General Fund, and such licensed surplus line broker placing ocean marine insurance shall be subject to the provisions of Section 1262, notwithstanding the provisions of Section 1249 and 1252, and must show on any document issued by and/or delivered by them evidencing such insurance, all of the insurers and must clearly stamp on any such documents that on the demand of the assured or its representative the latest financial statements of any such insurers are available at its office for inspection:

- (1) Ocean marine and foreign trade insurance.
- (2) Insurance on subjects located, resident, or to be

performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside of this state.

(3) Insurance on property or operation of railroads engaged in interstate commerce.

(4) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

B. Surplus line brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this Part. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the Commissioner of Insurance. The surplus line broker shall furnish to the Commissioner of Insurance at his request and on forms as designated and furnished by him a report of all such coverage so placed in a designated calendar year.

Notwithstanding anything to the contrary herein contained, the rates for the exempt lines of insurance set out in Subsection A (1), (2), (3) and (4) shall not be regulated. (Act 185 of 1970).

§ 1270. Records of insureds

Every person for whom insurance has been placed with an unauthorized insurer pursuant to or in violation of this Part shall, upon the Commissioner of Insurance's order, produce for his examination all policies and other documents evidencing the insurance, and shall disclose to the Commissioner of Insurance the amount of the gross premiums paid or agreed to be paid for the insurance. For each refusal to obey such order, such person shall be liable for a fine of not more than five hundred dollars.

§ 1271. Tontine funds: sales prohibited

A. On and after July 20, 1961, the sale by any in-

MONTANA

UNAUTHORIZED INSURERS AND SURPLUS LINES

40-3427

40-3425. Rules and regulations. (1) The commissioner shall make or may approve and adopt reasonable rules and regulations, consistent with this surplus line insurance law, for any or all of the following purposes:

- (a) Effectuation of such law;
- (b) Establishment of procedures through which determination is to be made as to the eligibility of particular proposed coverages for placement with a surplus line insurer or insurers; and
- (c) Establishment, procedures, and operations of any voluntary organization of surplus line insurance agents or others designed to assist such agents to comply with such law.

(2) Such rules and regulations shall be subject to the procedures and carry the penalty provided by section 40-2710.

History: En. Sec. 290, Ch. 286, L. 1959.

Collateral References

Insurance 2-48.

44 C.J.S. Insurance § 78.

40-3426. Exemptions from surplus line law. The provisions of this surplus line insurance law controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed insurance agents of this state:

- (1) Wet marine and transportation insurances;
- (2) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;
- (3) Insurance on property or operations of railroads engaged in interstate commerce; and
- (4) Insurance of aircraft owned or operated by manufacturers of aircraft, or aircraft operated in scheduled interstate flight, or cargo of such aircraft, or against liability, other than workmen's compensation and employers' liability, arising out of the ownership, maintenance or use of such aircraft.

History: En. Sec. 291, Ch. 286, L. 1959.

40-3427. Report and tax of independently procured coverages. (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any self-insurer who in this state procures or continues, except for catastrophic or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus line agent pursuant to the surplus line insurance law of this state or exempted from such law under section 40-3426, shall within thirty (30) days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such insured upon request. The report shall show the name and address of the insured or insureds, the name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also subject insurance resident, located or to be performed outside this state a

shall execute and deliver to the superintendent of insurance a bond in the sum of five thousand dollars, payable to the state, with at least two sureties, approved by the superintendent and conditioned that such person will faithfully comply with sections 3905.30 to 3905.35, inclusive, of the Revised Code, and will annually file with the superintendent in January, a sworn statement of the gross premiums charged for insurance procured or placed, and the gross premiums on such insurance canceled under such license during the year ending on the thirty-first day of December last preceding, and at the time of filing such statement will pay to the superintendent an amount equal to five per cent of the balance of such gross premiums after deducting such return premiums so reported. Such tax shall be collected from the insured by the surplus line broker placing such policy of insurance at the time of the delivery of the policy to the insured. No license issued under section 3905.30 of the Revised Code shall be renewed until such reports and tax have been filed and paid in full. The bond required by this section shall be deposited with the superintendent and kept in his office.

HISTORY: GC 1867; RS 1876-79; 97 v 157, § 2; 103 v 126, § 9; 121 v 307, § 1; 127 v 11616, § 1; 128 v 11203.

See RC § 3905.31 which refers to this section.

§ 3905.34 Tax on unauthorized insurance company business. (GC § 6514)

All persons, companies, associations, or corporations, residing or doing business in this state that enter into any agreements with any insurance company, association, individual, firm, underwriter, or Lloyd, not authorized to do business in this state, whereby said person, company, association, or corporation shall enter into contracts of insurance covering risks within this state, with said unauthorized insurance company, association, individual, firm, underwriter, or Lloyd, for which insurance there is a premium charged or collected, shall, annually on the first day of July or within ten days thereafter, return to the superintendent of insurance a statement under oath of all actual cost of indemnity and gross premiums paid or payable for the twelve months preceding on policies or contracts of insurance taken by the said person, company, association, or corporation and shall at the same time pay to said superintendent a tax of five per cent of the actual cost of indemnity paid or payable to any such association, firm, or individual, or a tax of five per cent of the gross premiums paid or payable to any such insurance company, underwriter, or Lloyd. All taxes collected under this section by the superintendent shall be paid by him, upon the warrant of the auditor of state, into the general revenue fund of the state.

HISTORY: GC 1864; 101 v 373, § 1; 101-153.

Cross-References to Related Sections

See RC § 3905.37 which refers to this section.
See RC § 3905.38 which refers to RC § 3905.36 et seq.

§ 3905.37 Prohibition. (GC § 664-2)

No person, company, association, or corporation shall fail to make the report required in section 3905.36 of the Revised Code and to furnish all the information that is required by the superintendent of insurance to determine the amount due under said section.

HISTORY: GC 1864; 101 v 373, § 2; 101-153.

Penalty, RC § 3905.99(C).

§ 3905.38 Exemptions. (GC § 651-3)

Sections 3905.36 to 3905.38, inclusive, of the Revised Code do not extend to private citizens, firms, or corporations, residents of this state, who seek to provide indemnity among themselves, from fire loss or other casualty, by exchange of private contracts for protection only and not for profit. Nor do such sections extend to fraternal beneficiary associations or members thereof.

HISTORY: GC 1864; 101 v 373, § 3; 101-153.

§ 3905.39 Expiration date of certificates and licenses.

All certificates of authority and licenses of companies, organized or admitted to do business under the laws relating to insurance companies, shall expire on the thirtieth day of June next after they are issued.

HISTORY: GC 1867; RS 1876; 97 v 157, § 10; 103 v 126, § 9; 116 v 101, § 1; 128 v 11203, § 1; 127 v 11203.

§ 3905.40 Prohibition against nonresidents. (GC § 615)

The superintendent of insurance shall issue no license to any person as agent of an insurance company if such person is a resident of a state which, by its laws, prohibits residents of this state from acting as agents of insurance companies in such state; if the superintendent is satisfied that any person holding a license as such agent is a resident of such state, he shall revoke such license.

HISTORY: GC 1865; RS 1873; 97 v 162; 101-153.

Research Aids

License of agents
Topic: Insurance 141

CASE NOTES

1. Since the penalties which are provided by statute for the act of a foreign insurance company in doing business in this state without having complied with the state's statutes upon such subject, are limited to be the sole punishment for such violation of law, any insurance policy issued by a foreign insurance company, which has not complied with the state's statute, is valid, and, consequently, one who has procured upon such an insurance policy at the request of the insured, may recover from the in-

§ 1119. Exemptions from surplus lines provisions

The sections of this article relative to surplus line coverages shall not apply to reinsurance. L 1957, p. 260, § 1119.

§ 1120. Records of insureds

Upon request of the Insurance Commissioner any person in Oklahoma who is the insured under any policy issued by an unauthorized insurer upon a subject of insurance resident, located, or to be performed in Oklahoma at the time the policy was issued, shall produce for examination all policies and other documents evidencing and relating to the insurance, and shall disclose the amount of the gross premiums paid or agreed to be paid for the insurance, through whom the insurance was procured, and such other information relative to the placing of such insurance as may reasonably be required. L 1957, p. 260, § 1120.

which declares that the business of insurance and every person engaged herein shall be subject to the laws of the several states.

History: L. 1969, ch. 80, § 2.

31-38-3. Transacting insurance business in state without certificate of authority unlawful—Exceptions—What constitutes transaction—Effect of failure to obtain certificate.—(1) It shall be unlawful for any insurer to transact insurance business in this state, as set forth in subsection (2) of this section, without a certificate of authority from the commissioner; provided, however, that this section shall not apply to:

(a) The lawful transaction of surplus lines insurance.

(b) The lawful transaction of reinsurance by insurers.

(c) Transactions in this state involving a policy lawfully solicited, written, and delivered outside of this state covering only subjects of insurance not resident, located, or expressly to be performed in this state at the time of issuance, and which transactions are subsequent to the issuance of such policy.

(d) Transactions in this state involving life insurance, disability insurance or annuities provided to or by education or religious or charitable institutions organized and operated without profit to any private shareholder or individual for the benefit of such institutions and individuals engaged in the service of such institutions.

(e) Attorneys acting in the ordinary relation of attorney and client in the adjustment of claims or losses.

(f) Transactions in this state involving group life and group sickness and accident or blanket sickness and accident insurance or group annuities where the master policy of such groups was lawfully issued and delivered in and pursuant to the laws of a state in which the insurer was authorized to do an insurance business, to a group organized for purposes other than the procurement of insurance, and where the policyholder is domiciled or otherwise has a bona fide situs.

(g) Transactions in this state involving any policy of insurance or annuity contract issued prior to the effective date of this act.

(h) Transactions in this state relative to a policy issued or to be issued outside this state involving insurance on vessels, craft or hulls, cargoes, marine builder's risk, marine protection and indemnity.

nity or other risk, including strikes and war risks commonly insured under ocean or wet marine forms of policy.

(i) Transactions pursuant to section 31-15-19, Utah Code Annotated 1953.

(2) Any of the following acts in this state effected by mail or otherwise by or on behalf of an unauthorized insurer is deemed to constitute the transaction of an insurance business in this state. The venue of an act committed by mail is at the point where the matter transmitted by mail is delivered and takes effect. Unless otherwise indicated, the term "insurer" as used in this section includes all corporations, associations, partnerships and individuals, engaged as principals in the business of insurance and also includes interinsurance exchanges and mutual benefit societies.

(a) The making of or proposing to make, as an insurer, an insurance contract.

(b) The making of or proposing to make, as guarantor or surety, any contract of guaranty or suretyship as a vocation and not merely incidental to any other legitimate business or activity of the guarantor or surety.

(c) The taking or receiving of any application for insurance.

(d) The receiving or collection of any premium, commission, membership fees, assessments, dues or other consideration for any insurance or any part thereof.

(e) The issuance or delivery of contracts of insurance to residents of this state or to persons authorized to do business in this state.

(f) Directly or indirectly acting as an agent for or otherwise representing or aiding on behalf of another any person or insurer in the solicitation, negotiation, procurement or effectuation of insurance or renewals thereof or in the dissemination of information as to coverage or rates, or forwarding of applications, or delivery of policies or contracts, or inspection of risks, or fixing of rates or investigation or adjustment of claims or losses or in the transaction of matters subsequent to effectuation of the contract and arising out of it, or in any other manner representing or assisting a person or insurer in the transaction of insurance with respect to subjects of insurance resident, located or to be performed in this state. The provisions of this subsection (2) shall not operate to prohibit full-time salaried employees of a corporate insured from acting in the

capacity of an insurance manager or buyer in placing insurance in behalf of such employer.

(g) The transaction of any kind of insurance business specifically recognized as transacting an insurance business within the meaning of the statutes relating to insurance.

(h) The transacting or proposing to transact any insurance business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of the statutes.

(3) (a) The failure of an insurer transacting insurance business in this state to obtain a certificate of authority shall not impair the validity of any act or contract of such insurer and shall not prevent such insurer from defending any action at law or suit in equity in any court of this state, but no insurer transacting insurance business in this state without a certificate of authority shall be permitted to maintain an action in any court of this state to enforce any right, claim or demand arising out of the transaction of such business until such insurer shall have obtained a certificate of authority.

(b) In the event of failure of any such unauthorized insurer to pay any claim or loss within the provisions of such insurance contract, any person who assisted or in any manner aided directly or indirectly in the procurement of such insurance contract shall be liable to the insured for the full amount of the claim or loss in the manner provided by the provisions of such insurance contract.

History: L. 1969, ch. 80, § 3.

Compiler's Notes.

Chapter 80 of Laws, 1969 carried no effective date clause.

31-38-4. Violations—Injunctive relief.—Whenever the commissioner believes, from evidence satisfactory to him, that any insurer is violating or about to violate the provisions of section 31-38-3, the commissioner may, through the attorney general of this state, cause a complaint to be filed in the district court of Salt Lake County to enjoin and restrain such insurer from continuing such violation or engaging therein or doing any act in furtherance thereof. The court shall have jurisdiction of the proceeding and shall have the power to make and enter an order or judgment awarding such preliminary or final injunctive relief as in its judgment is proper.

History: L. 1969, ch. 80, § 4.

31-38-5. Service of process—Appointment of secretary of state as agent—Method of service—Sufficiency—Default judgment.—(1)

copies of such legal process either by a person competent to serve a summons, by registered mail or certified mail with return receipt requested. At the time of such service the plaintiff shall pay to the commissioner two dollars, taxable as costs in the action. The commissioner shall forthwith mail the documents of process served, or a true copy thereof, to the person designated by the insurer in the policy for the purpose by prepaid registered mail with return receipt requested. The insurer shall have forty days from the date of service upon the commissioner within which to plead, answer, or otherwise defend the action. Upon service of process upon the commissioner in accordance with this provision, the court shall be deemed to have jurisdiction in personam of the insurer.

(3) An unauthorized insurer issuing such policy shall be deemed thereby to have authorized service of process against it in the manner and to the effect as provided in this section. Any such policy shall contain a provision stating the substance of this section, and designating the person to whom the commissioner shall mail process as provided in subsection (3) of this section. [1963 c 185 § 16; 1955 c 363 § 8; 1947 c 79 § 15.15; Rem. Supp. 1947 § 45.15.15.]

48.15.160 Exemptions from surplus line requirements. (1) The provisions of this chapter controlling the placing of insurance with unauthorized insurers shall not apply to reinsurance or to the following insurances when so placed by licensed agents or brokers of this state:

- (a) Ocean marine and foreign trade insurance;
- (b) Insurance on subjects located, resident, or to be performed wholly outside of this state, or on vehicles or aircraft owned and principally garaged outside this state;
- (c) Insurance on operations of railroads engaged in transportation in interstate commerce and their property used in such operations;
- (d) Insurance of aircraft owned or operated by manufacturers of aircraft, or of aircraft operated in schedule interstate flight, or cargo of such aircraft, or aircraft liability, other than workmen's compensation and employer's liability, arising out of the ownership, maintenance or use of such aircraft.

(2) Agents and brokers so placing any such insurance with an unauthorized insurer shall keep a full and true record of each such coverage in detail as required of surplus line insurance under this chapter. The record shall be preserved for not less than five years from the effective date of the insurance and shall be kept available in this state and open to the examination of the commissioner. The agent or broker shall furnish to the commissioner at his request and on forms as designated and furnished by him a report of all such coverages reported in a completed calendar year. [1949 c 180 § 22; 1947 c 79 § 15.16; Rem. Supp. 1949 § 45.15.16.]

48.15.170 Records of insureds — Inspection. Every person for

HB-299
GREATER ANCHORAGE AREA BOROUGH

104 NORTHERN LIGHTS BOULEVARD
ANCHORAGE, ALASKA 99503



January 26, 1971

OFFICE OF THE CHAIRMAN

The Honorable William Moran
Alaska State House of Representatives
Pouch V, Capitol Building
Juneau, Alaska 99801

Dear Bill:

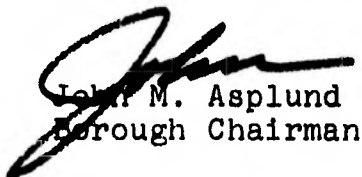
The Greater Anchorage Area Borough, like most governmental entities, has from time to time need of legislative action to either correct deficiencies in existing laws or to broaden the scope of these laws to enable it to survive with the ever-changing times. Because of this, we depend heavily upon our elected delegates.

This year we are asking each of the delegates to assist. Rather than overload any one of you with a heavy legislative program, we have attempted to divide our legislative package as best we could, hopefully according to your interests.

As a result, you will find a copy of our proposed Vexatious Litigant Bill enclosed. We are asking that you sponsor this Bill in the House. A letter and a copy of this legislation has been sent to Representative Mike Rose asking that he co-sponsor it with you. We have also requested the assistance of Senator Joe Josephson on this particular bill when it reaches the Senate.

If we can provide additional information or testimony, we will be happy to do so.

Very truly yours,


John M. Asplund
Borough Chairman

JMA:vp

encl.

ROBISON, McCASKEY, STRACHAN, HOGE, RICHARDS & FRANKEL

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JOHN R. STRACHAN
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WILLIAM G. RICHARDS
MARVIN S. FRANKEL
PETER A. LEKIGICH
LEROY BARKER

24 March 1971

HB-305

Mr. Jalmar Kertulla, Chairman
House Commerce Committee
Juneau, Alaska

Dear Chairman Kertulla and Committee Members:

I have read House Bill No. 305 limiting cancellability of certain insurance policies. I certainly am in favor of legislation in the intention expressed in this Bill.

I think it is also important and that perhaps an amendment should be added providing that where policies show more than one loss payee beneficiary, such as seller and buyer, that notice of cancellation could not be effective unless the 10 day or whatever statutory notice is required is furnished to all of the beneficiaries or loss payees named in the policy and its endorsements.

The reason for this is that numerous people sell their homes under contracts or deeds of trust which require that the buyer carry insurance with the seller also named as loss payee as his interest may appear. If the buyer defaults in payment of the insurance premiums and the insurance company only notifies the buyer of the cancellation, the seller's interest goes unprotected without any notice which would otherwise result in his placing insurance to cover his interests.

We have had numerous occasions where loss has occurred in this situation and I feel that it is truly a matter for the attention of the Legislature.

Very truly yours,

Paul F. Robison

PFR/jl

cc: Tom Fink, Representative, Juneau ✓
" Bill Moran, " " ✓
" Mike Rose, " " ✓

Division of Insurance

March 18, 1971

HB-305

We have noticed an increasing number of cancellations on property insurance policies for which no valid reason is apparent and for which the individual insured has no protection or recourse for reinstatement. Mid term cancellation for no stated reason places the insured in a "caveat emptor" position. We have received a substantial number of complaints recently, where the insurance carrier has terminated coverage on policies covering low value dwellings. We are sure that many cases like this are never called to our attention. The cases that we have investigated have verified our suspicions that these cancellations are for no other reason. The State of California has adopted this type of legislation and report that it is operating successfully.

Last year the legislature passed an automobile cancellation bill which limits the permissible reasons for cancellation of automobile insurance. This is found in AS 21.36 (ch 28 SLA 1970). When the property cancellation problem was realized we drafted a request for legislation to limit property cancellations by amending portions of the automobile cancellation bill thereby eliminating the need to repeat many sections already contained in the automobile cancellation bill. When HB-305 came down it was inserted in AS 21.42. The sections common to the automobile cancellation bill and the non-commercial property cancellation bill have not been picked up. This could be corrected by substituting the bill attached (Exhibit I) for HB-305. We have discussed this with the Deputy Director of Insurance and the Commissioner of the Department of Commerce and have their concurrence.

The common sections in the automobile cancellation bill are indicated in Exhibit II.

This proposed legislation will; give the buyer a reason for any cancellation of coverage, limit valid reasons for cancellation to 5 classes, provide a 45 day notice of non-renewal and a 20 day notice of cancellation except on non-payment cases which will provide a 10 day notice of cancellation. The present notice provides only 5 days for fire policies. There is a definite need for the additional protection this bill would afford the insuring public.

This legislation may have an adverse effect on markets for the types of lines to be covered as carriers may feel that they have to withdraw. The bill covering automobiles cancellation has not apparently affected our markets. We really do not expect any withdrawal problems but some are possible.

EXHIBIT I

IN THE LEGISLATURE OF THE STATE OF ALASKA

SEVENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An act relating to the cancellation and renewal of certain non-commercial insurance policies other than automobile."

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

*Section 1. AS 21.36.210 is amended by adding new subsections

(e) and (f) to read:

(e) No insurer may exercise its right to cancel an insurance policy covering;

(1) Loss of or damage to real property which is used predominantly for residential purposes, and which consists of not more than four dwelling units.

(2) Loss of or damage to personal property in which natural persons resident in specifically described real property of the kind described in subdivision (1) have an insurable interest except personal property used in the conduct of a commercial or industrial enterprise.

(3) Legal liability of a natural person or persons for loss of, damage to, or injury to, persons or property but not including policies primarily insuring risks arising from the conduct

of a commercial or industrial enterprise

Except for reasons listed in (f) of this section.

(f) Exceptions to (e) of this section are:

(1) Nonpayment of premium, including nonpayment of any additional premiums, calculated in accordance with the current rating manual of the insurer, justified by a physical change in the insured property or a change in its occupancy for use.

(2) Conviction of the named insured of a crime having as one of its necessary elements an act increasing any hazard insured against.

(3) Discovery of fraud or material misrepresentation by either of the following:

(A) The insured or his representative in obtaining the insurance.

(B) The named insured in pursuing a claim under the policy.

(4) Discovery of grossly negligent acts or omissions by the insured substantially increasing any of the hazards insured against.

(5) Physical changes in the insured property which result in the property becoming uninsurable

*Section 2. AS 21.36.270 is amended to read:

Sec. 21.36.270 EFFECT OF FAILURE TO COMPLY. Notwithstanding the failure of an insurer to comply with secs 210 - 310 of this chapter termination of coverage under the policy either by cancellation or non-renewal is effective on the effective date of any other policy providing similar coverage on the same [motor vehicle or a replacement of it.] (1) risk, or
(2) motor vehicle or a replacement of it.

*Section 3 AS 21.36.210 (1) is amended to read:

Sec 21.36.310 DEFINITIONS. In secs. 210 -300 of this chapter

(1) "Policy" means a policy covering the exposures listed in 210 (e) of this section or an automobile policy which includes automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage, delivered or issued for delivery in this state, insuring as the named insured, one individual or husband and wife resident of the same household, and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less which is not used in the occupation, profession or business of the insured, nor used as a public or livery conveyance nor rented to others;

*Section 4. This act takes effect July 1, 1971.

EXHIBIT II



LAWS OF ALASKA

1970

Source

Chapter No.

HCSSB 311

28

AN ACT

Relating to the cancellation and renewal of certain automobile insurance policies.

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

Section 1. AS 21.36 is amended by adding new sections to read:

Sec. 21.36.210. LIMITS ON CANCELLATION. (a) No insurer may exercise its right to cancel an automobile insurance policy except for the following reasons:

(1) nonpayment of premium; or

(2) the driver's license or motor vehicle registration of either the named insured or of an operator who resides in the same household as the named insured or who customarily operates a motor vehicle insured under the policy has been under suspension or revocation during the policy period or, if the policy is a renewal, during its policy period or the 180 days immediately preceding its effective date.

(b) During the policy period, no modification of automobile physical damage coverage (except coverage for loss caused by collision) whereby provision is made for the application of a deductible amount not exceeding \$100 is a cancellation of the coverage or of the policy.

(c) Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation which existed before the effective date of the renewal.

(d) This section does not apply to the failure to renew a policy, except as to coverage in force for less than 12 months.

→ Sec. 21.36.220. NOTICE OF CANCELLATION. No insurer may exercise its right to cancel a policy unless a written notice of cancellation is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days before the effective date of cancellation, except that when cancellation is for nonpayment of premium the notice shall be mailed or delivered to the named insured at the address shown in the policy at least 10 days before the effective date of cancellation and shall include or be accompanied by a statement of the reason for the cancellation. This section does not apply to the failure to renew a policy, except as to coverage in force for less than 12 months.

→ Sec. 21.36.230. STATEMENT OF REASONS. A notice of cancellation issued under sec. 210(a)(2) of this chapter shall either state the reasons for the cancellation, or contain a statement that upon the written request of the named insured, mailed or delivered to the insurer at least 10 days before the effective date of cancellation, the insurer will specify in writing the reason for the cancellation. If the reason for cancellation is not included in the notice of cancellation, the insurer shall upon written request of the named insured specify in writing the reason for cancellation. The insurer shall mail or deliver this explanation to the named insured within 10 days after receipt of a written request. Failure to specify the reason following a request constitutes a violation of this title, but does not invalidate the cancellation.

→ Sec. 21.36.240. FAILURE TO RENEW. No insurer may fail to renew a policy in force for less than 12 months. No insurer may fail to renew a policy in force for 12 months or more unless a written notice of nonrenewal is mailed or delivered to the named insured, at the address shown in the policy, at least 20 days before the expiration date of the policy, or of the anniversary date of a policy written for a term longer than one year or with no fixed expiration date. This section does not apply

(1) if the insurer has in good faith manifested in any way its willingness to renew;

(2) in case of nonpayment of premium for the expiring policy; or

(3) if the insured fails to pay the premium as required by the insurer for renewal.

Sec. 21.36.250. NOTICE OF ELIGIBILITY. When a policy of automobile liability insurance is cancelled, other than for nonpayment of premium, or for failure to renew a policy of automobile liability insurance to which sec. 240 of this chapter applies, the insurer shall notify the named insured of his possible eligibility for automobile insurance through the automobile assigned risk plan, or automobile insurance plan. The notification shall accompany or be included in the notice of cancellation or nonrenewal required by secs. 230 and 240 of this chapter.

→ Sec. 21.36.260. PROOF OF MAILING. Proof of mailing of notice of cancellation, or of nonrenewal or of reasons for cancellation, to the named insured at the address

shown in the policy, is sufficient proof of notice.

Sec. 21.36.270. EFFECT OF FAILURE TO COMPLY. Notwithstanding the failure of an insurer to comply with secs. 210 - 310 of this chapter, termination of coverage under the policy either by cancellation or nonrenewal is effective on the effective date of any other policy providing similar coverage on the same motor vehicle or a replacement of it.

Sec. 21.36.280. IMMUNITY OF INSURER, DIRECTOR AND INFORMER. There is no liability on the part of, and no cause of action of any nature may arise against, the director of insurance or against an insurer, its authorized representatives, agents, or employees, or a person furnishing to the insurer information as to reasons for cancellation, for any statement made by any of them in a written notice of cancellation, or in any other communication, oral or written, specifying the reasons for cancellation, or the providing of information pertaining to a cancellation or for statements made or evidence submitted at a hearing conducted in connection with a cancellation. However, this immunity from liability does not apply when the information furnished or statement made is untrue and the person furnishing the information or making the statement knew of the lack of truth or was grossly negligent in ascertaining the truth.

Sec. 21.36.290. POLICY PERIOD. A policy with a policy period or term of less than 12 months shall, for the purposes of secs. 210 - 310 of this chapter be considered to be written for a policy period or term of 12 months except in case of cancellation under any of the circumstances specified in sec. 210 of this chapter, and a policy written for a term longer than one year or a policy with no fixed expiration date shall be considered to be written for successive policy periods or terms of one year and termination by an insurer effective on an anniversary date of the policy shall be considered a failure to renew.

Sec. 21.36.300. APPLICABILITY OF SECS. 210 - 310 OF THIS CHAPTER. Secs. 210 - 310 of this chapter do not apply to any

- (1) policy which has been in effect less than 60 days at the time notice of cancellation is mailed or delivered by the insurer unless it is a renewal policy;
- (2) policy issued under an automobile assigned risk plan or automobile insurance plan;
- (3) policy insuring more than four motor vehicles;
- (4) policy covering the operation of a garage, automobile sales agency, repair shop, service station or public parking place;
- (5) policy providing insurance only on an excess basis; or
- (6) other contract providing insurance to the

Chapter 28

named insured even though the contract may incidentally provide insurance with respect to motor vehicles.

Sec. 21.36.310. DEFINITIONS. In secs. 210 - 310 of this chapter

(1) "policy" means an automobile policy which includes automobile liability coverage, uninsured motorist coverage, automobile medical payments coverage, or automobile physical damage coverage, delivered or issued for delivery in this state, insuring as the named insured, one individual or husband and wife resident of the same household, and under which the insured vehicles are of the following types only:

(A) a motor vehicle of the private passenger or station wagon type that is not used as a public or livery conveyance, nor rented to others; or

(B) any other four-wheel motor vehicle with a load capacity of 1,500 pounds or less which is not used in the occupation, profession or business of the insured, nor used as a public or livery conveyance nor rented to others;

(2) "renewal" or "to renew" means

(A) the issuance and delivery by an insurer of a policy replacing at the end of the policy period a policy previously issued and delivered by the same insurer,

(B) the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term, or

(C) the extension of the term of a policy beyond its policy period or term under a provision for extending the policy by payment of a continuation premium;

(3) "nonpayment of premium" means failure of the named insured to discharge when due any of his obligations in connection with the payment of premium on a policy, or any installment of the premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit.

REP. WILLIAM J. MORAN
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ANCHORAGE, ALASKA 99501



The Full-system Mass Transit Concept for The Small City

Re: HB 334 and HB 335

Mass transportation problems in the large cities stand out, in part at least, due to their very magnitude, and they are receiving some badly needed attention on both the local and national level. Smaller cities (100,000 or less) are also having serious mass transit difficulties, however, and there is not the same degree of concern shown about them. This proposes the "Full-system Concept" for a small city and outlines a method which could be followed in meeting public transportation needs, and help guarantee the best possible transit management, as well as full value for the money spent.

By GEORGE M. SMERK

IN the past decade there has been considerable concern shown in improving mass transportation as one means of providing relief from clogged streets and increasing the mobility of urban residents. Much of this interest has been generated by the aid programs introduced by the federal government in 1961. Any efforts made in this direction are commendable after years of neglect by all levels of government. Nevertheless, little attention has been paid to the problems of mass transit in small cities—those of 100,000 population or less.

The crying need for mass transportation in large cities is so obvious that there can be no doubt that it is vital to the public interest and necessary to the functioning of the urban area. As a result, however morbid some big-city systems may be, whatever the degree of decay found in equipment and operating practices, it is obvious that the systems will somehow continue to run—even if it means ownership and operation by the city government or some other public agency. Indeed, in recent years—thanks in a large part to the federal programs and some state aid, coupled with expendi-

ture of local funds—there have even been small but often significant improvements in mass transportation in larger cities.

On the other hand, in many cities below 100,000 in population, mass transportation is fast withering away.¹ Perhaps somewhat surprisingly, there has been remarkably little concern shown. In large part, this is because the need for transit and the problems faced when it is lacking are not as obvious and clear-cut in a small city as in a large one. Local political and community leaders usually do not have the staff resources or expertise available to help them worry about mass transport problems in addition to all the other affairs they must deal with. At the same time, there has rarely been a strong, unified, public outcry for continuation, resuscitation, or improvement of public transport in small cities. The groups which stand most to benefit—the poor, the aged, the infirm, and the young—in other words, those who most often do

¹ See, for example, Urban Mass Transportation—1962, Hearings before a Subcommittee of the Committee on Banking and Currency, United States Senate, 87th Congress, 2d Session, April 24-27, 1962 (Washington, D. C., U. S. Government Printing Office, 1962), pp. 340-390.

not have easy access to and use of an automobile—have little to bind them together into a unified, socioeconomic, or sociopolitical group.

Similarities and Differences in Small- and Large-city Transit Enterprise

ALL mass transportation enterprises, regardless of the scale involved or the size of a city in which it is located, face certain similar problems. One of the most serious of these is the competition of the automobile, which has attracted much of the total traffic and has siphoned away off-peak traffic in particular. Paradoxically, mass transit still enjoys relatively heavy peak-hour traffic. Unfortunately, resources used only in the few peak hours are a burden that must be supported throughout the off-peak times. Revenue from the peaks—heavy though it may be—is liable to be severely strained in order to support both peak and off-peak costs. The peaked demand pattern is a prime cause of the shaky financial condition of the transit industry.

The relative indifference of local government to the problems of the transit industry is another difficulty common to transit firms of all sizes. Transit operations are often carried on today under burdensome procedures and regulations designed to help thwart the transit monopoly of sixty years ago. There may be, for example, substantial difficulties faced in gaining approval of route modifications to meet changing needs. Indifference can also be found in other forms; even so simple a thing as failure of police to enforce "no parking" ordinances at bus stops can greatly hinder efficient operations.

Another common problem area is transit management itself. In most cases it can best be classified as operations-oriented, management-by-reaction. Even a small transit enterprise in a small city can

involve considerable complexity in operations, particularly in the scheduling of manpower and the use and maintenance of equipment. Management, usually risen from the ranks, has therefore tended to concentrate its attention on production of the service rather than marketing of the product. As a result, revenue and profit difficulties are generally not viewed as a marketing problem. The reactions to falling revenues are usually service cuts and fare increases which lead almost inevitably to a further decline in patronage.

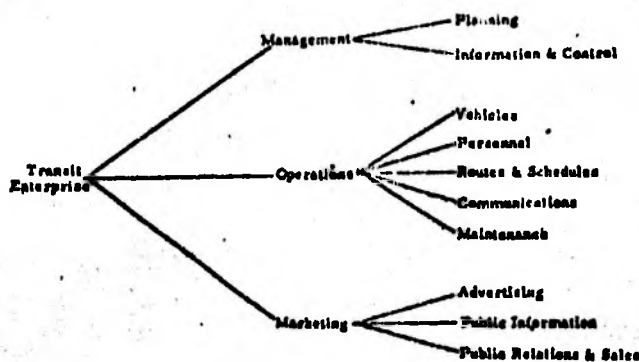
OBVIOUSLY, there is little the transit industry or the individual firm can do about the automobile and the changes it has wrought in the patterns of demand. Furthermore, changes in the attitude of all levels of government are at present in a state of evolution but there will probably be a slow but steady increase in co-operation and aid. Therefore, in reviewing alternatives, the most feasible area for the fairly rapid relief of problems is in transit management itself.

In the large city, the major constraints imposed by the environment are the scale of the enterprise—assuming realistically that there is but one major operator—and the relatively high degree of dependence of the public upon mass transportation. The larger the scale of operation, the greater the degree of complexity and the greater the need and opportunity for managerial specialization. Large-scale enterprises need, and can justify, the purchase and use of experience, consultants, and data processing devices. Moreover, large-scale enterprise is most likely to lead to generally impersonal relations between transit management and rank-and-file personnel, and between the transit firm and the general public. Furthermore, with increasing



FIGURE I

RELATIONSHIP OF THE ELEMENTS OF THE FULL-SYSTEM MASS TRANSIT CONCEPT



public dependence upon mass transport, the greater is the need to gear plant, personnel, and equipment to match peak demands.² As a result, except for the peak twenty hours a week, most large-city transit firms are burdened with considerable overcapacity.

On the other hand, in small-scale, small-city operations, platoons of managerial specialists are neither possible nor necessary. Capital intensive use of exotic hardware is likewise unjustifiable. However, a close relationship is possible between supervisory and managerial personnel and the operating employees; the small-city enterprise may also have a more personal relationship with the people it serves and with city government, if care is taken to cultivate both relationships. Moreover, a lesser relative degree of public dependence upon the transit system, and the high probability of more moderate demand peaks, means that the degree of overcapacity required in a large-city system is not needed in the small city.

Small-city Mass Transit: The Dangers of the Conventional Wisdom

UNFORTUNATELY, in years past as well as today, most research and writing in transit has been aimed at big-city problems and big-city situations. Much of this transit thinking is misplaced in the case of small cities; much of it is out of date—the product of the first quarter of this century. As a result, operational concepts and management attitudes in the transit industry as a whole are geared to the conventional wisdom most appropriate to big cities in the age of the streetcar.

One of the most obvious practices of conventional thinking is the "Main Street" operating pattern. Because of the expense of construction of street railway lines, it was unwise, unless population was extraordinarily dense, to place rail facilities too close together. Using the rough rule of thumb that the reasonable service area on either side of a streetcar line was approximately a quarter of a mile, the routes were laid out in a coarse-grained pattern approximately one-half mile apart. As a result, the streetcars usually did not penetrate the actual residential areas very deeply.

Another reason for lack of fine-grained coverage

is the habit of gearing up for the peak can be found in the habit of buying large, relatively high-capacity buses over the past twenty years. The great majority of vehicles purchased recently seat from forty-five to fifty-three persons. The standard bus seats thirty-five. Most of the capacity of the bus is greatly underutilized except during peak hours.

was the fact that the streetcar, particularly before the introduction of the PCC car in the mid-1930's, was relatively obnoxious. Because of noise serious objections would have been raised had more intense penetration been attempted. The "streetcar street" was not itself a choice residential location.

Today, even though the bus has generally replaced the streetcar, the buses often tend to follow the old routes with an almost religious devotion, despite rapidly changing population, employment, and shopping patterns. Where new bus lines have been established, they still tend to follow the main streets almost exclusively.³ The difficulty is very simply this: If mass transportation is to serve the public adequately, if it is to be an effective competitor to the automobile, the public must have easy access to service that can be provided by fine-grained routing.

THE typical size of the vehicles used in mass transport service is another heritage of streetcar days. In days prior to automotive competition, streetcars were justifiably large because demand was usually relatively high and fairly steady throughout the day, and the capacity and large size of the vehicle could be easily justified. Subsequently, large streetcars were replaced with large buses.

Today this practice is usually justified on the grounds that it is cheaper to pay one man to drive one large bus than to pay two men to drive two smaller vehicles, and, of course, the capacity of the vehicle is warranted during the hours of peak demand. There may be wisdom in this thinking in big-city systems. Because of competition in the labor market with manufacturing industry, which finds it easier to use capital to boost worker productivity, bus drivers must be paid wages competitive with those of industrial workers. A larger vehicle under one man's control is one way in which productivity can be increased, at least when there is traffic available to be moved.

IN small-city operations, the relatively large size of even the smallest standard transit vehicle—a 35-passenger model—is a major cross to bear. Patronage may rarely fill them up, even during rush hours. The relatively high cost of such vehicles when new—approximately \$15,000 for a 35-passenger bus in operating condition—and the

³ Poor planning of new subdivisions and so-called "communities" makes it virtually impossible, in many cases, to serve them effectively and efficiently with mass transportation. City fathers, developers, and planners, insensitive to transport requirements, must share the considerable blame involved.

burdens of depreciation and operating costs make them most inappropriate equipment to use in low total and low peak demand situations. Again, the cumbersome size of the bus and the noise associated with them may make them rather unwelcome in residential neighborhoods.

IN a production-oriented industry, the conventional wisdom calls for shaving cost whenever and wherever possible. In the small city this leads to combining routes, often ballooning them into large one-way loops or zigzagging back and forth to permit one line to cover the territory once served by two or more. In either case, such routing leads to excessive circuitry and inconvenience for many patrons or potential users. The drive to cut costs also leads to extending the headway of a route to perhaps sixty to ninety minutes in order to permit as few vehicles as possible to cover maximum route mileage.

Furthermore, the cost-cutting syndrome usually means that many practices considered highly important in most businesses are dismissed as mere frills. Public information material, such as maps and schedules, if available at all, are usually unattractive and difficult to read. Advertising of the service is usually nonexistent. Any sort of fact gathering that threatens to be costly, regardless of its value to management, is often dropped. Lack of marketing orientation at its worst may have prevented the transit enterprise from understanding and expanding its operations to meet new potential demands in developing suburban areas.

In short, because the conventional wisdom is the child of production-oriented, big-city transit thinking, small-city transit operations may typically consist of a few routes, operated on infrequent headways by excessively large equipment on a broad-grained pattern that neither reaches nor conveniently serves the bulk of the population—which in any case is poorly informed about what service is available. Small wonder small-city mass transportation is in trouble.

Management is the key to the survival and improvement of small-city mass transit, regardless of whether the enterprise is publicly or privately owned, subsidized to provide service, or expected to produce a return on investment. But the industry suffers from a lack of professional managers and it will be many years before federal programs to educate persons for transit management have produced a reasonable supply of trained transit managers. Probably most of these will be attracted

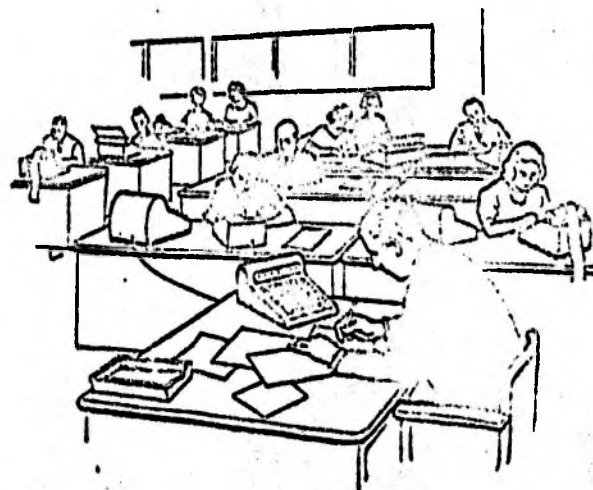
to bigger cities. What is needed, therefore, is a concept—a star to steer by—that can help guide the small-scale transit enterprise. Just such a method of guidance is the Full-system Mass Transit Concept.

Full-system Mass Transit: The Unconventional Wisdom

IN a small city in which the Full-system Concept is in operation, the visitor would have some sights to catch his eye unlike most cities of similar size. At the center of town he would discover an attractive transfer house. From time to time, in a regular pattern throughout the day, a flock of small, cheerfully painted buses would descend upon this facility and there would be the hustle and bustle of people boarding, alighting, and departing.

Wherever the visitor might take himself in the city, he would soon be bound to find one of the ubiquitous buses moving along its route. They would bear the tell-tale antennae indicating that they were radio-equipped; on the roof would be the unmistakable sign of an air-conditioning unit. Occasionally he would come across shelter houses and small, modern terminal houses at outlying shopping and work centers. At certain key places would be posted large information tablets containing maps and schedule information.

Behind the scenes would be the careful maintenance program that ensured the availability of the surprisingly small number of vehicles that performed the service, and the system of data gathering that gave the tiny management team the information needed for effective control of the operations of the system. Less modest, perhaps, would be the marketing effort, visible in the form of arresting advertisements regularly placed in the local papers, and audible



through the local radio station. Perhaps the most notable feature of all would be the fact that townspeople from all walks of life would swear by—not at—their public transit system. Moreover, because it was a useful, integral part of their community, they would use it in large numbers.

Such a picture is not pie-in-the-sky; it requires only some important changes in approach.

The Philosophy of Full-system Mass Transit

THE essence of the concept is the idea of system. Webster defines a system as "a regularly interacting or interdependent group of items forming a unified whole."⁴ Despite the formidable prose of the definition, the notion is simple and straightforward. Moreover, it is obvious that urban transit abounds in system relationships. A city itself is a system, and transit is part of the circulatory subsystem that helps bind it together.

Within the transit enterprise itself, the systematic approach is crucial. For example, the kind of vehicle used can determine what sort of persons may drive them, where they may be driven, and the cost of the service that is supplied. Schedules and routes must be geared to public need and the operating capabilities of equipment; maintenance and communications are needed to insure reliable, on-time service. The neglect of system relationships obviously makes it difficult or impossible to achieve desired goals effectively and efficiently.

Moreover, the concept as set out here is very simple. In keeping with the scale of the enterprise. A vast and complex business or enterprise must obviously engage in systems approaches on a par with the magnitude of the effort. Batteries of engineers, scientists, and managers are needed to fit a rocket into space. Even though the basic concept remains the same, the scale of small-city transit operation makes large numbers of technicians and expensive computing hardware unnecessary; success lies more with the attitude of management.

The major guideline of the Full-system Concept is that of optimizing the results of the operations of the entire enterprise in moving toward goals. This may very well mean suboptimization—that is, increasing the cost—of some pieces of the system in order to achieve maximum total service quality—and revenues for private enterprise systems—at a reasonable cost. In other words, it means avoiding attempts to cut costs or improve performance in any one activity without regard to the impact of

⁴ Webster's Seventh New Collegiate Dictionary, Springfield, Massachusetts, G. and C. Merriam Company, 1963, p. 895.

such cost cutting on all other activities and on the overall profitability and/or effectiveness of the enterprise. An analogy can be found in the physical distribution management concept currently attracting considerable attention in the business world. The old-fashioned traffic manager, viewing only the transportation element of a system, would buy the least costly freight service that met the firm's transportation needs, regardless of its effect on inventories, warehousing costs, packaging costs, etc.

The physical distribution manager, on the other hand, may ship by relatively expensive air freight in order to reduce packaging, warehousing, and inventory cost, if by so doing he reduces the total costs of distribution of product. By viewing all elements of the distribution system, the physical distribution manager can do a more efficient job than can the traffic manager.

SEVERAL important guidelines must be observed in carrying through the Full-system Concept. First of all, the service offered by the transit firm must be of sufficiently high quality to offer a reasonable transportation alternative to all residents. Mass transportation must overcome its reputation of abominable service performed in Coolidge-era trappings. The quality factors at issue are convenience, as reflected by fine-grained coverage of the city, schedules rigorously maintained, vehicles that are comfortable, and personnel that are courteous and well-trained. It is not enough to produce a service of such low quality that only those persons with no transport alternative whatsoever would possibly consider using it.

The second guideline is the reduction of costs to a minimum, given the quality standards that are to be maintained. The principal means of achieving minimum cost performance is to tailor plant and equipment to meet the needs of the service, and to



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make intensive use of these assets. A systematically conceived and operated transit enterprise should be able to avoid much idle capital. The nature of small-city demand should afford this opportunity.

The final guideline is that of the long-range approach to the eventual achievement of specific goals. Regardless of whether the objective of the enterprise is a given level of profitability, minimization of loss, or a certain level of ridership, many years of careful cultivation of the market may be necessary to achieve objectives.⁵ Plans should be carefully laid, so that with proper attention paid to establishment of interim targets of revenues and costs, and an effective system of controls, the desired results will be achieved. Full-system mass transit should be considered in the same light as any new product offered to the public; essentially, the success of the concept involves a critical change in the habits of consumers of transport and such changes do not come quickly.

A FURTHER word about goals is necessary. A privately owned transit enterprise is expected to turn a reasonable profit. Publicly owned transit enterprise may be expected to do no more than break even; often the goal is to produce some level of service at minimum cost, and it is assumed that the service will be perpetually subsidized. Decisions on pricing reflect the goal. Regardless of ownership, the profit goal is a powerful stimulus to efficient operations that meet public needs. Transit, however, in its preoccupation with operations and neglect of marketing, has generally fallen woe-

⁵A good example is RCA's introduction of color TV. Even after a method of successfully transmitting and receiving color television was developed, years of effort were required to build the market. This included a substantial offering of color shows on NBC-TV to make the purchase of a color set worth-while to the consumer, who probably already owned a good black and white set. Few new products are financial successes from the beginning; it is extremely shortsighted to expect them to be.

fully short of doing a businesslike job of producing either profits or good transit service. Because of the discipline afforded by profit goals—and the requirement that shrewd management be concerned with both production and marketing—it seems wise that even a publicly owned enterprise should attempt to meet its service goals and eventually produce a surplus, over and above covering all its costs, depreciation, and necessary provisions for expansion.

The Subfunctions and Form of Full-system Mass Transit

IN the Full-system Concept, the transit enterprise is viewed as an interrelated group of activities or subfunctions—such as maintenance, or routing and scheduling—all bearing on the main function of transit service. For purpose of discussion, the subfunctions may be most conveniently bundled together in major categories of management, operations, and marketing. Figure I (page 27) shows the relationship.

Management

THE major function of management is to control the successful operation of the enterprise by careful integration of the interrelated parts. In essence, managerial activities consist of manipulating the various subfunctions of operations and marketing—including pricing—to reach the targets established for service, revenue, cost, and profit (or surplus). This approach is, therefore, in direct opposition to the "management by reaction" as practiced in mass transit today.

In order to play its role successfully, the management function must involve itself with the interrelated subfunctions of planning, and information and control systems. The breakdown of effort

into these areas does not, of course, mean that a large staff is necessary; only that the tasks of management are clearly categorized.

Planning. The subfunction of planning must have as its objective the establishment of specific goals within the structure of the enterprise, including both long- and short-range targets. A major job handled within this subfunction would be the analysis of proposed alterations and changes in service or marketing effort. For example, in consideration of the expansion of service through the operation of a new line, the planning area would determine the probable cost, the potential market, the marketing and other effort needed to implement the change, the patronage, and revenue targets to be reached over time and the effect of the change on the enterprise as a whole.

Information and control systems. Much of the work of the planning subfunction would depend upon the information and control systems subfunction. This area would have as its job the establishment and maintenance of an accounting and cost control system providing information useful and necessary in the management of the enterprise.

Cost control systems must be devised that provide required detail at reasonable cost. Management should know, for example, not only the cost, revenue, and patronage of each route, but also, if possible, have such information available for each trip. Even the boarding and alighting locations of patrons on each trip would be useful in noting the patterns of transit usage, along with information on actual origins and destinations of patrons.

Operation

THE operations function involves all those areas related to the actual production of the transit service. These include vehicles, personnel, routes and schedules, communications, and maintenance.

Vehicles. The vehicle subfunction is a critical one in mass transit, and—as has been pointed out in earlier pages—one of the major problems in the small-city environment. The size and capacity of the vehicles used, their initial cost and cost of operation and maintenance, their ability to penetrate residential areas without offense, their dependability, attractiveness, and comfort, are all factors closely related to the success of the whole venture and affect the other subfunctions intimately.

A major guideline in regard to vehicles and their selection is that the equipment used must meet both the conditions of demand and the operating condi-

tions of the given environment. As an example, where demand is relatively light and streets narrow, with sharp corners to turn, a small bus—probably smaller than today's most modest-sized standard vehicle—would be best. On the other hand, where demand is quite heavy, a large bus is needed. If operating conditions are such that a standard transit bus is too long to navigate tight corners, then short-length, high-capacity, double-deck buses are just the ticket. The advantages of utilizing one standard type of equipment have to be weighed against possessing a variety of equipment that permits substantial flexibility in operations and higher quality service in terms of penetration and sprightly running.⁹

As pointed out earlier, a major guideline of the Full-system Concept visualizes a fine-grained operation that makes maximum use of assets. This is translatable into a fairly large number of routes, closely spaced, with fair frequency of schedules. In a small city, as defined in this article, demand is not likely to be excessively high, even at the peak, and closely spaced routes should tend to distribute the traffic rather evenly among the routes.

Regardless of seating capacity (10 to 20 presumably), the buses should be air-conditioned, have a pleasant, easy-to-clean interior, comfortable seats and springing, and be dependable. These features, plus an attractive exterior paint scheme, should make for a most beguiling bus, with a \$5,000 to \$12,000 price range.

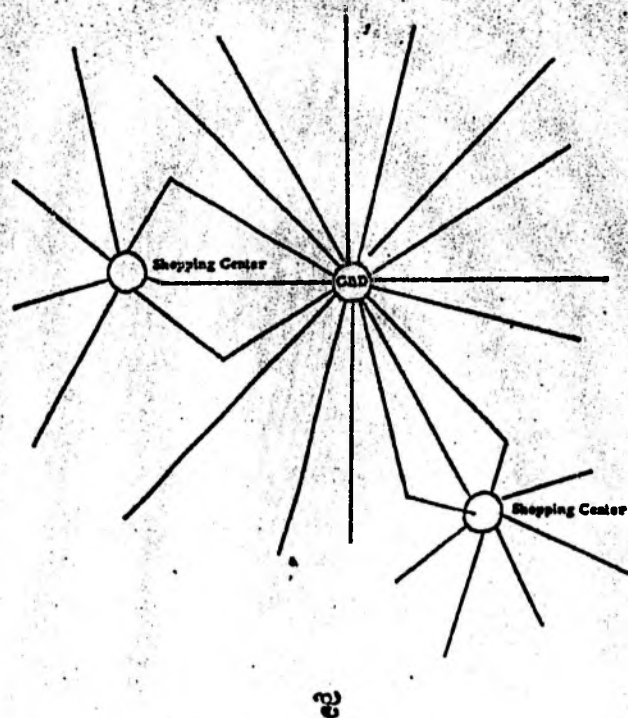
Despite the aim of relatively modest cost, the vehicles should be written off as soon as possible so that they can be replaced frequently. No piece of rolling stock should be kept for more than ten years, and retention for no more than five years would be better.

Small buses will be able to run on any residential street without needless noise and disturbance to residents; the goal of a service that successfully penetrates residential neighborhoods without offense can be realized. Wear and tear on the streets should be not much greater than that imposed by automobiles.

MOREOVER, the superior maneuverability of a small vehicle will enable it to maneuver its way through streams of vehicles quite easily, rather than

⁹The small bus is obviously no cure-all to small-city transit problems and the comments on such equipment are not intended to give that impression. For some highly informative comments on this point, see "Mass Transportation in a Small City," The New Castle Area Transit Authority, New Castle, Pennsylvania, fall, 1968, especially pp. 9 and 29.

Figure 11
 DIAGRAMMATIC VIEW OF FULL-SYSTEM MASS TRANSIT CONCEPT ROUTING



wallowing in traffic as its big brothers are forced to do.⁷

PERSONNEL. The driver is clearly a key factor in the successful operation of mass transit service. His selection and training are not matters to be taken lightly. He is the one who meets the public and his courtesy and skill in dealing with people clearly do much to make the difference between success and failure in the undertaking.⁸ Since a basic part of the Full-system Concept for small cities depends upon the use of small vehicles, the association between driver and passengers is likely to be physically close. This offers an unusual opportunity to create a close and friendly relationship between the transit enterprise and the public it serves through the medium of the driver.

All of this means that the driver must be a paragon of all those virtues which bus drivers are supposed to possess in terms of driving ability, politeness, neatness, etc. But not just anyone who can drive well—an erstwhile truck driver, for instance,

⁷ Unfortunately, as many readers are probably thinking, such an ideal vehicle does not exist. The Minibus and Flexette, to name several small buses currently available on the market, are a bit larger and more expensive than desirable. A small bus slightly larger than the Ford Econoline, or Volkswagen Microbus, would be about right. There is an obvious vehicular need here that remains to be met in a really satisfactory manner.

⁸ For some interesting information on the importance of the driver to the public, see "A Consumer Report," New York: The Transit Advertising Association, Inc., undated, p. 5.

will do. The driver's potential as a friendly representative of the transit enterprise is a key factor in making a ride on the bus a pleasure for patrons. He must be carefully selected and trained for the job.

Beyond a driver's role in meeting the public, skillfulness in actually handling a vehicle can result in substantial economies in operation. Carefully kept records of operating and maintenance cost, assigned to each driver as well as to each vehicle, will permit management to pinpoint inefficient drivers and take the retraining steps needed to weed out "expensive" driving habits. Moreover, as the vehicles to be used will generally be small, it will be possible to utilize women drivers, since the muscle needed to handle a large standard transit bus will be unnecessary.

ROUTES AND SCHEDULES. The routes and schedules subfunction involves the laying out of routes and the scheduling of revenue service. The routing objective of a fine-grained service can be met by planning routes that are relatively close together so that patrons will have no more than two or three blocks to walk in order to reach public transportation. To afford maximum coverage and utility, careful consideration must be given to providing service to all places of employment, shopping, personal service, recreation, schooling, and medical care, as well as residential areas. All are sources

of potential patronage and, within reason, none should be left untapped or unserved.

It is obviously impossible to claim that a city has real full-system mass transportation service without covering the whole of the city with mass transit in the fine-grained pattern. It is equally impossible to plan a route that connects every possible origin and destination point that its patrons may desire. The routes must, therefore, converge on one or more major transfer points to permit easy interchange. By bringing all routes to focus, patrons are given considerable flexibility and access to the whole of the city is given to the transit patron.

The central business district is the most likely site of the principal transfer house. This should also be the location of the central operating control point. Routes should radiate from the transfer house, the actual pattern determined by the street layout and the distribution of population and economic activity. Some will converge on other major foci in the urban areas, such as principal suburban shopping centers or factories. From these subcenters additional routes may radiate into suburban communities. Figure II (page 33) gives an idealized, diagrammatic view of Full-system Concept routing.

To ease transfer, the major exchange facilities should be, in effect, small terminals. Patrons must not be forced to dash madly—and at considerable personal risk and inconvenience—from corner to corner. All buses must pull up next to one another at the transfer house, and shelter from the elements should be provided to make transferring as pleasant as possible. The close proximity of the buses to one another will add to the painlessness of the process.



The matter of schedules is often a vexing one. This is especially true in the small city where demand will never be adequate to make it economically feasible to offer service on such frequent headways that the given time certain points are served is of small consequence. Schedules should also be easy for the public (and supervisory and operating personnel, as well) to remember. In small cities in the lower end of the size range, service more frequent than every thirty minutes can probably not be justified. Each route should therefore be tailored so that it can be served, out and back to the central transfer house, in a period of slightly less than thirty minutes. To ease transfer and schedule memorization, all buses should be scheduled to leave the transfer house at the same time (on the hour or half-hour).

In operation, therefore, the Full-system Concept transit enterprise will present a picture of regular ebb and flow. Remembering such a schedule will place little strain on the public and eliminate the confusion and frustration of spasmodic or seemingly capricious scheduling. If demand on a route presses too heavily upon the capacity of given vehicles at certain peak times, it would probably be best to run two smaller buses in tandem—or substitute larger vehicles customarily used in charter or other special services—rather than violate the schedule pattern.

The period of service throughout the day will, of course, depend upon the span of travel demand. Because the great majority of trips will be connected with work, school, and shopping, it is obviously unnecessary to operate beyond those periods. Initially, the period of operation should be from about 6:00 A.M. to 7:00 P.M. Since the whole approach to the Full-system Concept must be positive—that is, a constantly growing and improving service rather than one of constant cutbacks—it would be best to start off on the conservative side and add to the service period as the need proves itself.

The first task of management under the Full-system Concept is to provide a reliable, regularly scheduled and routed service. Once this is established, careful investigation of the market should provide insight into the operation of charter and special services.

An aggressively marketed charter service can be profitable to the transit enterprise and a boon to the community. Special subscription or dial-a-bus plans, providing door-to-door service under special fare and contractual agreements, and special school bus services, should also be well-researched

and evaluated and phased in as the need for them becomes clear.

COMMUNICATIONS. Perhaps more important than the frequency of service is the assurance on the part of the public that the service operates on time.

Close supervision of the system is, therefore, necessary to assure punctuality and precision of operation. Supervision is, to a large extent, a question of communication. This may be done by a variety of methods, ranging from the stationing of supervisors at fixed locations to note the time of passage, all the way up to sophisticated electronic monitoring systems.

Probably two-way radio communication between the vehicles and the central control point would be the most effective and economical means available today for small transit enterprises. Since each route will typically be served by only one bus, a serious delay can throw route schedules off for a considerable amount of time. With radio, drivers could relay information concerning delays (flat tire, mechanical trouble, traffic jams) to the control center, and relief vehicles could be put into service to maintain the schedule and to rescue passengers on the delayed bus.

Communication is of vital importance to the reliable operation of the system. It is, therefore, wise to spend a considerable sum on a high-quality communications system to assure the quality of operations. Neglecting this element, to the detriment of service quality, would be a case of the falsest sort of economy.

Maintenance. The maintenance subfunction is crucial in insuring that all vehicles are in the best possible condition as far as safety and mechanical performance are concerned. It also allows as close to 100 per cent availability of equipment as is feasible. This is the best way to avoid delays in service and permit a bare minimum of equipment to provide regularly scheduled operations.

The high standards of mechanical reliability necessary can best be met with a preventive maintenance program, rather than provocative maintenance as usually practiced by small-scale transit enterprise. As noted previously, complete records should be kept for each vehicle and for each driver. The cost of maintenance and checkups before any trouble occurs is offset by availability and reliability of equipment in service and lowering of the cost of lost patronage as a result of failure to maintain schedules. *Not* having to have additional vehicles,



because much uncertainty is avoided, is another major benefit.

Marketing

THE principal objectives of the marketing function are to help provide management with necessary information concerning the market it serves, to remind the public constantly of the services offered and its advantages, and to provide information to the public concerning routes and schedules.

Advertising. The major job of the advertising subfunction is to use advertising media to keep the public reminded and informed. Through advertising the image of the transit operation as a vital and highly useful part of small-city activity will be created over time; by living up to the service claims, the image will be verified. Of course, to be effective, the advertising must be aimed at specific market segments. This may be achieved by means of careful advertising in newspapers and on radio, and perhaps through home delivered circulars and handbills. Cost savings and freedom from parking problems will probably be major themes.

In a society constantly bombarded with advertising, and surfeited with a benumbing variety of goods and services, an enterprise must advertise simply to remain in the public ken. Since the Full-system Concept aims at changing travel habits over a relatively long time period, a constant program of advertising must be maintained. This does not mean that advertising must be lavish in order to do the job. Rather, it means that it must be carefully prepared through the services of a reliable and perceptive advertising agency, and by regularly budgeting sufficient money to do an effective job.

Public Information. The subfunction of public information is closely allied to advertising. Its objective is to make sure the public knows what service is available. Attractive and easy-to-read schedules and maps are an obvious part of this program. The cost of such media is partially offset by the patronage of customers who use the service simply because they know and understand what is available. Undoubtedly, many potential patrons are lost to public transportation because information concerning service is inadequate, nonexistent, or requires a PhD in code breaking to fathom its meaning.

In addition to maps and schedules, information tablets mounted on poles or other suitable places (such as inside public buildings and apartment houses) should also contain routes and schedule information. A telephone information service must also be available. Indeed, by a tie-in with communications, a potential patron could be informed of the precise location of buses in his vicinity and be able to determine his chances of catching a given trip.

PUBLIC RELATIONS AND SALES. The public—or community—relations subfunction must provide a two-way street of information for management and for the public. More particularly, it would be the task of public relations to be in constant contact with social, fraternal, and other groups, not only to give presentations and talks on the services available, but to gather the reactions and ideas of the public concerning its needs and desires. Such information would then be relayed to management to aid in planning and decision making.

Another vital facet of public relations would be in selling various groups on utilizing charter and special services offered by the transit enterprise. This is a potentially lucrative part of the transit business and aggressive salesmanship and good service can add greatly to revenues.

A most vital role will be played by public relations in the period leading up to the inauguration of service on the Full-system Concept. In addition to meetings of various sorts to inform clubs, government bodies, and other organizations of the planned service, the flow of information to the press must be carefully handled. The six months leading up to actual commencement of operations should be a crescendo of information to whet the public appetite.

Conclusion

THE Full-system Mass Transit Concept for a small city is only an idea. What has been presented

is an outline of a procedure or method that could be followed.

THE concept is not new or revolutionary; it is merely an attempt to bring to bear certain aspects of modern business techniques in the field of transit and on the stage of the small city.

The reaction to this idea, particularly among transit managers who have regularly faced the grueling task of operating a mass transportation system in a small city, is not likely to be favorable at first. It flies in the face of the penny-pinching reality of the world in which they have to operate, and which, in many ways, is beyond their control. Nevertheless, the conventional wisdom of the transit industry has produced little more than deficits and declining service quality. The application of the Full-system Concept can surely do no worse.

The enterprise, regardless of whether it is privately or publicly owned, will not find it cheap in the short run to adopt the Full-system Concept. Several years of subsidy—from public or private sources—will be necessary even for systems with profit goals. However, the approach suggested seems to be a practical way of achieving either self-supporting mass transport, or a service form and managerial attitude that really meets public needs and perhaps offers substantive relief to urban congestion and isolation. Indeed, if wages continue to rise and objectives and policies demand increased service at low fares, the labor-intensive nature of any bus-oriented transit system seems to make subsidy mandatory. The Full-system Concept would at least guarantee the best possible management and full value for the money spent.

The obvious need is for the concept to be operationally tested. Prior to that, careful research work must be done on the most effective utilization of modern business techniques to the subfunctional areas set out above. Vital questions of detail as to organization, personnel selection, preventive maintenance programs, equipment selection, information systems, etc., must be answered. A host of hypotheses must be generated and a veritable draft "handbook" of full-system procedures established. The hypotheses should then be tested in the crucible of a small-city mass transit laboratory. Whatever the results, they are likely to be of substantial value to transit operations in small cities throughout the United States.

File-
HB 335

February 28, 1972

Mr. Paul A. Carr, Secretary
Public Transportation Committee
Greater Anchorage Area Borough
Pouch 6-650
Anchorage, Alaska 99502

Dear Mr. Carr:

I appreciate very much your letter of February 24 relative to the Greater Anchorage Borough Planning and Zoning Commission's statement of position on public transportation. As you may be aware, the Judiciary Committee is presently considering HB 335 relative to mass transit. I am, therefore, sending a copy of your letter and position paper to the Chairman of this committee, Mr. William Moran.

Again, thank you for writing.

Sincerely,

Mike Miller, Chairman
House Local Government Committee

P.S. After dictation of this letter, HB 335 was passed out of Judiciary Committee and is now in Rules awaiting placement on the House calendar.



GREATER ANCHORAGE AREA BOROUGH

**3500 TUDOR ROAD
POUCH 6.650
ANCHORAGE ALASKA 99502**

February 24, 1972

PLANNING DEPARTMENT

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Local Affairs Committee
Alaska State House of Representatives
Pouch "V" State Capitol Building
Juneau, Alaska 99801

Gentlemen:

The enclosed "Statement of Position" paper was printed at the Transportation Hearing held in Anchorage February 5th.

This paper presents the position of the Greater Anchorage Area Borough Planning and Zoning Commission's citizen subcommittee on Public Transportation.

They hope this will assist you in understanding some of their thinking on public transportation in Anchorage. Should you need additional information or have any questions, please do not hesitate to let me know.

Sincerely,

Paul A. Carr, Secretary
Public Transportation Committee

PAC:rvd

Enc.

GREATER ANCHORAGE AREA BOROUGH
PLANNING AND ZONING COMMISSION

SUBCOMMITTEE ON PUBLIC TRANSPORTATION

STATEMENT OF POSITION

INTRODUCTION

As you are all aware, mass public transportation in the Anchorage area does not now exist. I will not go into the details of Anchorage's past transit systems or their failures. However, I feel it is significant that there are several buses now operating for the exclusive use of Federal - State programs; while we do not detract from this use we feel it further strengthens the need for a public transportation system that will utilize efficiently all those resources now available and being used for semi-public transportation in Anchorage. The simple fact is that the Anchorage area has no - or at best a limited public transportation choice.

Many groups have recognized the existence of the need for public transportation. At the urging of these various groups and individuals, the Greater Anchorage Area Borough created a subcommittee of the Planning and Zoning Commission to study public transportation. The Borough Planning Department then obtained a planning grant for \$20,000 from the Urban Mass Transportation Administration. This planning grant funded a feasibility study for public transportation in the Anchorage area.

This study by John Bivens and Associates is now nearing completion. The Greater Anchorage Area Borough Public Transportation Subcommittee, which I am representing today, is making plans for a public meeting, at which we will solicit public reaction to that feasibility study as well as input on what the citizens of Anchorage feel they need and will use in the way of public transportation.

POSITION

The subcommittee's position on public transportation, which we feel is related to the purpose of this meeting, consists of several basic points. These are:

1. THAT ANCHORAGE URGENTLY NEEDS A PUBLIC TRANSPORTATION SYSTEM.

As the population increases and more motor vehicles are used, vehicle congestion and parking space will become an increasingly prominent problem unless the planning of existing street, highways, and rights-of-way extensions keeps pace. But increasing rights-of-way, extending highways, widening streets, and constructing freeways removes more and more areas from the useable tax base of the community and thereby places a greater tax burden on the areas remaining. In addition, by coordinating and developing an area to please the private automobile operator, many enjoyable features of urban living are sacrificed.

Only the creation of a public transit system complementary to the use of the private automobile will prevent the continuation of the course upon which Anchorage appears headed. As we believe private capital cannot provide public transportation and make a profit, it is, we feel, a public responsibility which all residents share.

2. THAT A PUBLIC TRANSIT SYSTEM THROUGH THE USE OF VARIOUS SIZE VEHICLES OR MODES BE ESTABLISHED TO SERVE THE ENTIRE AREA WITH RELIABLE, CLEAN, COMFORTABLE, TRANSPORTATION; AT A REASONABLE FARE THAT A TRANSIT SYSTEM BEGIN OPERATION IN A COMPLETE FORM RATHER THAN AS A PIECEMEAL EFFORT.

The initial area wide transit system should be a bus system using the best available air and noise pollution controls. However, this must be considered a phase I transit system and phase II public transit for Anchorage be planned and designed to incorporate such features as rail, guideways, moving sidewalks and personal transit vehicles where practical.

SPEED AND SAFETY

In order for a public transportation system to attract riders, it must have speeds that are comparable to those of other modes.

One of the difficulties which is recognized with bus transit systems is that the buses get snarled in the same traffic congestion as the private automobile.

Safe walkways must be provided to permit public access to bus stops and transfer stations.

COMFORT

Passenger comfort must receive attention in the selection of the vehicles as well as during their operations. It is impossible to attract riders to a system if the buses or other vehicles are cold in the winter and hot in the summer.

A transit system, to attract and hold a maximum amount of riders, must provide service that is:

1. Convenient and dependable;
2. Fast and safe;
3. Frequent in service;
4. Reasonable in cost;
5. Pleasing in appearance;
6. Flexible in that it can change with the needs of the community.

3. THAT A PUBLIC TRANSPORTATION SYSTEM BE ESTABLISHED AS A PUBLIC UTILITY OF THE GREATER ANCHORAGE AREA BOROUGH AND THAT IT RECEIVE SUBSIDIZATION THROUGH TAXES, SHARED REVENUES, GRANTS AND OTHER MEANS.

A transit system for Anchorage must be a public system subsidized directly or indirectly by the public. Public transportation in Anchorage is feasible only if the public accepts this responsibility. A transit system must encourage, not discourage, people to ride. In Anchorage the only way this can be accomplished is by the system being subsidized to a degree where the fare, if any, is kept at a minimum. A transit system must not only serve the entire Borough; financial support must come from the entire Borough.

The transit system should be under public ownership and control. Actual management, however, might be provided through contracts to private concerns. The transit system must be an organizational entity separate from the Borough. We believe this should be as a transit utility, not an authority, subject to the budgetary controls of the Borough Assembly, yet with greater autonomy of operation than have the municipal utilities presently serving the City and the Borough.

It will be necessary to have legislation granting authority to the City or Borough to operate public transportation systems, and we support the Guess-Bowman House Bill #335 which would grant this authority and we would ask consideration that this bill permit any transit utility operating solely within a single Borough be exempt from regulations of the Alaska Transportation Commission. We support Bill #334 which would provide state revenue to cities and boroughs providing transit facilities.

4. THAT THE TRANSIT SYSTEM REMAIN FLEXIBLE SO THAT ROUTES AND FARE STRUCTURE IF ANY CAN BE ALTERED EASILY WITH NO DELAY FROM A REGULATORY AUTHORITY.

As mentioned earlier, Anchorage, in the past, has experienced several attempts and failures at public transportation systems. While these systems have failed for various reasons, the major re-occurring reason is that they could not fill their intended function - that of providing a flexible and reliable system that gave adequate service to all potential riders.

Flexibility in the transit system as it is described here encompasses schedules, fares, routes, vehicles and policies.

The need for flexibility of service, scheduling, routes, etc., which we feel is an essential feature of a service-oriented transit utility requires that management be able to respond immediately to the changing conditions. This would be impossible if all changes must be approved by a presently overburdened Alaska Transportation Commission. Fiscal control and contractual authority might well be delegated to a board by the Assembly for a period of five years, and then review of this authority should be evaluated by the Assembly at the end of that time to determine whether such a board should be continued, altered or be done away with.

To provide this flexibility the operation of the system must be continually monitored. The monitoring envisioned must be capable of signaling when there is a need for a change, it must not be costly, and it must be easy to understand and use.

5. THAT IMMEDIATE STEPS BE TAKEN TO SECURE FEDERAL FINANCING TO ESTABLISH A TRANSIT SYSTEM FOR ANCHORAGE.

Fortunately, the Federal government has at long last offered to assist urban areas in creating public transportation systems. It encourages the development of public transportation systems in all urban areas of the country through the Urban Mass Transportation Act of 1964. This act provides Federal grants to municipalities for the creation of public transportation systems.

Funds can be obtained from the Urban Mass Transit Administration of the Department of Transportation through the Federal Grant Program. These federal grants can be used to obtain buses, commuter rail cars, support equipment, and facilities. Anchorage can qualify for Department of Transportation Grants to fund at least two-thirds of the cost incurred to plan and develop a public transportation system.

6. THAT A PUBLIC TRANSPORTATION SYSTEM, WHERE POSSIBLE, BE DESIGNED TO COMPLEMENT THE EXISTING GREATER ANCHORAGE AREA BOROUGH SCHOOL BUS PROGRAM.

We do not feel that the existing school buses could effectively serve as a public transit conveyance. The reasons for this are numerous. However, we do think that a public transit system properly designed and routed can alleviate some transportation demands now made on the school bus program.

A financial arrangement might be made whereby the School District could provide financial assistance to the public transit system for payment of the pupils who would ride transit buses in lieu of regular school buses.

7. THAT THE CONCEPT OF THE AMATS PROGRAM OF SUPPLYING DATA AND PROVIDING INFORMATION ON THE TRANSPORTATION NEEDS OF ANCHORAGE BE CONTINUED.

While the subcommittee has expressed some opposition to the recently presented AMATS plan we do feel there is a need for continued transportation planning. However, we feel that a complete transportation network which provides for public transit requirements as well as continuing public participation must be a part of that planning.

The AMATS corridor concept has merit if it will be considered as a corridor reserved for unspecified transportation modes and not strictly for the exclusive use of the private automobile.

Realizing that there are others who wish to be heard I have not expanded in great detail on some of the positions with you, and hope to receive many comments at our forthcoming public meeting.

Realizing that there are others who wish to be heard I have not expanded in great detail on some of the positions presented here. However, we would be pleased to discuss these and other positions with you, and hope to receive many comments at our forthcoming public meeting.

Thank you.

Copies of our position will be forwarded to your committee by the Borough Planning Department.

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HB-340

15 § 1671 COMMERCE AND TRADE

SUBCHAPTER II.—RESTRICTIONS ON GARNISHMENT

§ 1671. Congressional findings and declaration of purpose

(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods and services in interstate commerce.

(2) The application of garnishment by a creditor to any individual results in loss of employment by the debtor, the disruption of employment, production, and consumption, and creates a substantial burden on interstate commerce.

(3) The general policies among the States of the several States relating to garnishment have, in effect, frustrated the efficiency of the bankruptcy laws and frustrated the purposes thereof in many parts of the country.

and the basis of the laws enacted in subsection (c) of this section. Congress determined that the provisions of this subchapter are necessary and proper for the execution thereof and to establish uniform bankruptcy laws.

§ 1672. Definitions

(a) The term "debtor" means any individual who is liable to a creditor for the payment of a debt.

(b) The term "creditor" means any person to whom a debt is owed.

(c) The term "garnishment" means the legal process by which the earnings of any individual are required to be paid to a creditor of that individual.

(d) The term "wages" means any compensation payable to an individual for services rendered by him to another individual.

(e) The term "interstate commerce" means commerce between two or more States.

(f) The term "State" means any State of the United States.

(g) The term "restriction on garnishment" means any law which restricts the amount of wages which may be garnished from the wages of any individual.

(h) The term "maximum part of the wages" means the maximum part of the wages which is subject to garnishment.

(i) The term "25 per centum of the disposable earnings" means 25 per centum of the disposable earnings of any individual.

(j) The term "disposable earnings" means the earnings of any individual after the deduction of taxes and other deductions which are required by law.

(k) The term "law" means any law of any State or of the United States.

(l) The term "individual" means any natural person.

References
U.S.C.A.

Exceptions

(b) The restrictions of subsection (a) of this section do not apply in the case of

- (1) any order of any court for the support of any person,
- (2) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act,
- (3) any debt due for any State or Federal tax.

Execution or enforcement of garnishment order or process prohibited

(c) No court of the United States or any State may make, execute, or enforce any order or process in violation of this section.

Pub.L. 90-321, Title III, § 303, May 29, 1968, 82 Stat. 163.

References in Text. Chapter XIII of the Bankruptcy Act, referred to in 1, 1969, see section 501(c) of Public Law 91-1, 1969, is classified to section 1101, set out as a note under section 201 of this title.

§ 1674. Restriction on discharge from employment by reason of garnishment

(a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Whoever willfully violates subsection (a) of this section shall be fined not more than \$1,000, or imprisoned not more than one year, or both.

Pub.L. 90-321, Title III, § 304, May 29, 1968, 82 Stat. 163.

Effective Date. Section effective July 31, 1969, see section 501(c) of Public Law 91-1, 1969, of this title.

§ 1675. Exemption for State-authorized garnishments

The Secretary of Labor may by regulation exempt from the provisions of section 1673(a) of this title garnishments issued under the laws of any State if he determines that the laws of that State provide for garnishments which are substantially similar to those provided for in section 1673(a) of this title.

Pub.L. 90-321, Title III, § 305, May 29, 1968, 82 Stat. 164.

Effective Date. Section effective July 31, 1969, see section 501(c) of Public Law 91-1, 1969, of this title.

§ 1676. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Administrator of the Department of Labor, shall enforce the provisions of this subsection.

Pub.L. 90-321, Title III, § 306, May 29, 1968, 82 Stat. 164.

Effective Date. Section effective July 31, 1969, see section 501(c) of Public Law 91-1, 1969, of this title.

§ 1677. Effect on State laws

This subchapter does not annul, alter, or affect, or exempt any person from complying with, the laws of any State

- (1) prohibiting garnishments, or providing for more limited garnishments than are allowed under this subchapter, or
- (2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness.

Pub.L. 90-321, Title III, § 307, May 29, 1968, 82 Stat. 164.

Effective Date. Section effective July 31, 1969, see section 501(c) of Public Law 91-1, 1969, of this title.

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DICKERSON, BEGAN
SUPERVISING ATTORNEY

LAW OFFICES OF
ALASKA LEGAL SERVICES CORPORATION
111 FOURTH STREET
JUNEAU, ALASKA 99801

March 24, 1971

The Honorable William J. Moran
Chairman, House Judiciary Committee
Alaska State House of Representatives
State Capitol Building
Juneau, Alaska 99801

Re: House Bill 340

Dear Mr. Chairman:

The above Bill is designed to accomplish two goals. First, it would raise somewhat the present income exemption level. Second, it would in effect put the Alaska and Federal income exemption laws under one roof. I thought perhaps a detailed explanation would be of assistance to you.

The present Alaska income exemption is found in A.S. 09.35.080(1). It provides for an exemption of \$350 for the head of the family, and \$200 for a single person.

Superimposed on Alaska's statute is the Federal Consumer Credit Protection Act of 1970, commonly known as Truth in Lending, found in 15 U.S.C.A. 1673(a). This provides that the amount subject to garnishment may not exceed

- (1) 25 per centum of his disposable earnings for that week, or
- (2) the amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed . . . , whichever is less.

Because of the differences, the garnishee is forced to look at both laws to determine the maximum. This can be both confusing and time consuming. This problem is further compounded by the fact that the federal exemption is automatic, while the Alaska exemption must be "reserved" by the judgment debtor after garnishment. The federal statute refers to "earnings", defined as compensation paid or payable for personal services, while the Alaska exempts "income --- earned or inured to his benefit".

The Alaska exemption for a single person has already been superceded by the federal law. The federal minimum wage is \$1.60 per hour. That figure times thirty is \$48 per week. With 4-1/3 weeks per month, this would mean that \$208 is exempt, which exceeds Alaska's \$200. For all intents and purposes, the Alaska exemption will always be exceeded by the federal law as far as a single person's earnings are concerned. The only relevance of the Alaska law would be in cases where the income was other than earnings for personal services, such as dividends, interest or the like.