

ALASKA LEGISLATURE COMMITTEE FILES 1981-1982 8672

1805 SLC SB 79.8 - SB 873 1805

rating organization fails to grant or reject an application for subscribership within 30 days, the title insurance company may request a review by the director as if the applicaiton had been rejected. If the director finds that the title insurance company has been refused admittance to the rating organization without justification, he shall order the rating organization to admit them. If he finds the action was justified, he shall make an order affirming the action.

(g) Concert of action among title insurance companies and rating organizations is authorized if the resulting filing is subject to the porvisions of this section that apply to filings generally.

(h) Two or more title insurance companies who are members of ^A rating organization may act in concert with each other with respect to rate making, policy forms, underwriting rules, surveys, inspections and investigations, loss and expense data, and research

(i) the director may review activities and rpactices of the rating orgaiztion, and if after a hearing, he finds the action inconsistent with the provisions of this section, he may issue a written order requiring the discontinuance of the practice.

Sec 21.66.402 DEVIATIONS FROM FILINGS OF RATING ORGANIZATIONS each member of a rating organization must adhere to the filings made in its behalf, except that a title insurance company may file with the director a decrease or increase to be applied to the rates of a rating organization, if the increase or decrease is found by the director to be a proper rating for a particular area. The filing must specify the basis for the deviaiton in the rating, and a copy of the filing and data shall be sent to the rating organization. Each deviation shall be in effect for one year, unless terminated with the approval of the director or in accordance with the provisions of AS 21.66.400.

Sec 21.66.403 APPEAL FROM ACTION OF RATING ORGANIZATION. A member of a rating organization may appeal to the director an action from the rating organization approving or rejecting a proposed change in the filing of a rating organization. If the rating organization fail to act on a sukmission (proposal) within 30 days, it shall mean a rejection of the proposal.

(b) The director shall, after a hearing held with at least 10 days written notice to the appellant and rating organization, issue an order approving the decision of a rating organization, or an order directing the rating organization to give further consideration to the proposal, and take action within 30 days.

(c) If the director finds that the action on an appeal, by the rating organization, was unreasonable, he may issue an order to the rating organization to make an addition to its filing, in a manner consistent with his findings, and within a reasonable time after the issuance of his order. If either the action of the rating organization (proposed changes in rate filings) or the modificaiton proposed by the appellant is in accordance with this chapter, the director shall approve the action.

(d) An appeal, based on the failure of a rating organization to make a filing on

on behalf of a member, in accordance with the rights granted in AS 21.66.390, the director shall, if he grants the appeal, order the rating organization to make the requested filing for use by the appellant. In deciding the appeal, the director shall apply the standards set out in AS 21.66.390.

Section 8 Amends AS 21.66.410 (c) inserts the phrase title insurance rating organization in the presently established section.

Section 9 Addresses the prohibition against giving false or misleading information to the title insurance rating organization by title insurance companies or agents which would effect filing rates allowable under this chapter.

Section 10) Adds title insurance rating organizations to the list of organizations which may have a penalty imposed by the director for violations of this chapter.

Section 11) Adds title insurance rating organizations to whom the director may suspend the certificate of authority for failure to comply with an order of the director within the time limit allowed by the order. Certificate may not be suspended until the time for an appeal has expired, or if an appeal has been taken, until the order has been affirmed.

Section 12) Immediate effective date.



Alaska State Legislature

Senate

Official Business

Labor & Commerce Committee

Pouch V
State Capitol
Juneau, Alaska 99811

SB 798; Summary

Allows a title insurance company to become a member of a title insurance rating organization in order to satisfy its obligations in filing schedules, and rules and plans relating to schedules of rates or manuals of classification, and modifications it proposes to use in the state.

The director, Div of Insurance, may issue licenses to title insurance rating organizations, if he finds the applicant competent, trustworthy, and qualified. License to be in effect for three years, and may be suspended or revoked if the organization ceases to meet its requirements. Rating organizations must allow any title insurance company to become a member at a reasonable cost. Members or subscribers must adhere to filings made on its behalf except that the company may file a decrease or increase to be applied to any element of the rates produced by the rating system for a class of title insurance that is found, by the director, to be a proper rating unit for the application of the decrease or increase, or to be applied to the rates for a particular area. Further grants the right to appeal to the director, actions and decisions of the rating organization.

Makes amendments to the various sections dealing with title insurance companies to include title rating organizations (rate filing, justification of rates, making of rates, disapproval of filings, false or misleading information and penalties.)

Sec. 21.66.330. Examination of records. If the director has reason to believe that a title insurance agent has violated or is in violation of AS 21.66.310, he shall immediately examine the title insurance agent's books of account and record and vouchers pertaining to the business of title insurance. The title insurance agent shall pay to the director the cost of an examination conducted under this section. (§ 6 ch 120 SLA 1974)

Sec. 21.66.340. Additional penalty for rebates. A person who violates AS 21.66.310 is liable to the state for five times the amount or value of the rebate, reduction, or abatement of any rate or charge made incident to the issuance of title insurance, or a special favor or advantage, or a monetary consideration or inducement. (§ 6 ch 120 SLA 1974)

Sec. 21.66.350. Division of rates. Nothing in AS 21.66.010 — 21.66.480 prohibits the division of rates and charges between or among a title insurance company and its agent, two or more title insurance companies, one or more title insurance companies and one or more title insurance agents, or two or more title insurance agents, if the division of rates and charges does not constitute an unlawful rebate and is not in payment of a forwarding fee or finder's fee. (§ 6 ch 120 SLA 1974)

Sec. 21.66.360. Purpose of title insurance rate regulation. The purpose of AS 21.66.370 — 21.66.400 is to promote the public welfare by regulating title insurance rates so that they are not excessive, inadequate or unfairly discriminatory, and to authorize cooperative action between or among title insurance companies in rate making and other matters within the scope of AS 21.66.010 — 21.66.480. Nothing in AS 21.66.010 — 21.66.480 is intended to prohibit or discourage uniformity in title insurance rates, rating systems and rating plans and practices. (§ 6 ch 120 SLA 1974)

Sec. 21.66.370. Rate filing. (a) A title insurance company shall file with the director its schedules of rates, manuals of classifications, rules and plans relating to schedules of rates or manuals of classification, and every modification of the schedules or manuals which it proposes to use in this state. A filing under this section shall contain the effective dates of the documents filed, and indicate the character and extent of the coverage contemplated.

(b) The director shall review the filings as necessary to carry out the provisions of AS 21.66.010 — 21.66.480.

(c) Subject to the provisions of (e) of this section, each filing shall be on file for a period of 30 days before it becomes effective. The director may, upon written notice given within the 30-day period to the person making the filing, extend the waiting period for an additional period, not to exceed 30 days, in order to complete the review of the filing. Additional extensions of the waiting period may also be made with the

consent of the title insurance company. Upon written application by the title insurance company, the director, after review of the application, may authorize a filing or any part of it to become effective upon the expiration of the waiting period or its extension.

(d) Except for rates filed under (e) of this section, a filing which has become effective is considered to meet the requirements of AS 21.66.010 — 21.66.480.

(e) When the director finds that a rate for a particular kind or class of risk cannot practicably be filed before it is used, or any contract or kind of title insurance, by reason of rarity or peculiar circumstances, does not lend itself to advance determination and filing of rates, he may, under appropriate regulations, permit the rate to be used without a previous filing and waiting period.

(f) Beginning November 12, 1974, no title insurance company or agent of a title insurance company may charge a rate for a policy or contract of title insurance except in accordance with filings or rates which are in effect for the title insurance company as provided in AS 21.66.010 — 21.66.480.

(g) The director may not regulate, or require the filing of, rates paid by title insurance companies for reinsurance contracts or agreements, or policies of excess co-insurance. (§ 6 ch 120 SLA 1974)

Sec. 21.66.380. Justification for rates. (a) A rate filing shall be accompanied by a statement of the title insurance company making the filing, setting out the basis on which the rate was determined, with the rates computed. A filing of rates may be justified by the following:

- (1) the experience or judgment of the title insurance company making the filing,
- (2) its interpretation of any statistical data relied upon,
- (3) the experience of other title insurance companies making the filings, or
- (4) any other factors which the title insurance company considers relevant.

(b) The statement and justification provided for in this section shall be open to public inspection. (§ 6 ch 120 SLA 1974)

Sec. 21.66.390. Making of rates. (a) A title insurance company that makes its own rates shall make rates that are not excessive or inadequate and which do not unfairly discriminate between risks in this state which involve essentially the same exposure to loss and expense elements, and which give due consideration to the following matters:

- (1) the desirability for stability of rate structures;
- (2) the necessity of assuring the financial solvency of title insurance companies in period of economic depression by encouraging growth in assets of title insurance companies in periods of high business activity; and

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(3) the necessity for assuring a reasonable margin of underwriting and operating profit.

(b) A title insurance company that makes its own rates shall adopt basic classifications of policies or contracts of title insurance which shall be used as the basis for rate-making. (§ 6 ch 120 SLA 1974)

Sec. 21.66.400. Disapproval of filings. (a) Upon the review at any time by the director of a filing, he shall, before issuing an order of disapproval, hold a hearing upon not less than 10 days written notice, specifying in reasonable detail the matters to be considered at the hearing. Notice of the hearing shall be given to each title insurance company which made a filing, and if, after the hearing, the director finds that the filing or a part of the filing does not meet the requirements of AS 21.66.010 — 21.66.480, he shall issue an order specifying how it is deficient, and when, within a reasonable period thereafter, the filing or a part of it is considered no longer effective, if the filing or a part of it has become effective under the provisions of AS 21.66.370. A title insurance company has the right at any time to withdraw a filing or a part of a filing. Copies of the order issued under this section shall be sent to every title insurance company affected. The order does not affect a contract or policy made or issued before the expiration of the period set out in the order.

(b) A person or organization aggrieved with respect to a filing which is in effect, may make written application to the director for a hearing on the filing. The title insurance company that made the filing may not proceed under this subsection. The application shall specify in reasonable detail the grounds to be relied upon by the applicant. If the director finds that the application is made in good faith, and that the applicant would be aggrieved if his grounds are established, and that his grounds otherwise justify holding a hearing, he shall, within 30 days after receipt of the application, hold a hearing upon not less than 10 days written notice to the applicant and to each title insurance company which made such a filing. If, after the hearing, the director finds that the filing or a part of it does not meet the requirements of AS 21.66.010 — 21.66.480, he shall issue an order specifying how the filing or a part of it fails to meet the requirements of AS 21.66.010 — 21.66.480, stating when, within a reasonable period after the order is issued, the filing or a part of it is considered no longer effective. Copies of the order shall be sent to the applicant and to every such title insurance company. The order does not affect a contract or policy made or issued before the expiration of the period set out in the order.

(c) No filing, or modification of a filing may be disapproved if the rates in connection with the filing meet the requirements of AS 21.66.010 — 21.66.480. (§ 6 ch 120 SLA 1974)

Sec. 21.66.410. Rate administration. (a) The director may prescribe by regulation (1) guidelines reasonably adaptable to each of the

rating system: (1) file with him; (2) a uniform classification of accounts to be observed, (3) statistics to be reported; and (4) uniform forms for reporting this data by all title insurance companies.

(b) Regulations may be promulgated by the director for the interchange of data necessary for the application of rating plans.

(c) In order to more uniformly administer rate regulations, the director and each title insurance company may exchange information and experience data with insurance supervisory officials, title insurance companies and title insurance rating organizations in other states, and may consult with them and with each other with respect to rate making and the application of rating systems. (§ 6 ch 120 SLA 1974)

Sec. 21.66.420. False or misleading information. No title insurance company or title insurance agent may wilfully withhold information from, or knowingly give false or misleading information to the director. (§ 6 ch 120 SLA 1974)

Sec. 21.66.430. Penalties. (a) The director may, if he finds that a title insurance company, or title insurance agent has violated a provision of AS 21.66.010 — 21.66.480, impose a penalty of not more than \$100 for each violation. However, if the violation is wilful, he shall impose a penalty of not more than \$1,000 for each violation. Penalties imposed under this section are in addition to any other penalties provided by law.

(b) In addition to the penalty provided in (a) of this section, the director may suspend the certificate of authority of a title insurance company, or title insurance agent upon failure to comply with an order of the director within the time limit allowed by the order. No certificate of authority may be suspended for failure to comply with an order until the time prescribed for an appeal has expired, or, if an appeal has been taken, until the order has been affirmed.

(c) The director may determine when a suspension of a certificate of authority becomes effective, and it remains in effect until modified or rescinded by the director or until the order upon which the suspension is based is modified, rescinded or reversed.

(d) No penalty may be imposed and no certificate of authority may be suspended or revoked except upon a written order of the director, stating his findings, and made after a hearing held upon not less than 10 days written notice to the person or organization, specifying the alleged violation. (§ 6 ch 120 SLA 1974)

Sec. 21.66.440. Existing filings and hearings continued. All title insurance manuals of classifications, rules and rates, rating plans and their modifications filed before August 14, 1974 shall be considered to have been filed under AS 21.66.010 — 21.66.480. All hearings and investigations pending before August 14, 1974 shall be continued under AS 21.66.010 — 21.66.480. (§ 6 ch 120 SLA 1974)

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SB 800

An Act establishing a direct interest subsidy program to subsidize the interest paid by residents on loans for multi-family housing; and providing for an effective date

The fiscal note for SB 800 is based on the following information and assumptions:

NEW CONSTRUCTION

A) The FY'81 and FY'82 (3 months) figures for number of loans made by AHFC were used as a base. It is assumed that AHFC made 90% of the loans in the State in these areas.

Year	Total Loans	Single Family Dwellings	Duplexes	Duplex Units Built	% Units Duplex/Singles
FY 1981	6,426	6,058	378	756	12.4%
FY 1982	5,227	4,948	279	558	11.3
Total	11,663	11,006	657	1,314	11.9
Average	7,000	6,606	394	788	11.9
				+ 90% = 876 units (est. avg. market)	

B) Anchorage housing is composed of the following categories (in terms of units as opposed to dwellings):

Single Family	30,097	Total # units at the 4-20 unit level is 14,712 or 2.346 units at the 4-20 unit level to every duplex unit.
Duplexes (units)	6,040	
3-4 units	6,211	
5-19 units	9,356	
20+ units	6,036	

C) Estimated cost per unit:

Juneau/Ketchikan (weak current market)	\$	46,000	20%
Anchorage (strong current market)		48,000	55%
Fairbanks (moderate market) plus cost of living differential of 14% over average Juneau and Anchorage costs		53,600	25%
Weighted Average	\$	49,000	

D) Estimated Average Market (see A above) 876

Times ratio of subsidy unit level (see B above)	x	2.346	
= Estimated # of units in multiple unit market times average cost per unit		<u>2,055</u>	units
= Estimated market		<u>\$100,695,000</u>	

E) Estimated market of \$100,695,000 amortized at 5% subsidy for 30 year loans to total \$93,903,910 subsidy cost for new multiple dwelling units.

PURCHASE OF PREVIOUSLY CONSTRUCTED UNITS

A) If the current number of units in Anchorage at the 4-20 unit level is 14,712 and Anchorage is 55% of the State market then there are approximately 25,767 units Statewide.

B) If the number of units which are purchased annually is 5% and the average cost is \$42,000, then the yearly market is approximately \$54,110,700 amortized at 5% subsidy for 20 years to total \$30,594,900 subsidy cost for purchased units.

SB 800
5% Subsidy on Multiple Dwellings

OPERATING COSTS

Personal Services

Accounting Technician II	7,995 per month	\$23,940 yearly	\$ 23,940
SSB Benefits (.0613)		1,468	
Variable Benefits (.1568)		3,753	
Monthly Benefits (\$183 per month)		<u>2,196</u>	<u>7,417</u>
Total Personal Services			31,357
<u>Travel</u> - None			-0-

Contractual Services

Postage		400	
Telephone		400	
Zerox Charges		100	
Advertising		<u>500</u>	1,400

Commodities

Calculator		280	
Misc. Supplies		<u>200</u>	480

Space Rental		2,700	<u>2,700</u>
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Total Operating Costs - FY 1983			<u><u>\$ 35,937</u></u>
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1	POSITION TITLE Accounting Technician II			RANGE/STEP 14 A	BARG. UNIT. GGU	LOCATION AWA	APPROV.	DIBAPP.					
2	TYPE OF POSITION Permanent	STAFF MONTHS 12	RP No.	PCN No.	PRIORITY 1/1	FORM 12 PAGE/LINE	LEG						
3	TYPE OF EXPENDITURE			AMOUNT		JUSTIFICATION:							
	1	2	3										
4	PERSONAL SERVICES:			SB 800 would require the Department of Commerce and Economic Development to administer a direct interest subsidy program for purchase and construction of multiple dwellings within the state. Subsidies would be calculated or audited and paid to banks on a yearly basis.									
	SALARY		23,940										
5	BENEFITS		3,753										
6	SBS		1,468										
7	FIXED BENEFITS		2,196										
8	TOTAL PERSONAL SERVICES		01						31,357				
9	TRAVEL		02										
10	CONTRACTUAL		03										
11	COMMODITIES		04										
12	EQUIPMENT		05						237				
13	OTHER								2,700				
14	TOTAL COST								34,337				
	RECEIPT CODE	FUNDING SOURCE											
15		FED RCPTS. 1002											
16		GF MATCH. 1003											
17		GEN. FUND 1004		34,337									
18		I-A RCPTS. 1005											
19		PGM RCPTS 1028											
20		OTHER											
21	CONTINUATION		FOR B&M USE ONLY										
22	ADDITION												
4A KEY NUMBER				COLUMN NO.									

AGENCY Commerce and Economic Development PROGRAM Economic Development

BRU Loan Administration

COMPONENT _____

13 REQUEST FOR NEW POSITION.

Page _____ of _____ REVISED DATE _____

FY 83

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 800
Title An Act establishing a direct interest subsidy program to subsidize the interest paid by residents on loans for multi-family housing and providing for an effective date

Requested by _____ Date _____

II. FISCAL DETAIL

Agency Affected Department of Commerce & Economic Development
Program Category Affected Economic Development
BRU, Program, Or Subprogram(s) Affected Division of Loans and Veterans' Affairs
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		31.4	33.3	35.3	37.4	39.6
200 TRAVEL						
300 CONTRACTUAL		1.4	1.5	1.6	1.7	1.8
400 COMMODITIES		.5	.5	.6	.6	.7
500 EQUIPMENT						
600 LAND & STRUCTURES		2.7	2.9	3.0	3.2	3.4
700 GRANTS, CLAIMS, ETC.						
800 Subsidies		124,499.0	131,968.0	139,886.0	148,279.0	157,175.0
TOTAL		124,535.0	132,006.2	139,925.5	148,321.9	157,220.5

FUNDING (Thousands of Dollars)

GENERAL FUND		124,532.3	132,003.3	139,923.5	148,318.7	157,217.1
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS

FULL TIME						
PART TIME						
TEMPORARY						

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

See attached detailed analysis.

Estimated activity is impossible to predict due to lack of specific information on loan portfolios or market demand.

The calculation of the subsidies is based on the up-front appropriation of those subsidies for the life of the loan in the year that the loan is made. Subsidies would be released to the bank for each year that the loan is still in force. Without this up-front guarantee, borrowers would not participate in the subsidy program.

IV. DATE March 9, 1982

PREPARED BY Don Hostak, Director
AGENCY Department of Commerce & Economic Development
PHONE 465-2555

Original: Legislative Finance



Alaska State Legislature

Senate

Official Business

Labor & Commerce Committee

Pouch V
State Capitol
Juneau, Alaska 99811

SB 800 Summary

Establishes a direct interest subsidy program to subsidize the interest paid on loans for multi-family housing. Any Alaskan, 18 years of age, would be eligible to receive a "direct interest subsidy coupon" from the state.

When a coupon holder obtains a loan for the construction or purchase of a multi-family (4 to 20 units) dwelling in Alaska, he may present his coupon and evidence of the loan to the Department of Commerce and Economic Development. The department must then pay the lending institution amounts sufficient to reduce the interest paid by the person by 5%. No subsidy on loans over \$2,000,000, and a person may have only one subsidized loan out at one time. Provides for an immediate effective date.

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Official Business

Alaska State Legislature

Senate

Labor & Commerce Committee

Pouch V
State Capitol
Juneau, Alaska 99811

SB 801

Concepts are contained in the Code Revision Commission rewrite of the Alaska Corporations Code; Section 10.06.970 (5).

CODE REVISION PROJECT
719 Second Street
Suite 17
Davis, California 95616

6th of March, 1962

Elizabeth Johnston, Esquire
General Counsel
Bristol Bay Native Corporation
445 East 5th Avenue
Anchorage, Alaska 99510

Dear Ms. Johnston:

A copy of your letter to Mr. Larry Carroll, Chief Securities Examiner with the Department of Commerce and Economic Development has been forwarded to my office. For nearly two years I have been working with the Code Revision Commission in a comprehensive revision of the Alaska Business Corporation Act. The Commission has recently completed a final draft of what it has termed the Alaska Corporations Code and has transmitted it to Legislative Counsel for introduction.

Section 10.06.970. Rules of Construction and Interpretation should prove of special interest to your client. Sub-section (5) declares:

References in this chapter to financial statements, balance sheets, income statements, and statements of changes in financial position of a corporation and references to assets, liabilities, earnings, retained earnings, and similar accounting items of a corporation mean financial statements or items prepared or determined in accordance with generally accepted accounting principles then applicable, and fairly presenting the matters which they purport to present, subject to any specific accounting treatment required by a particular section of this chapter. Unless otherwise expressly stated, references in this chapter to financial statements mean, in the case of a corporation which has subsidiaries, consolidated statements of the corporation and those of its subsidiaries as are required or

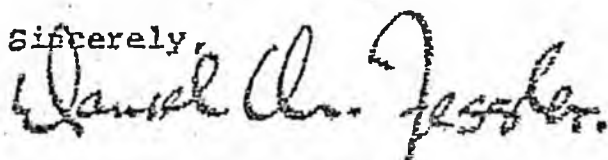
Elizabeth Johnston, Esquire
Page two
6 March, 1982

permitted to be included in the consolidated statements under generally accepted accounting principles then applicable, and all references to these accounting ~~items~~ mean items determined on a consolidated basis in accordance with consolidated financial statements.

You will observe that this provision of the ACC is predicated upon Section 114 of California's General Corporation Law with a slightly less baroque wording of a long overdue clarification.

At the appropriate point in which hearings are slated I would urge your attention to the provisions of the ACC and hope, that upon review, they will meet with your approval. If you have any questions please feel free to contact my office.

Sincerely,



Daniel Wm. Fessler
Professor of Law and Consultant to the
Alaska Code Revision Commission

cc:

Ms. Katherine Walsh, Secretary
Alaska Code Revision Commission

Bristol
Bay
Native
Corporation

445E 5TH AVENUE P.O. BOX 2201 ANCHORAGE ALASKA 99512 PH (907) 218-3507

March 10, 1982

Mr. Chairman:

My name is Elizabeth Johnston, General Counsel for Bristol Bay Native Corporation. I am here to testify in support of Senate Bill 801.

Senate Bill 801 amends the profit corporation statutes to specifically define the phrase "financial statements of the corporation." Why is this definition needed?

"Financial statements of the corporation" is a key phrase in determining a director's defense against personal liability for dividend payments. AS 10.05.219(1). Yet the phrase is ambiguous. This ambiguity creates unnecessary risks for directors attempting to comply with statutory requirements. Clarity would serve to protect directors from ex post facto definitions and liability.

The definition of "financial statements of the corporation" in Senate Bill 801 contains two basic concepts. The first is that the financial statements will be prepared according to generally accepted accounting principles then applicable. The second is that the statements will be consolidated, where appropriate. Both of these concepts are

basic to the published financial statements required by the Securities Exchange Commission to be sent to all shareholders. Both concepts have also been incorporated by the Code Revision Commission, in its working draft of the corporation statutes. The American Institute of Certified Public Accountants, the SEC and the Code Revision Commission, all endorse these concepts because they produce economically meaningful data and because they protect shareholders and creditors from the manipulation of financial data.

In short, I support the definition because it will protect directors and it will protect creditors and shareholders as well.

SENATE BILL 801

Alaska corporate law makes directors of a profit corporation jointly and severally liable for excessive dividend payments. AS 10.05.216(a). However, this same law also provides a defense or a safe harbor. A director is not liable for excessive dividends if he in good faith relied on the financial statements of the corporation for his analysis of a legal dividend source. AS 10.05.219(1).

The problem is that the scope of this defense is ambiguous. The meaning of "financial statements" is unclear and therefore, creates unnecessary risks for directors as they try to comply with dividend requirements.

The solution is to define the "financial statements of the corporation." The definition proposed in Senate Bill 801 includes, where appropriate, consolidated balance sheets and income statements prepared according to generally accepted accounting principles. While other financial documents are useful for other corporate purposes, only the preceding are useful for an analysis of a legal source for dividends under AS 10.05.219(1).

(b) A person required to designate an agent under (a) of this section and the corporation controlled by the person may not initiate an action in the courts of the state until the person complies with the provisions of (a) of this section. If the person or corporation controlled by the person initiates an action in a court of the state and the court finds that the person has not complied with (a) of this section, the court shall dismiss the action without prejudice. (§ 36 ch 123 SLA 1980)

Sec. 10.05.794. Cancellation of certificates issued and filings accepted. The commissioner may, within one year after a filing, and after written notice to the corporation or individual making a filing, cancel a certificate issued or filing accepted under AS 10.05.003 — 10.05.828, on any ground existing at the time notice of cancellation is made and on which the commissioner could have originally refused to issue the certificate or accept the filing. The notice of cancellation shall state the reason for the cancellation. A corporation or individual may request a hearing within 90 days after receipt of the notice. Cancellation becomes final if the corporation or individual does not request a hearing within 90 days after receipt of notice. Notice of cancellation shall be sent by certified mail with return receipt requested. If the return receipt is not received by the department within a reasonable time and the department has made diligent inquiry as to the address of the corporation, notice may be made by publication in a newspaper of general circulation in the vicinity of the registered office of the corporation or the address of the individual who made the filing, and the cancellation becomes final 60 days after publication of the notice. (§ 36 ch 123 SLA 1980)

Sec. 10.05.799. Identification code. The commissioner and the commissioner of revenue shall jointly establish and adopt a coded list of business activities and shall make the list available to the public. (§ 36 ch 123 SLA 1980)

Article 11. General Provisions.

Section

823. Regulations

825. Definitions

Sec. 10.05.823. Regulations. The department may adopt regulations in accordance with the Administrative Procedure Act (AS 44.62.10 — 44.62.650) to administer AS 10.05.003 — 10.05.828. (§ 36 ch 123 SLA 1980)

Sec. 10.05.825. Definitions. In AS 10.05.003 — 10.05.828, unless the context otherwise requires,

(1) "commissioner" means the commissioner of commerce and economic development or his designee;

(2) "corporation" or "domestic corporation" means a corporation for profit subject to the provisions of AS 10.05.003 — 10.05.828, except a foreign corporation or a state or national bank;

(3) "department" means the Department of Commerce and Economic Development;

(4) "foreign corporation" means a corporation for profit organized under laws other than the laws of Alaska for a purpose for which a corporation may be organized under AS 10.05.003 — 10.05.828;

(5) "articles of incorporation" means the original or restated articles of incorporation and all amendments and includes articles of merger;

(6) "shares" means the units into which the proprietary interest in a corporation is divided;

(7) "subscriber" means one who subscribes for a share in a corporation before or after incorporation;

(8) "shareholder" means one who is a holder of record of a share in a corporation;

(9) "authorized shares" means the shares of all classes which the corporation may issue;

(10) "treasury shares" means shares which have been issued, have been subsequently acquired by and belong to the corporation, and have not, either by reason of the acquisition or thereafter, been cancelled or restored to the status of authorized but unissued shares; treasury shares are "issued" shares, but not "outstanding" shares;

(11) "net assets" means the amount by which the total assets of a corporation, excluding treasury shares, exceed the total debts of the corporation;

(12) "stated capital" means, at any particular time, the sum of

(A) the par value of all issued shares which have a par value,

(B) the amount of the consideration received by the corporation for all issued shares which do not have a par value, except that part of the consideration allocated to capital surplus as permitted by law, and

(C) such amounts not included in (A) and (B) of this paragraph which have been transferred to stated capital, whether upon the issue of shares as a share dividend or otherwise, less all reductions made as permitted by law; but notwithstanding the manner of designation by the laws under which a foreign corporation is organized, the stated capital of a foreign corporation is determined on the same basis and in the same manner as the stated capital of a domestic corporation for the purpose of computing charges imposed by AS 10.05.003 — 10.05.823, fees, and franchise taxes;

(13) "surplus" means the excess of the net assets of a corporation over its stated capital;

(14) "earned surplus" means the portion of the surplus of a corporation equal to the balance of its net profits, income, gains and losses from the date of incorporation, or from the latest date when a deficit was eliminated by an application of its capital surplus or stated capital.

otherwise, after deducting subsequent distributions to shareholders and transfers to stated capital and capital surplus to the extent the distributions and transfers are made out of earned surplus;

(15) "capital surplus" means the entire surplus of a corporation other than its earned surplus;

(16) "insolvent" means inability of a corporation to pay its debts as they become due in the usual course of its business;

(17) "franchise tax" means the annual corporation tax imposed under Alaska law on corporations;

(18) "affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, a corporation subject to AS 10.05.003 — 10.05.828;

(19) "control" means

(A) owning directly or indirectly, or having the power to vote, 25 percent or more of any class of voting securities of a corporation subject to AS 10.05.003 — 10.05.828; or

(B) influencing or affecting in any substantive manner the election of a majority of the directors or trustees of a corporation subject to AS 10.05.003 — 10.05.828;

(20) "person" means an individual, a corporation, a partnership, an association, a joint-stock company, an estate, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated association, a government, a political subdivision of a government, or a combination of these entities;

(21) "reorganization" means a "reorganization" as that word is defined by § 368(a)(1)(A)–(D) of the Internal Revenue Code of 1954 as it exists on the effective date of this Act.

(22) "alien" means

(A) an individual who is not a citizen or national of the United States, or who is not lawfully admitted to the United States for permanent residence, or paroled into the United States under the Immigration and Nationality Act (8 U.S.C. §§ 1101 — 1503), as amended;

(B) a person, other than an individual, that was not created or organized under the laws of the United States or of a state, or whose principal place of business is not located in any state; or

(C) a person, other than an individual, that was created or organized under the laws of the United States or of a state, or whose principal place of business is located in a state, and which is controlled by a person described in (A) or (B) of this paragraph;

(23) "state" means any of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States;

(24) "five percent shareholder" means a person owning at least five percent of the shares, or five percent of any class of shares, of a corporation. (§ 2 ch 126 SLA 1957; am § 2 ch 168 SLA 1957; § 10 ch 64 SLA 1959; am § 2 ch 1 SLA 1961; am § 1 ch 80 SLA 1965; am § 6 ch 145 SLA 1975; am § 62 ch 218 SLA 1976; am §§ 37 — 40 ch 123 SLA 1980)

Effect of amendments. — The 1975 amendment added paragraphs (18) through (21).

The 1976 amendment substituted "commissioner of commerce and economic development" for "commissioner of commerce" in paragraph (1) and "Department of Commerce and Economic Development" for "Department of Commerce" in paragraph (3).

The 1980 amendment added "or his designee" at the end of paragraph (1), rewrote paragraph (19), inserted "an estate", substituted "association" for

"organization", deleted "or" preceding "a political", added "or a combination of these entities", all in paragraph (20), and added paragraphs (22)-(24).

Editor's notes. — Section 7, ch. 145, SLA 1975, provides: "It is the intent of the legislature to adopt the definitions for 'affiliate' and 'control' as those terms are in use and have been interpreted by the United States Securities Exchange Commission on the effective date of this Act."

Legislative history reports. — For report on ch. 145, SLA 1975 (CSSB 376 am H), see 1975 Senate Journal, p. 1028.

Chapter 10. Business and Industrial Development Corporation Act.

Section

- 10. Incorporators
- 20. Assistance of commissioner
- 30. Articles of incorporation
- 40. General powers
- 110. Amendment of articles

Section

- 150. Examinations
- 185. Cancellation of certificates issued and filings accepted
- 210. Definitions

Sec. 10.10.010. Incorporators. Three or more persons, who are residents of this state, who desire to create an industrial development corporation under AS 10.10.010 — 10.10.220 for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges provided in AS 10.10.010 — 10.10.220, may be incorporated by filing articles of incorporation in the office of the commissioner as provided in AS 10.10.010 — 10.10.220. (§ 1 ch 94 SLA 1967; am § 63 ch 218 SLA 1976)

Effect of amendments. — The 1976 amendment deleted "of commerce" following "commissioner" near the end of the section.

Sec. 10.10.020. Assistance of commissioner. The commissioner shall assist the incorporators in forming the corporation and shall meet with and advise the corporation's board of directors. (§ 1 ch 94 SLA 1967; am § 64 ch 218 SLA 1976)

Effect of amendments. — The 1976 amendment deleted "of economic development" following "commissioner."

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SE 801
Title An Act relating to financial statements of corporations
Requested by Ferguson by request Date 2/16/82

II. FISCAL DETAIL

Agency Affected Department of Commerce & Economic Development
Program Category Affected Division of Banking, Securities, Small Loans & Corporations
BRU, Program, Or Subprogram(s) Affected Public Protection
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		-0-				
200 TRAVEL		-0-				
300 CONTRACTUAL		-0-				
400 COMMODITIES		0				
500 EQUIPMENT		-0-				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		-0-				
TOTAL		-0-				

FUNDING (Thousands of Dollars)

GENERAL FUND		-0-				
FEDERAL FUNDS		0				
OTHER (Specify Source)		-0-				
		-0-				

POSITIONS

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

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

Legislation, if passed, would add a new paragraph to the definition section of the Alaska Business Corporation Act defining "financial statements of the corporation."

IV. DATE February 22, 1982

PREPARED BY Willis F. Kirkpatrick
AGENCY Division of Banking, Securities, Small Loans & Corporations
PHONE 487-4111

Original: Legislative Finance
Budget and Management
State Archives - Dept. Legislative Council

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STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

JAY S. HAMMOND, GOVERNOR

POUCH D

JUNEAU, ALASKA 99811

Phone: 465-2500

February 19, 1951

Honorable Bob Mulcahy
Chairman
Senate Labor and Commerce
Committee
Pouch V
Juneau, Alaska 99811

Dear Senator Mulcahy:

Thank you for your request for a position statement and fiscal note on SB 807, dealing with registration of broker-dealers, investment advisors, agents and securities.

Section 1 of the bill amends the registration procedure so that the administrator need not require broker-dealers, agents and investment advisors to post surety bonds if they have a sufficient amount of insurance to cover investors. This change allows, rather than requires, the administrator to set out minimum capital requirements for broker-dealers and investment advisors. The amendment makes this Alaska Securities Act section consistent with the Uniform Securities Act.

Section 2 eliminates unnecessary statutory requirements for business without lessening the protection provided to the public by the Alaska Securities Act. Within the past few years, clients of broker-dealers who operate through national exchanges (New York Stock exchange, etc.) have had a substantial amount of insurance provided by the Security Investors Protection Corporation (SIPC). The SIPC insurance operates in a manner similar to insured bank savings accounts. That is, if the bank or broker-dealer for some reason goes out of business without sufficient insurance to cover depositors (investors), SIPC will reimburse the investors.

We have some registered broker-dealers who are not insured by SIPC and it is proposed that, by regulation, those broker-dealers would continue to maintain a bond while those insured by SIPC will not.

Section 3 simply reduces the amount of paper sent to the Division of Banking. We have found one copy of the prospectus filed under the Securities Act of 1933 is sufficient for our review.

February 19, 1982

Under current statutes, if a registrant sells more securities in Alaska than has been registered, the entire offering could be subject to rescission by an unhappy investor. Registrants should have some protection from this; at the same time, registrants should carefully assess and initially register the amount of securities they feel will be sold in the State. Section 4 of the proposed statute provides protection for the registrant while encouraging him not to underestimate the amount expected to be sold in Alaska.

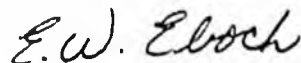
An example of how this works is:

The registrant provides a registration fee of \$75.00 to register \$75,000 in securities for sale in the State of Alaska. He then sells \$100,000. In this instance, he could posteffectively register the securities by paying the amount he should have paid to register \$100,000 in securities (an additional \$25.00) plus a triple penalty (\$75.00).

This proposed statute is taken from the Oregon Statute, ORS 59.065(5) with the minimum penalty raised from \$25.00 to \$50.00.

We encourage your support and passage of this legislation.

Sincerely,



Edward W. Eboch
Deputy Commissioner

EWE/wfs 5/5

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST
Bill/Resolution No. SB 807 -- An Act relating to the registration of broker-titled dealers, agents and investment advisors; and relating to registration of
Requested by Rodey Date 2/18/82 Securities.

II. FISCAL DETAIL
Agency Affected Department of Commerce & Economic Development
Program Category Affected Consumer Protection
BRU, Program, Or Subprogram(s) Affected Banking and Securities
(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES		0				
200 TRAVEL		0				
300 CONTRACTUAL		0				
400 COMMODITIES		0				
500 EQUIPMENT		0				
600 LAND & STRUCTURES		0				
700 GRANTS, CLAIMS, ETC.		0				
TOTAL		0				

FUNDING (Thousands of Dollars)

GENERAL FUND		0				
FEDERAL FUNDS		0				
OTHER (Specify Source)		0				

POSITIONS

FULL TIME		0				
PART TIME		0				
TEMPORARY		0				

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No fiscal Impact

Willis F. Kirkpatrick

IV. DATE February 18, 1982 PREPARED BY Willis F. Kirkpatrick, Director
AGENCY Division of Banking, Sec. Small Loans, & Corps.
Original: Legislative Finance PHONE 465-2500
Budget and Management
Prime Sponsor: Sen. Legislator Name

Article 2. Registration of Broker-Dealers, Agents, and Investment Advisers.

Section

- 30. Registration requirements
- 40. Registration procedure
- 50. Post-registration provisions

Section

- 60. Denial, revocation, suspension, cancellation, and withdrawal of registration

Sec. 45.55.030. Registration requirements. (a) It is unlawful for a person to transact business in this state as a broker-dealer or agent unless he is registered under this chapter.

(b) It is unlawful for a broker-dealer or issuer to employ an agent unless the agent is registered. The registration of an agent is not effective during a period when he is not associated with a particular broker-dealer registered under this chapter or a particular issuer. When an agent begins or terminates a connection with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the administrator.

(c) It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is registered as an investment adviser under this chapter; (2) he is registered as a broker-dealer without the imposition of a condition under AS 45.55.060(d)(5); or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(d) Every registration expires one year from its effective date unless renewed. The administrator may by rule or order prepare an initial schedule for registration renewals so that subsequent renewals of registrations effective on May 9, 1959, may be staggered by calendar months. For this purpose the administrator may by rule reduce the registration fee proportionately. (§ 201 ch 150 SLA 1959)

Sec. 45.55.040. Registration procedure. (a) A broker-dealer, agent, or investment adviser may obtain an initial or renewal registration by filing with the administrator an application together with a consent to service of process pursuant to AS 45.55.260(g). The application shall be accompanied by the fingerprints and a photograph of the applicant and shall contain whatever information the administrator by rule requires concerning such matters as

- (1) the applicant's form and place of organization;
- (2) the applicant's proposed method of doing business;
- (3) the qualifications and business history of the applicant; in the case of a broker-dealer or investment adviser, the qualifications and business history of a partner, officer, or director, a person occupying a similar status or performing similar functions, or a person directly or indirectly controlling the broker-dealer or investment adviser; and, in the case of an investment adviser, the qualifications and business history of an employee;

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(4) an injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony; and

(5) the applicant's financial condition and history.

(b) The administrator may by regulation or order require an applicant for initial registration to publish an announcement of the application in one or more specified newspapers published in this state. If no denial order is in effect and no proceeding is pending under AS 45.55.060, registration becomes effective at noon on the 30th day after an application is filed, except that registration becomes effective upon filing of the application by any of the persons subject to this chapter who were doing business in this state on May 9, 1959. The administrator may by regulation or order specify an earlier effective date, and he may by order defer the effective date until noon of the 30th day after the filing of an amendment.

(c) Every broker-dealer applicant for initial registration shall pay a registration fee of \$125. Every agent applicant and investment adviser applicant for initial registration shall pay a registration fee of \$50. Every broker-dealer applicant for annual renewal of registration shall pay an annual renewal fee of \$75. Every agent applicant and investment adviser applicant for annual renewal of registration shall pay an annual renewal fee of \$30.

(d) A registered broker-dealer or investment adviser may file an application for registration of a successor, whether or not the successor is then in existence, for the unexpired portion of the year. A broker-dealer may file a request to transfer from a previous broker-dealer an agent's unexpired portion of the registration if the provisions of AS 45.55.030(b) have been met. There is a filing fee of \$10 for filing applications under this subsection.

(e) The administrator shall by regulation require of registered broker-dealers and investment advisers a minimum capital and a bond guaranteed by a corporate surety qualified to do business in this state.

(f) The administrator shall by regulation require registered broker-dealers, agents, and investment advisers to post surety bonds in amounts up to \$10,000, and shall by regulation determine their conditions. An appropriate deposit of cash or securities shall be accepted in place of a bond so required. Every bond shall provide for suit on it by any person who has a cause of action under AS 45.55.220 and, if the administrator by rule or order requires, by any person who has a cause of action not arising under this chapter. Every bond shall provide that no suit may be maintained to enforce a liability on the bond unless brought within three years after the sale or other act upon which it is based. (§ 202 ch 198 SLA 1959; am § 1 ch 55 SLA 1972; am §§ 2 — 6 ch 86 SLA 1972; am § 6 ch 132 SLA 1977)

of the issuer as of a date within four months before the filing of the registration statement, and a summary of earnings for each of the two fiscal years preceding the date of the balance sheet and for any period between the close of the last fiscal year and the date of the balance sheet, or for the period of the issuer's and predecessor's existence if less than two years.

(c) If no stop order is in effect and no proceeding is pending under AS 45.55.120, a registration statement under this section automatically becomes effective at three o'clock Pacific Standard Time in the afternoon of the second full business day after the filing of the registration statement or the last amendment, or at an earlier time as the administrator determines. (§ 402 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961)

Sec. 45.55.090. Registration by coordination. (a) A security for which a registration statement has been filed under the Securities Act of 1933 or any security for which filing has been made under Regulations A, E, and F pursuant to subsection (b) of § 3 of the Securities Act of 1933 in connection with the same offering may be registered by coordination.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.260(g):

(1) three copies of the latest form of prospectus filed under the Securities Act of 1933;

(2) if the administrator requires, copies of the articles of incorporation and bylaws (or their substantial equivalent) currently in effect, a copy of an agreement with or among underwriters, a copy of an indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(3) if the administrator requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(4) an undertaking to forward all future amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, promptly and in any event not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission, whichever first occurs.

(c) A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (1) no stop order is in effect and no proceeding is pending under AS 45.55.120; (2) the registration statement has been on file with the administrator for at least 10 days; and (3) a statement of the maximum and minimum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or a shorter

period which the administrator permits and the offering is made within those limitations.

(d) The registrant shall promptly notify the administrator by telephone or telegram of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file a post-effective amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price. Upon failure to receive the required notification and post-effective amendment with respect to the price amendment, the administrator may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with (c) and (d) of this section if he promptly notifies the registrant by telephone or telegram (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of (c) and (d) of this section as to notice and post-effective amendment, the stop order is void as of the time of its entry. The administrator may by rule or otherwise waive either or both of the conditions specified in (c)(2) and (3) of this section. If the federal registration statement becomes effective before all the conditions in (c) and (d) of this section are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly advise the registrant by telephone or telegram at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under AS 45.55.120; but this advice by the administrator does not preclude the institution of the proceeding at any time. (§ 403 ch 198 SLA 1959, as added by § 19 ch 105 SLA 1961; am § 2 ch 55 SLA 1972; am § 7 ch 86 SLA 1972)

Sec. 45.55.100. Registration by qualification. (a) A security may be registered by qualification.

(b) A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in AS 45.55.110(c) and the consent to service of process required by AS 45.55.260(g):

- (1) with respect to the issuer and any significant subsidiary: its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

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Article 3. Registration of Securities.

Sec. 45.55.070. Registration requirement.

NOTES TO DECISIONS

Applied in Hentzner v. State, Sup. Ct. Op. No. 2103 (File No. 3649), 613 P.2d 821 (1980).

Article 4. General Provisions.

Section

200. Orders and injunctions

Sec. 45.55.130. Definitions.

NOTES TO DECISIONS

Investment contract. — Contracts in February, to sell no more than 2,000 ounces of gold at considerably below the market price of 90 per ounce, delivery to be within six to eight months, with the money to be used to finance mining to begin in the spring, fell squarely within the definition of an investment contract and were therefore securities. Hentzner v. State, Sup. Ct. Op. No. 2103 (File No. 3649), 613 P.2d 821 (1980).

Sec. 45.55.200. Orders and injunctions. (a) Whenever it appears to the administrator that a person has engaged or is about to engage in an act or practice in violation of any provision of AS 45.55.010 — 45.55.270 or rule or order under AS 45.55.010 — 45.55.270, the administrator may

(1) if it is considered in the public interest or for the protection of investors, issue an order (A) directing the person to cease and desist from continuing the act or practice, (B) directing the person, for a period not to exceed three years, to file the annual reports, proxies, consents or authorizations, proxy statements, or other materials relating to proxy solicitations required under AS 45.55.139 with the administrator for examination and review 10 working days before a distribution to shareholders, and (C) voiding any proxies obtained by a person required to file under AS 45.55.139, including their future exercise or actions resulting from their past exercise, if the proxies were solicited by means of an untrue or misleading statement prohibited under AS 45.55.160; or

(2) bring an action in the superior court to enjoin the acts or practices and to enforce compliance with AS 45.55.010 — 45.55.270 or rule or order under AS 45.55.010 — 45.55.270, and upon a proper showing, the appropriate remedy shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets; the court may not require the administrator to post a bond.

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(b) Before issuing an order under (a)(1) of this section the administrator shall give reasonable notice of and an opportunity for a hearing. However, the administrator may issue a temporary order pending the hearing which order shall remain in effect until 10 days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within 15 days after the receipt of notice. (§ 308 ch 198 SLA 1959; am § 1 ch 126 SLA 1968; am § 1 ch 65 SLA 1981)

Effect of amendments. — The 1981 amendment designated the existing section as subsection (a) and added subsection (b). In subsection (a), the amendment substituted "the administrator" for "he" in the introductory language, in paragraph (1), substituted "it is considered" for "he considers it," added "(A)" preceding "directing the person to cease" and substituted the language beginning "(B) directing the person" and ending with "prohibited under

AS 45.55.160" for "provided that reasonable notice of and an opportunity for a hearing shall first be given, except that the administrator may issue a temporary order pending the hearing which shall remain in effect until 10 days after the hearing is held and which shall become final if the person to whom notice is addressed does not request a hearing within fifteen days after the receipt of notice."

Sec. 45.55.210. Criminal penalties.

NOTES TO DECISIONS

"Willfully" as it is used in subsection (a) of this section requires an awareness of wrongdoing. *Hentzner v. State*, Sup. Ct.

Op. No. 2103 (File No. 3649), 613 P.2d 821 (1980).

Chapter 87. Bulk Fuel.

Sec. 45.87.500. Definitions.

Editor's notes. — This section was enacted as AS 45.87.040 but was

renumbered by the revisor of statutes pursuant to AS 01.05.031 (b).

Chapter 88. Alternative Technology and Energy Revolving Loan Fund.

Editor's notes. — The above chapter heading was changed to reflect the name of

the fund as established by AS 45.88.010.

Sec. 45.88.500. Definition.

Editor's notes. — This section was enacted as AS 45.88.010 but was

renumbered by the revisor of statutes pursuant to AS 01.05.031(b).

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Alaska State Legislature

Senate

Official Business

Labor & Commerce Committee

Pouch V
State Capitol
Juneau, Alaska 99811

SB 819 Summary:

Relates to contracts for architectural, engineering, and land surveying services. Provides the state shall award contracts for such services only on the basis of demonstrated competence and qualifications for the type of professional services required. Provides an attempt shall be made to negotiate a contract with the person or firm selected at a price that is fair and reasonable. Proposals are to be publicly ranked, and the state shall attempt to negotiate a fair and reasonable price with the best qualified contractor, and shall negotiate with other contractors, in order of ranking, if negotiations with the first ranking contractors are not successful. Provides the state may reject all or part of a proposal. Does not apply to contracts awarded in an emergency if the person awarding the contract certifies in writing that the emergency exists. Takes effect immediately.

(d) Votes required to be conducted under (c) of this section may be conducted by teleconference. (§ 1 ch 170 SLA 1980)

Cross references. — For the 1980 special appropriation to the reserve for emergency operating expenses account, see

Chapter 171, SLA 1980, in the Temporary and Special Acts binder.

Article 4. Uniform Purchasing.

Section

230. Competitive bids

Sec. 37.05.230. Competitive bids. In the manner provided in AS 37.05.010 — 37.05.330 and rules and regulations established under it

(1) a contract for construction and repairs, or a purchase of and contract for supplies, materials, equipment, and contractual services must be based on competitive bids; an award shall be made to the lowest responsible bidder after advertising for bids, except that (A) Repealed by § 2 ch 92 SLA 1967; (B) a bid shall be awarded to an Alaska bidder if his bid is not more than five per cent higher than the lowest nonresident bidder's; and (C) competitive bids need not be required (i) for contractual services where no competition exists; (ii) for sales involving fair trade items; (iii) where, in the judgment of the purchasing agent, food, clothing, or medical supplies, or materials for use in laboratory and experimental studies may be purchased otherwise to the best advantage of the state; (iv) where rates are fixed by law or ordinance; (v) for items traded in on like items; or (vi) for professional services;

(2) if the amount of the contractual services, purchase, or sale is estimated to exceed \$2,500 sealed bids shall be solicited, when practicable, by publication in a newspaper calculated to reach prospective bidders and by posting notices in public places within the area where the work is to be performed or material furnished and in addition the department may also designate a trade journal for publication; the department shall also solicit bids by sending notices by mail to all active prospective bidders known to it and all bids shall be sealed when received, and shall be opened in public at the hour stated in the notice; the department may negotiate directly if it finds that it is in the best interests of the state;

(3) a contractual service, purchase or sale where the known requirements are estimated to be less than \$2,500 may be made either upon competitive bids in accordance with (2) of this section or in the open market, in the discretion of the department; but, so far as practicable, shall be based on at least three competitive bids and recorded as provided in AS 37.05.240; small purchases of less than \$300 in the discretion of the department may be made on the open market, and may be by cash payment from petty cash accounts set aside for that purpose;

the department shall determine the amount of the petty cash accounts needed by each state agency, and inspect the petty cash accounts at least once each year to determine that the total plus amounts of receipts for unreplenished disbursements is equal to the fixed sum of cash set aside; shortages in petty cash accounts are a personal liability of the responsible head of the agency to whom the account is set aside; the department shall make all necessary rules and regulations governing use and replenishment of petty cash funds;

(4) the provisions of this section relative to competitive bids do not apply to contracts for the operation of transportation systems for students to and from the schools within the state, as are authorized under AS 14.09.010; and these contracts may be awarded by bid or negotiation and, at the discretion of the Board of Education, may be awarded for periods of three years or less;

(5) an "Alaska bidder," for the purpose of bid awards under (1) (B) of this section, is a person who

(A) holds a current Alaska business license,

(B) submits a bid for goods or services under the name as appearing on his current Alaska business license,

(C) has maintained a place of business within the state for a period of six months immediately preceding the date of his bid.

(6) the competitive bid requirements of this section do not apply to air taxi services used by state employees when no formal contract is executed; the department affected shall pay the air taxi operator the tariff rates as published by him with the Air Transportation Commission for the type of aircraft required; the tariffs need not be uniform throughout the state and may reflect the diverse conditions of various areas of the state; the air taxi service used in each case shall be selected by the state employee who is to fly in the aircraft, or if more than one state employee is flying in the aircraft by the employee in charge; in all cases the air taxi operator shall have complied with AS 02.05.010 — 02.05.260 and other prequalifying regulations established by the department.

(7) the provisions of this section relative to an "Alaska bidder" do not apply to contracts estimated to exceed \$5,000, of either the Department of Transportation and Public Facilities, which are authorized under AS 35.15.010 — 35.15.120, or the Department of Highways, which are authorized under AS 19.10.010 — 19.10.280.

(8) the provisions of this section relative to competitive bids do not apply to the purchase of products or services manufactured or provided by a sheltered workshop. (§ 3 art IV ch 82 SLA 1955; am §§ 8 — 10, 23 ch 186 SLA 1957; am § 1 ch 77 SLA 1959; am § 1 ch 158 SLA 1962; am § 1 ch 82 SLA 1964; am §§ 1, 2 ch 92 SLA 1967; am § 1 ch 61 SLA 1970; am § 1 ch 92 SLA 1975; am §§ 1, 2 ch 194 SLA 1975)

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exclusive lease or franchise without the necessity of calling for bids. 1962 Op. Att'y Gen., No. 4.

As well as for extension thereof. — If an exclusive lease or franchise is in effect the state cannot extend the term thereof without calling for bids. 1962 Op. Att'y Gen., No. 4.

But not for nonexclusive lease or franchise. — The commissioner of public works has the authority to grant a nonexclusive lease or franchise without calling for competitive bids. 1962 Op. Att'y Gen., No. 4.

Sec. 37.05.231. Estimation of flying hours required. The state, when soliciting bids for air charter service, shall make available in writing to prospective bidders upon request an estimate of the flying hours required by each individual agency of the state which will take advantage of these services. (§ 1 ch 17 SLA 1967)

Sec. 37.05.240. Award of contracts and purchases. A contract or purchase made by or under the supervision of the department for which competitive bids are required shall be awarded to the lowest responsible bidder, taking into consideration conformity with the specifications, terms of delivery, and other conditions imposed in the call for bids. Bids may be rejected, and a bid shall be rejected if it contains a material alteration or erasure which is not initialed by the signer of the bid. The department may reject the bid of a bidder who is in arrears on taxes due the state or who failed to perform on a previous contract with the state. Where competitive bids are required and where all bids are rejected, new bids shall be called for as in the first instance. Before the awarding of a contract for a building or the making of repairs upon a building, the department shall see that the bids conform with plans and specifications approved by the Department of Transportation and Public Facilities. All bids with the names of the bidders and the amounts of the bids, together with all documents pertaining to the award of a contract, shall be made a part of a file or record and retained by the department for three years, unless reproduced by microfilming and these files or records are open to public inspection at all reasonable times. An aggrieved bidder may within five days after an award of contract appeal to the department for hearing, with notice to interested parties, for redetermination and final award in accordance with law. (§ 4 art IV ch 82 SLA 1955; am § 1 ch 64 SLA 1976)

Effect of amendment. — The 1976 amendment added "which is not initialed by the signer of the bid" to the end of the second sentence.

Editor's note. — Pursuant to Executive

Order No. 89 (1977), the reference to the Department of Transportation and Public Facilities has been substituted for a reference to the Department of Public Works near the middle of the section.

Sec. 37.05.250. Delegation of duties. The department may delegate the duties imposed by this chapter upon an employee of the state normally stationed in a town or location distant from the state capital. Agents so designated shall perform the duties as the department

(1) the contractor is, and for two years immediately preceding the award of the contract has been, a licensed contractor having his or its principal office in the state;

(2) the contractor certifies that he has not defaulted on a contract awarded to him during the period of three years preceding the award of a contract for which a bid is submitted;

(3) the contractor submits a financial statement, prepared within a period of nine months preceding the submission of a bid for the contract and certified by a public accountant or a certified public accountant licensed under AS 08.04.010 — 08.04.690, demonstrating that the contractor has a net worth of not less than 20 per cent of the amount of the contract for which a bid is submitted; and

(4) the total amount of all contracts which the contractor anticipates performing during the term of performance of the contract for which a bid is submitted does not exceed the net worth of the contractor reported in the certified financial statement prepared and submitted under (3) of this subsection by more than seven times. (§ 1 ch 81 SLA 1978)

Cross references. — As to limitation of home rule power regarding municipal exemption on contractor bond requirements, see AS 29.13.100(38). As to require-

ment that a municipality use ordinances to exempt contractors from compliance with general requirements relating to certain bonds, see AS 29.48.130(a)(12).

Chapter 95. General Provisions.

Section

10. Definitions

Sec. 36.95.010. Definitions. In AS 36.05.010 — 36.25.025 unless the context requires otherwise

(1) "contractor" means the contractor including subcontractors performing work necessary to facilitate public construction;

(3) "public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, of highways or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board with respect to an educational facility under AS 14.08.161;

(am § 3 ch 89 SLA 1976; am § 16 ch 147 SLA 1978)

Revisor's notes. — AS 36.95.010(3) has been corrected by the reinsertion of the word "of" before and after the word "buildings" to return to the original wording of sec. 16, ch. 142, SLA 1972.

Effect of amendments. — The 1976 amendment substituted "subcontractors performing work necessary to facilitate public construction" for "the

subcontractor" in paragraph (1) and inserted "field surveying" in paragraph (3).

The 1978 amendment, in paragraph (3) deleted "or" following "for the state" and added "or a regional school board with respect to an educational facility under AS 14.08.161" to the end.

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Introduced: 3/4/82
Referred: Labor & Commerce

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 SENATE BILL NO. 831

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 TWELFTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurance policies and contracts."

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

8 * Section 1. AS 21.09.260 is amended to read:

9 Sec. 21.09.260. VIOLATIONS - PENALTIES. An insurer violating the
10 provisions of AS 21.09.250 [AS 21.09.220 - 21.09.250] is guilty of a
11 misdemeanor and upon conviction is punishable by a fine of not more than
12 \$500 for each violation. In the event of conviction the insurance
13 director may suspend or revoke the license of the insurer, but violation
14 shall not invalidate the insurance contract.

15 * Sec. 2. AS 21.09.220, 21.09.230, and 21.09.240 are repealed.

16 *SEE STATUTES BENEATH BILL;*

**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

OFFICE OF THE COMMISSIONER

POUCH D
JUNEAU, ALASKA 99811
PHONE: 465-2500

LEGISLATIVE POSITION PAPER
SB 831
March 15, 1982

The Department of Commerce and Economic Development favors SB 831 and urges passage of the bill.

SB 831 repeals the Alaska Countersignature Law which requires that an insurance policy issued for delivery in Alaska or covering a subject in Alaska be signed by a licensed resident Alaska agent. It further sets forth a level of remuneration to be received by the countersigning agent.

The law was originally intended as a protective device for Alaska producers, to give them an advantage over their non-resident counterparts. This type of law exists in about 40 states and agents associations in those states are asking for repeal because it has not worked as expected. Where it is applied as structured, it tends to impede the flow of business and implant an additional level of bureaucracy as to those policies affected. Some non-resident producers circumvent the law through the use of contracts with a resident, power of attorney, and facsimile signature. The law provides no protection for the insuring public.

A copy of the sections of law to be repealed is attached.

E.W. Eboch 3/15/82

Edward W. Eboch
Deputy Commissioner

SECTIONS TO BE REPEALED

Sec. 21.09.220. Counter signature by resident agent—Application of title. No company, association, reciprocal exchange, person or persons authorized to transact insurance or offer indemnity contracts in this state excepting reciprocal mutuals organized under the laws of this state and life insurance companies or life insurance contracts and health and accident contracts and annuity contracts written therein, may make, write, place or cause to be made, written or placed, a policy or contract of insurance or indemnity of any kind or character, or a general or floating policy covering risks on property located in the state, liability created by or accruing under the laws of this state, or undertakings to be performed in this state, except through their licensed resident insurance agents, who shall countersign all policies, riders and endorsements or indemnity contracts so issued and collect the premiums, or see to their collection in due course, and who shall keep a record of the same. The record shall contain the usual and customary information concerning the risk undertaken, including the full premium paid or to be paid, to the end that the state may receive the taxes required by law to be paid on premiums collected for insurance on property or undertakings located in this state. No agent shall pay or forward a premium or application for insurance or in any manner secure, help or aid in the placing of insurance, or effect a contract of insurance or indemnity upon property, liability or undertakings located in this state with an insurer which is not authorized to transact its business in this state; except that if two or more insurers issue a single policy of insurance, the policy may be countersigned on behalf of all insurers appearing on it by a licensed agent, resident of the state, or any one of the insurers. The practice of signing policies in blank is likewise prohibited. (§ 1 ch 120 SLA 1966)

Sec. 21.09.230. Exception. Nothing contained in § 220 of this chapter shall be construed as preventing the free and unlimited right to negotiate wholly outside this state contracts of insurance by licensed nonresident agents and brokers, provided the policies, dailies, endorsements or evidence of the contracts covering properties or insurable interests in this state are countersigned by the resident agent of this state, in which event the countersigning agent shall receive a commission of not less than five per cent of the premium paid; provided, however, that the countersigning commission may not

exceed one-half of the total commission and provided further that for countersigning these insurance policies the resident agent shall not be paid more than \$50 nor less than \$1 for countersigning a policy or bond; and provided further, that if the licensed nonresident agent or broker or the insurer assuming the risk desires the resident agent to render additional services during the life of a policy the compensation to be paid to the countersigning agent shall be a matter of contract between the parties in interest. Sections 220—250 of this chapter do not apply to the following contracts:

(1) policies covering property received for shipment or delivery or in transit while in possession or custody of a common carrier, or the rolling stock, vessels, aircraft, or other property of a common carrier used and employed by it in interstate or foreign commerce, or insurance of aircraft owned or operated by manufacturers of aircraft;

(2) policies issued by insurers not using agents in the general solicitation of business;

(3) contracts of reinsurance or retrocessions made by and for admitted companies;

(4) contracts of life and disability insurance and annuity contracts;

(5) contracts of title insurance;

(6) bid bonds issued in connection with a public or private contract;

(7) wet marine and transportation insurances. (§ 1 ch 120 SLA 1966)

Sec. 21.09.240. Affidavit attached to annual statement. At the time the annual statement of every such company is filed with the director there shall be attached to it an affidavit of the president, manager or chief executive officer in the United States stating that §§ 220—250 of this chapter have not been violated. (§ 1 ch 120 SLA 1966)

(c) A domestic company is exempt from taxation under this section for a period of five years from the date of its organization.

(d) An authorized insurer shall, with respect to all wet marine and transportation contracts written in this state during the preceding calendar year, before April 1 of each year, pay to the director a tax of three-quarters of one per cent on its gross underwriting profit. The gross underwriting profit is computed by deducting from the net premiums (i.e., gross premiums less all return premiums and premiums for reinsurance), on wet marine and transportation insurance contracts, the net losses paid (i.e., gross losses paid, less salvage and recoveries on reinsurance ceded) during the calendar year under the contracts. In the case of an insurer issuing participating contracts, the gross underwriting profit shall not include, for computation of the tax prescribed by this section, the amounts refunded or paid as participation dividends by the insurers to the holders of the contracts.

(e) Payment to the director by an insurer of the tax upon its premiums required by this section shall be in lieu of all other taxes imposed by the state upon premiums, franchise, privilege or other taxes measured by income of the insurer commencing with the taxable year beginning January 1, 1967.

(f) The state hereby pre-empts the field of imposing excise, privilege, franchise, income, license, permit, registration, and similar taxes, licenses, and fees upon insurers and their general agents, agents and representatives as such; and on the intangible property of insurers or agents; and all political subdivisions of agencies in the state, including home rule boroughs or cities, are prohibited from imposing or levying upon insurers, or upon their general agents, agents and representatives as such, any tax, license, or fee. Provided that this subsection shall not be construed as prohibiting the imposition by political subdivisions of taxes upon real and tangible personal property of insurers and their general agents, agents and representatives.

(g) The director may suspend or revoke the certificate of authority of an insurer which fails to pay its taxes as required under this section.

(h) The provisions of this section do not apply to title insurance companies. A premium tax on title insurance companies shall be levied in accordance with the provisions of AS 21.66.110. (§ 1 ch 120 SLA 1966)

REPEALED → Sec. 21.09.220. Counter signature by resident agent—Application of title. No company, association, reciprocal exchange, person or persons authorized to transact insurance or offer indemnity contracts in this state excepting reciprocal mutuals organized under the laws of this state and life insurance companies or life in-

insurance contracts and health and accident contracts and annuity contracts written therein, may make, write, place or cause to be made, written or placed, a policy or contract of insurance or indemnity of any kind or character, or a general or floating policy covering risks on property located in the state, liability created by or accruing under the laws of this state, or undertakings to be performed in this state, except through their licensed resident insurance agents, who shall countersign all policies, riders and endorsements or indemnity contracts so issued and collect the premiums, or see to their collection in due course, and who shall keep a record of the same. The record shall contain the usual and customary information concerning the risk undertaken, including the full premium paid or to be paid, to the end that the state may receive the taxes required by law to be paid on premiums collected for insurance on property or undertakings located in this state. No agent shall pay or forward a premium or application for insurance or in any manner secure, help or aid in the placing of insurance, or effect a contract of insurance or indemnity upon property, liability or undertakings located in this state with an insurer which is not authorized to transact its business in this state; except that if two or more insurers issue a single policy of insurance, the policy may be countersigned on behalf of all insurers appearing on it by a licensed agent, resident of the state, or any one of the insurers. The practice of signing policies in blank is likewise prohibited. (§ 1 ch 120 SLA 1966)

REPEALED →

Sec. 21.09.230. Exception. Nothing contained in § 220 of this chapter shall be construed as preventing the free and unlimited right to negotiate wholly outside this state contracts of insurance by licensed nonresident agents and brokers, provided the policies, dailies, endorsements or evidence of the contracts covering properties or insurable interests in this state are countersigned by the resident agent of this state, in which event the countersigning agent shall receive a commission of not less than five per cent of the premium paid; provided, however, that the countersigning commission may not exceed one-half of the total commission and provided further that for countersigning these insurance policies the resident agent shall not be paid more than \$50 nor less than \$1 for countersigning a policy or bond; and provided further, that if the licensed nonresident agent or broker or the insurer assuming the risk desires the resident agent to render additional services during the life of a policy the compensation to be paid to the countersigning agent shall be a matter of contract between the parties in interest. Sections 220—250 of this chapter do not apply to the following contracts:

- (1) policies covering property received for shipment or delivery, or in transit while in possession or custody of a common carrier,

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or the rolling stock, vessels, aircraft, or other property of a common carrier used and employed by it in interstate or foreign commerce, or insurance of aircraft owned or operated by manufacturers of aircraft;

(2) policies issued by insurers not using agents in the general solicitation of business;

(3) contracts of reinsurance or retrocessions made by and for admitted companies;

(4) contracts of life and disability insurance and annuity contracts;

(5) contracts of title insurance;

(6) bid bonds issued in connection with a public or private contract;

(7) wet marine and transportation insurances. (§ 1 ch 120 SLA 1966)

REPEALED → Sec. 21.09.240. Affidavit attached to annual statement. At the time the annual statement of every such company is filed with the director there shall be attached to it an affidavit of the president, manager or chief executive officer in the United States stating that §§ 220—250 of this chapter have not been violated. (§ 1 ch 120 SLA 1966)

Sec. 21.09.250. Unlawful acts defined. It is unlawful for an insurer doing business in this state to make, write, place or cause to be made, written or placed in this state a policy, duplicate policy or contract of insurance of any kind or character, or general or floating policy upon persons or property resident, situated or located in this state, from or through a broker, agent, surplus line broker or person who has not secured a license in this state. No insurer may pay a commission or any form of remuneration to a person, firm or organization for the writing or placing of insurance coverage in this state unless that person, firm or organization holds a license issued by the director or his successor. (§ 1 ch 120 SLA 1966)

Sec. 21.09.260. Violations—Penalties. An insurer violating the provisions of §§ 220—250 of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine not more than \$500 for each violation. In the event of conviction the insurance director may suspend or revoke the license of the insurer, but violation shall not invalidate the insurance contract. (§ 1 ch 120 SLA 1966)

Sec. 21.09.270. Retaliation. (a) If, under the laws of another state or foreign country, taxes, licenses and other fees, in the aggregate, and fines, penalties, deposit requirements or other material obligations, prohibitions or restrictions are or would be im-

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 831

Title An act relating to Insurance Policies and Contracts

Requested by Labor and Commerce Committee Date 3/4/82

II. FISCAL DETAIL

Agency Affected Division of Insurance

Program Category Affected Public Protection

BRU, Program, Or Subprogram(s) Affected Division Insurance

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	0					
200 TRAVEL	0					
300 CONTRACTUAL	0					
400 COMMODITIES	0					
500 EQUIPMENT	0					
600 LAND & STRUCTURES	0					
700 GRANTS, CLAIMS, ETC.	0					
TOTAL	0					

FUNDING (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER (Specify Source)	0					

POSITIONS

FULL TIME	0					
PART TIME	0					
TEMPORARY	0					

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE March 15, 1982

PREPARED BY Kenneth C. Moore, Div. of Insurance
Commerce & Economic Development

Original: Legislative Finance

PHONE 465-2515

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

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Alaska State Legislature

Senate

Official Business

Labor & Commerce Committee

Pouch V
State Capitol
Juneau, Alaska 9811

SB 841:

PROBLEM: Fixed interest rate ceilings (8%) on life insurance policy loans;

- 1) Rate of interest is lower than the cost of the loan;
- 2) Reduces funds available for investment (restricts investment capital)
- 3) Reduces funds available for distribution (dividends)
- 4) Creates a subsidy for policy holders using the policy loan feature at the expense of policy holders who do not have policy loans;
- 5) Impacts the net cost of insurance
- 6) Has an impact on insurer liquidity, and therefore effects the flexibility of their investment portfolio;

PROPOSED SOLUTIONS: Remove the fixed rate of interest cap on life insurance policy loans;

- 1) Provides the option of issuing a policy loan at a maximum rate of interest (8%), and/or offering an adjustable rate of interest tied in to the changes in the Moody Index (Corporate Bond Yield Index).
- 2) Rates can be adjusted by changes of $\frac{1}{2}$ percentage point of the Moody Index;
- 3) Rate adjustments may be determined quarterly, semi annually, or at least annually, and the frequency with which the company intends to determine interest rate adjustments must be contained in the policy.
- 4) Insurance companies are required to decrease rates at the same interval chosen for their adjustments, and the interval must be contained in each policy.
- 5) Provisions in the bill prohibit unintended lapses of policy coverage because of interest rate changes.

Bill has the support of: National Association of Life Underwriters
Alaska State Association of Life Underwriters
American Council of Life Underwriters
Division of Insurance

Has been approved by the National Association of Insurance Commissioners, and has been enacted in 19 states thus far.

tion. If the company fails to meet the requirements contained in this subsection, the director may suspend the certificate of authority of the company until the requirements are met or may prohibit the further issuance of variable contracts.

(k) The director has sole authority to regulate the issuance and sale of variable contracts, to examine and license agents to sell variable contracts, and to issue whatever regulations he may consider appropriate to carry out the purposes and provisions of this section.

(l) Except for AS 21.45.030, 21.45.080, 21.45.110, 21.45.180, 21.45.230, 21.45.240, 21.45.290, 21.45.300, 21.48.110, and except as otherwise provided in this section, the provisions of this title apply to separate accounts and contracts relating to them. An individual variable life insurance contract delivered or issued for delivery in the state must contain grace reinstatement and nonforfeiture provisions appropriate to that contract. An individual variable annuity contract delivered or issued for delivery in the state must contain grace and reinstatement provisions appropriate for that contract. A group variable life insurance contract delivered or issued for delivery in the state must contain a grace provision appropriate for that contract. The reserve liability for variable contracts shall be established in accordance with actuarial procedures, acceptable to the director, that recognize the variable nature of the benefits provided and any mortality guarantees. (§ 1 ch 180 SLA 1968; am § 1 ch 69 SLA 1980)

Effect of amendments. — The 1980 amendment rewrote the section.

Chapter 45. Life Insurance and Annuities.

<p>Section 80. Policy loan 300. Standard nonforfeiture law — Life insurance</p>	<p>Section 305. Standard nonforfeiture law for individual deferred annuities</p>
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Sec. 21.45.080. Policy loan. (a) There shall be a provision that after three full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security of the policy, at a specified rate of interest not exceeding eight per cent a year, an amount equal to or, at the option of the party entitled to it, less than the loan value of the policy. The director may authorize rates of interest in excess of six per cent only on a finding that the holders of policies will benefit from the increased earnings of the insurer resulting from the higher rates, through the use of higher dividends or lower premiums, or both. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, except that the insurer may deduct, either from the loan value or from

the procedure in determining accrued policy year. This is not paid and shall be indebted exceeds termination right to premium application automatic.

(b) The benefits of industrial SLA 1980

Effect of amendments preceding subsection in that subsection following

Sec. 21.45.080 (a) This

(b) In section 21.45.080 except a delivery corresponds at least as

(1) the premiums based upon a premium related in be here

(2) the date of for at least full year lieu of amount

the proceeds of the loan, an existing indebtedness not already deducted in determining the cash surrender value including interest then accrued but not due, the unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year. The policy may also provide that if interest on an indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value of the policy, the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of a premium to the insurer, for six months after the date of the loan application. The policy, at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect.

(b) This section does not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions, or to industrial life insurance policies. (§ 1 ch 120 SLA 1966; am § 1 ch 103 SLA 1980)

Effect of amendments. — The 1980 amendment substituted "eight" for "six" preceding "per cent" in the first sentence of subsection (a), added the second sentence in that subsection, and inserted a comma following "The policy" at the beginning of

the last sentence of subsection (a).

Editor's notes. — Section 8, c. 103, SLA 1980, provides: "This Act shall not impair the terms and conditions of any policy of life insurance issued before the effective date of this Act."

Sec. 21.45.300. Standard nonforfeiture law — Life insurance.
(a) This section shall be known as the standard nonforfeiture law.

(b) In the case of policies issued on or after the operative date of this section as defined in (n) of this section, no policy of life insurance, except as set out in (m) of this section, may be delivered or issued for delivery in this state unless it contains the following provisions, or corresponding provisions which in the opinion of the director are at least as favorable to the defaulting or surrendering policyholder:

(1) that in the event of default in a premium payment, after premiums have been paid for at least one full year, the insurer will grant, upon proper request not later than 60 days after the due date of the premium in default, a paid-up nonforfeiture benefit on a plan stipulated in the policy, effective as of such due date of such value as may be hereinafter specified:

(2) that upon surrender of the policy within 60 days after the due date of a premium payment in default after premiums have been paid for at least three full years in the case of ordinary insurance, and five full years in the case of industrial insurance, the insurer will pay, in lieu of any paid-up nonforfeiture benefit, a cash surrender value of such amount as may be hereinafter specified;

plus, if any, in the manner set out in the policy. (§ 1 ch 120 SLA 1966)

Sec. 21.45.080. Policy loan. (a) There shall be a provision that after three full years' premiums have been paid and after the policy has a cash surrender value and while no premium is in default beyond the grace period for payment, the insurer will advance, on proper assignment or pledge of the policy and on the sole security of the policy, at a specified rate of interest not exceeding six per cent a year, an amount equal to or, at the option of the party entitled to it, less than the loan value of the policy. The loan value of the policy shall be at least equal to the cash surrender value at the end of the then current policy year, except that the insurer may deduct, either from the loan value or from the proceeds of the loan, an existing indebtedness not already deducted in determining the cash surrender value including interest then accrued but not due, the unpaid balance of the premium for the current policy year, and interest on the loan to the end of the current policy year. The policy may also provide that if interest on an indebtedness is not paid when due it shall then be added to the existing indebtedness and shall bear interest at the same rate, and that if and when the total indebtedness on the policy, including interest due or accrued, equals or exceeds the amount of the loan value of the policy, the policy shall terminate and become void. The policy shall reserve to the insurer the right to defer the granting of a loan, other than for the payment of a premium to the insurer, for six months after the date of the loan application. The policy at the insurer's option, may provide for automatic premium loan, subject to an election of the party entitled to elect.

(b) This section does not apply to term policies or to term insurance benefits provided by rider or supplemental policy provisions, or to industrial life insurance policies. (§ 1 ch 120 SLA 1966)

Sec. 21.45.090. Table of values. There shall be a table showing in figures the loan value, if required under § 80 of this chapter, and the cash surrender values and nonforfeiture benefits in accordance with § 300(b) (5) of this chapter, either during the first 20 policy years or during the term of the policy, whichever is shorter. (§ 1 ch 120 SLA 1966)

Sec. 21.45.100. Table of installments. In case the policy provides that the proceeds may be payable in instalments which are determinable at issue of the policy, there shall be a table showing the amounts of the guaranteed installments. (§ 1 ch 120 SLA 1966)

Sec. 21.45.110. Reinstatement. Except as provided in § 230 of this chapter, there shall be a provision that unless (1) the policy

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has been surrendered for its cash surrender value, (2) its cash surrender value has been exhausted, or (3) the paid-up term insurance, if any, has expired, the policy will be reinstated at any time within three years (or two years in the case of industrial life insurance policies) from the date of premium default upon written application, the production of evidence of insurability satisfactory to the insurer, the payment of all premiums in arrears and the payment or reinstatement of another indebtedness to the insurer upon the policy, with interest at a rate not exceeding six per cent a year compounded annually. (§ 1 ch 120 SLA 1966)

Sec. 21.45.120. Payment of premiums. There shall be a provision relative to the payment of premiums. (§ 1 ch 120 SLA 1966)

Sec. 21.45.130. Payment of claims. There shall be a provision that when a policy becomes a claim by the death of the insured, settlement shall be made upon receipt of due proof of death and, at the insurer's option, surrender of the policy and/or proof of the interest of the claimant. If an insurer specifies a particular period before the expiration of which settlement shall be made, the period may not exceed two months from the receipt of the proofs. (§ 1 ch 120 SLA 1966)

Sec. 21.45.140. Beneficiary, industrial policies. An industrial life insurance policy shall have the name of the beneficiary designated on it with a reservation of the right to designate or change the beneficiary after the issuance of the policy. The policy may also provide that no designation or change of beneficiary shall be binding on the insurer until endorsed on the policy by the insurer, and that the insurer may refuse to endorse the name of proposed beneficiary who does not appear to the insurer to have an insurable interest in the life of the insured. The policy may also provide that if the beneficiary designated in the policy does not make a claim under the policy or does not surrender the policy with due proof of death within the period stated in the policy, which may not be less than 30 days after the death of the insured, or if the beneficiary is the estate of the insured, or is a minor, or dies before the insured, or is not legally competent to give a valid release, the insurer may pay the proceeds to the executor or administrator of the insured, or to any relative of the insured by blood or legal adoption or connection by marriage, or to any person appearing to the insurer to be equitably entitled to the proceeds by reason of having been named beneficiary, or by reason of having incurred expense for the maintenance, medical attention or burial of the insured. The policy may also include a similar provision applicable to other payments due under the policy. (§ 1 ch 120 SLA 1966)

Sec. 21.45.150. Title. There shall be a title on the policy, briefly describing it. (§ 1 ch 120 SLA 1966)

cept provisions relative to benefits in the event of disability and provisions which grant insurance specifically against death by accident or accidental means. (§ 1 ch 120 SLA 1966)

Sec. 21.45.200. Entire contract. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract constitutes the entire contract between the parties or, if a copy of the application is endorsed upon or attached to the contract when issued, there shall be a provision that the contract and the application constitute the entire contract between the parties. (§ 1 ch 120 SLA 1966)

Sec. 21.45.210. Misstatement of age or sex—Annuities. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that if the age or sex of the person or persons upon whose life or lives the contract is made, or of any of them, has been misstated, the amount payable or benefits accruing under the contract shall be such as the stipulated payment or payments to the insurer would have purchased according to the correct age or sex and that if the insurer makes or has made an overpayment or overpayments on account of a misstatement, the amount of the overpayment, with interest at the rate to be specified in the contract but not exceeding six per cent a year, may be charged against the current or next succeeding payment or payments to be made by the insurer under the contract. (§ 1 ch 120 SLA 1966)

Sec. 21.45.220. Dividends—Annuities. If an annuity or pure endowment contract, other than a reversionary survivorship, or group annuity, is participating, there shall be a provision that the insurer shall annually ascertain and apportion any divisible surplus accruing on the contract. (§ 1 ch 120 SLA 1966)

Sec. 21.45.230. Reinstatement—Annuities. In an annuity or pure endowment contract, other than a reversionary, survivorship, or group annuity, there shall be a provision that the contract may be reinstated at any time within one year from the default in making stipulated payments to the insurer, unless the cash surrender value had been paid, if all overdue stipulated payments and any indebtedness to the insurer on the contract are paid or reinstated with interest at a rate to be specified in the contract, not exceeding six per cent a year payable annually. Where applicable the insurer may also include a requirement of evidence of insurability satisfactory to the insurer. (§ 1 ch 120 SLA 1966)

Sec. 21.45.240. Standard provisions — Reversionary annuities.
(a) Except as stated herein, no contract for a reversionary annuity may be delivered or issued for delivery in this state unless it contains in substance each of the following provisions:

THE LEGISLATURE OF THE STATE OF ALASKA
TWELFTH LEGISLATURE

FISCAL NOTE

I. REQUEST

Bill/Resolution No. SB 841

Title An act relating to insurance provisions on policy loans & reinstatement of
Requested by Labor and Commerce Committee Date 3/8/82
of policies.

II. FISCAL DETAIL

Agency Affected Division of Insurance

Program Category Affected Public Protection

BRU, Program, Or Subprogram(s) Affected Division of Insurance

(Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

	FY 82	FY 83	FY 84	FY 85	FY 86	FY 87
100 PERSONAL SERVICES	0					
200 TRAVEL	0					
300 CONTRACTUAL	0					
400 COMMODITIES	0					
500 EQUIPMENT	0					
600 LAND & STRUCTURES	0					
700 GRANTS, CLAIMS, ETC.	0					
TOTAL	0					

FUNDING (Thousands of Dollars)

GENERAL FUND	0					
FEDERAL FUNDS	0					
OTHER (Specify Source)	0					

POSITIONS

FUI TIME	0					
PAF. TIME	0					
TEMPORARY	0					

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

IV. DATE March 15, 1982

PREPARED BY Kenneth C. Moore, Div. of Insurance
AGENCY Commerce & Economic Development

Original: Legislative Finance

PHONE 465-2515

cc: Budget and Management

Prime Sponsor (First Legislator Named)

33-001 (Rev. 12/81)

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**DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT**

OFFICE OF THE COMMISSIONER

POUCH 9
JUNEAU, ALASKA 99811
PHONE: 465-2500

LEGISLATIVE POSITION PAPER
SB 869
April 2, 1982

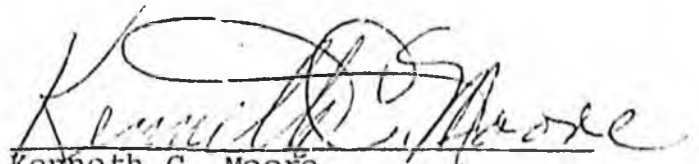
The Department of Commerce and Economic Development takes a neutral position on SB 869.

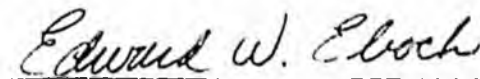
This proposal requires that a surety insurer maintain a copy of all applications for surety insurance as well as a record of the reasons for denial on those applications refused. The surety would then be required to provide that information upon the written request of the applicant.

The proposal also has a sunset provision effective June 30, 1988.

We are not clear on whether the information acquired during the effectiveness of the proposal would have to be maintained following expiration of the act. The proposal would not help a great deal nor will it do much harm. Insurers are prepared to comply if required and if reasonably protected.

In December 1980, the National Association of Insurance Commissioners adopted the "NAIC Insurance Information and Privacy Protection Model Act" which we firmly believe is the preferred method to providing the protection sought by SB 869. A copy of that model bill is attached for your review. We have also prepared an Alaskanized version of the NAIC model which does differ slightly. We are in the process of preparing a section analysis on that bill. The proposal we are suggesting is much wider in scope than SB 869. There would be no fiscal impact on the Division of Insurance.


Kenneth C. Moore
Director of Insurance


Edward W. Eboch
Deputy Commissioner

**NAIC INSURANCE INFORMATION AND
PRIVACY PROTECTION MODEL ACT**

—Text of Model Act as Revised
in December 1980—

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Section 23.	Severability.
Section 24.	Effective Date.

Preamble.

The purpose of this Act is to establish standards for the collection, use and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

Section 1. Scope.

(A) The obligations by this Act shall apply to those insurance institutions, agents or insurance-support organizations which, on or after the effective date of this Act:

(1) in the case of life, health and disability insurance:

- (a) collect, receive or maintain information in connection with insurance transactions which pertains to natural persons who are residents of this State, or
- (b) engage in insurance transactions with applicants, individuals or policyholders who are residents of this State, and

- ii. the charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished,

Drafting Note: The use of the term "substandard" in paragraph 2(A)(1)(d)(i) is intended to apply to those insurance institutions whose rates and market orientation are directed at risks other than preferred or standard risks. To facilitate compliance with this Act, Commissioners should consider developing a list of insurance institutions operating in their state which specialize in substandard risks and make it known to insurance institutions and agents.

- (e) in the case of a life, health or disability insurance coverage, an offer to insure at higher than standard rates.
- (2) Notwithstanding subsection (1) above, the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:
 - (a) the termination of an individual policy form on a class or statewide basis,
 - (b) a declination of insurance coverage solely because such coverage is not available on a class or statewide basis, or
 - (c) the rescission of a policy.
- (B) "Affiliate" or "affiliated" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.
- (C) "Agent" means _____. (Make reference here to every appropriate statutory category of producer, including brokers, authorized to do business in the State. This is necessary because in many states different types of producers or producers for certain types of insurance institutions are referred to by specific statutory terms in the insurance code.)
- (D) "Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten
- (E) "Commissioner" means _____. (Insert the appropriate title and statutory reference for the principal insurance regulatory official of the State.)
- (F) "Consumer report" means any written, oral or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or manner of living, which is used or expected to be used in connection with a financial transaction.
- (G) "Consumer reporting agency" means any person who:
 - (1) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee,
 - (2) obtains information primarily from sources other than insurance institutions, and
 - (3) furnishes consumer reports to other persons.
- (H) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.
- (I) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.
- (J) "Individual" means any natural person who:

- (O) "Investigative consumer report" means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances or others who may have knowledge concerning such items of information.
- (P) "Medical-care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to: health-maintenance organizations, home-health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies and skilled nursing facilities.
- (Q) "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker or speech therapist.
- (R) "Medical-record information" means personal information which:
- (1) relates to an individual's physical or mental condition, medical history or medical treatment, and
 - (2) is obtained from a medical professional or medical-care institution, from the individual, or from the individual's spouse, parent or legal guardian.
- (S) "Person" means any natural person, corporation, association, partnership or other legal entity.
- (T) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics. "Personal information" includes an individual's name and address and "medical-record information" but does not include "privileged information".
- (U) "Policyholder" means any person who:
- (1) in the case of individual property or casualty insurance, is a present named insured,
 - (2) in the case of individual life, health or disability insurance, is a present policyowner, or
 - (3) in the case of group insurance which is individually underwritten, is a present group certificateholder.
- (V) "Pretax interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:
- (1) pretends to be someone he or she is not,
 - (2) pretends to represent a person he or she is not in fact representing,
 - (3) misrepresents the true purpose of the interview, or
 - (4) refuses to identify himself or herself upon request.
- (W) "Privileged information" means any individually identifiable information that:
- (1) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual, and
 - (2) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual;

CORRECTION

CORRECTION

NAIC INSURANCE INFORMATION AND
PRIVACY PROTECTION MODEL ACT

—Text of Model Act as Revised
in December 1980—

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Section 21.	Immunity.
Section 22.	Obtaining Information Under False Pretenses.
Section 23.	Severability.
Section 24.	Effective Date.

Preamble.

The purpose of this Act is to establish standards for the collection, use and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents or insurance-support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

Section 1. Scope.

- (A) The obligations by this Act shall apply to those insurance institutions, agents or insurance-support organizations which, on or after the effective date of this Act:
- (1) in the case of life, health and disability insurance:
 - (a) collect, receive or maintain information in connection with insurance transactions which pertains to natural persons who are residents of this State, or
 - (b) engage in insurance transactions with applicants, individuals or policyholders who are residents of this State, and

- (2) in the case of property or casualty insurance:
 - (a) collect, receive or maintain information in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this State, or
 - (b) engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this State.
- (B) The rights granted by this Act shall extend to:
 - (1) in the case of life, health or disability insurance, the following persons who are residents of this State:
 - (a) natural persons who are the subject of information collected, received or maintained in connection with insurance transactions, and
 - (b) applicants, individuals or policyholders who engage in or seek to engage in insurance transactions, and
 - (2) in the case of property or casualty insurance, the following persons:
 - (a) natural persons who are the subject of information collected, received or maintained in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this State, and
 - (b) applicants, individuals or policyholders who engage in or seek to engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this State.
- (C) For purposes of this section, a person shall be considered a resident of this State if the person's last known mailing address, as shown in the records of the insurance institution, agent or insurance-support organization, is located in this State.
- (D) Notwithstanding subsections (A) and (B) above, this Act shall not apply to information collected from the public records of a governmental authority and maintained by an insurance institution or its representatives for the purpose of insuring the title to real property located in this State.

Section 2. Definitions.

As used in this Act:

- (A) "Adverse underwriting decision" means:
 - (1) any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:
 - (a) a declination of insurance coverage,
 - (b) a termination of insurance coverage,
 - (c) failure of an agent to apply for insurance coverage with a specific insurance institution which the agent represents and which is requested by an applicant,
 - (d) in the case of a property or casualty insurance coverage:
 - i. placement by an insurance institution or agent of a risk with a residual market mechanism, an unauthorized insurer or an insurance institution which specializes in substandard risks, or

- ii. the charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished,

Drafting Note: The use of the term "substandard" in paragraph 2(A)(1)(d)(i) is intended to apply to those insurance institutions whose rates and market orientation are directed at risks other than preferred or standard risks. To facilitate compliance with this Act, Commissioners should consider developing a list of insurance institutions operating in their state which specialize in substandard risks and make it known to insurance institutions and agents.

- (e) in the case of a life, health or disability insurance coverage, an offer to insure at higher than standard rates.
- (2) Notwithstanding subsection (1) above, the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:
 - (a) the termination of an individual policy form on a class or statewide basis,
 - (b) a declination of insurance coverage solely because such coverage is not available on a class or statewide basis, or
 - (c) the rescission of a policy.
- (B) "Affiliate" or "affiliated" means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.
- (C) "Agent" means _____. (Make reference here to every appropriate statutory category of producer, including brokers, authorized to do business in the State. This is necessary because in many states different types of producers or producers for certain types of insurance institutions are referred to by specific statutory terms in the insurance code.)
- (D) "Applicant" means any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.
- (E) "Commissioner" means _____. (Insert the appropriate title and statutory reference for the principal insurance regulatory official of the State.)
- (F) "Consumer report" means any written, oral or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or marital status, which is used or expected to be used in connection with a credit transaction.
- (G) "Consumer reporting agency" means any person who:
 - (1) regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee,
 - (2) obtains information primarily from sources other than insurance institutions, and
 - (3) furnishes consumer reports to other persons.
- (H) "Control", including the terms "controlled by" or "under common control with", means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.
- (I) "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.
- (J) "Individual" means any natural person who:

- (1) in the case of property or casualty insurance, is a past, present or proposed named insured or certificateholder;
- (2) in the case of life, health or disability insurance, is a past, present or proposed principal insured or certificateholder;
- (3) is a past, present or proposed policyowner;
- (4) is a past or present applicant;
- (5) is a past or present claimant; or
- (6) derived, derives or is proposed to derive insurance coverage under an insurance policy or certificate subject to this Act.

(K) "Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurer, insurance institution or insurance-support organization, other than:

- (1) an agent,
- (2) the individual who is the subject of the information, or
- (3) a natural person acting in a personal capacity rather than in a business or professional capacity.

(L) "Insurance institution" means any corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance, including health maintenance organizations, medical services plans and hospital service plans as defined in _____, ~~through the applicable sections of the State insurance code which define health maintenance organizations or medical or hospital service plans.~~ "Insurance institution" shall not include agents or insurance-support organizations.

(M) "Insurance-support organization" means

any person who regularly collects, stores, disseminates or in any way makes available information about individuals or groups of individuals for the primary purpose of providing information to an insurance agent for insurance transactions, including:

- (a) the furnishing of ~~credit~~ ~~reports~~ ~~to~~ ~~an~~ ~~insurance~~ ~~institution~~ ~~or~~ ~~agent~~ ~~for~~ ~~use~~ ~~in~~ ~~connection~~ ~~with~~ ~~insurance~~ ~~transactions~~;
- (b) the collection of personal information from insurance institutions, agents or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with underwriting or insurance claim activity.

(2) Notwithstanding subsection (1) above, ~~the following persons shall not be considered "insurance-support organizations" for purposes of this Act:~~ agents, governmental insurance institutions, medical care institutions and medical profes-

(N) "Insurance transaction" means any transaction involving insurance primarily for personal or family needs rather than business or professional needs which entails:

- (1) the determination of an individual's eligibility for insurance coverage, benefit or payment; or
- (2) the processing of an insurance application, policy, contract or certificate.

- (O) "Investigative consumer report" means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances or others who may have knowledge concerning such items of information.
- (P) "Medical-care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to: health-maintenance organizations, home-health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies and skilled nursing facilities.
- (Q) "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a chiropractor, clinical dietitian, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker or speech therapist.
- (R) "Medical-record information" means personal information which:
- (1) relates to an individual's physical or mental condition, medical history or medical treatment, and
 - (2) is obtained from a medical professional or medical-care institution, from the individual, or from the individual's spouse, parent or legal guardian.
- (S) "Person" means any natural person, corporation, association, partnership or other legal entity.
- (T) "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics. "Personal information" includes an individual's name and address and "medical-record information" but does not include "privileged information".
- (U) "Policyholder" means any person who:
- (1) in the case of individual property or casualty insurance, is a present named insured,
 - (2) in the case of individual life, health or disability insurance, is a present policyowner, or
 - (3) in the case of group insurance which is individually underwritten, is a present group certificateholder.
- (V) "Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:
- (1) pretends to be someone he or she is not,
 - (2) pretends to represent a person he or she is not in fact representing,
 - (3) misrepresents the true purpose of the interview, or
 - (4) refuses to identify himself or herself upon request.
- (W) "Privileged information" means any individually identifiable information that:
- (1) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual, and
 - (2) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual;

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provided, however, information otherwise meeting the requirements of this subsection shall nevertheless be considered "personal information" under this Act if it is disclosed in violation of section 13 of this Act.

Drafting Note: The phrase "in reasonable anticipation of a claim" contemplates that the insurance institution has knowledge of a loss but has not received formal notice of the claim.

- (X) "Residual market mechanism" means an association, organization or other entity defined or described in section(s) _____. (Insert those sections of the State insurance code authorizing the establishment of a FAIR Plan, assigned risk plan, reinsurance facility, joint underwriting association, etc.)

Drafting Note: Those states having a reinsurance facility may want to exclude it from this definition if the state's policy is not to disclose to insureds the fact that they have been reinsured in the facility.

- (Y) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.
- (Z) "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the Commissioner to transact the business of insurance in this state.

Drafting Note: Each state must make sure that this definition is consistent with its surplus lines laws.

Section 3. Pretext Interviews.

No insurance institution, agent or insurance-support organization shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction; provided, however, a pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person about whom the information relates for the purpose of investigating a claim where, based upon scientific information available for review by the Commissioner, there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation or material nondisclosure in connection with the claim.

Drafting Note: Some states may desire to eliminate the exception in this section and thereby prohibit pretext interviews in all instances. Other states may desire to broaden the exception so that pretext interviews can be utilized in underwriting and rating situations as well as claim situations. States may either expand or limit the prohibition against pretext interviews suggested in this section to accommodate their individual needs and circumstances. Deviation from the standard developed here should not seriously undermine efforts to achieve uniform rules for insurance information practices throughout the various states.

Section 4. Notice of Insurance Information Practices.

- (A) An insurance institution or agent shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:
- (1) in the case of an application for insurance, a notice shall be provided no later than:
 - (a) at the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records, or
 - (b) at the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;
 - (2) in the case of a policy renewal, a notice shall be provided no later than the policy renewal date, except that no notice shall be required in connection with a policy renewal if:
 - (a) personal information is collected only from the policyholder or from public records, or
 - (b) a notice meeting the requirements of this section has been given within the previous twenty-four (24) months; or
 - (3) in the case of a policy reinstatement or change in insurance benefits, a notice shall be

provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice shall be required if personal information is collected only from the policyholder or from public records.

- (B) The notice required by subsections (A) above shall be in writing and shall state:
- (1) whether personal information may be collected from persons other than the individual or individuals proposed for coverage;
 - (2) the types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;
 - (3) the types of [disclosures] identified in subsections (B), (C), (D), (E), (F), (I), (K), (L) and (N) of section 13 of this Act and the circumstances under which such disclosures may be made without prior authorization; provided, however, only those circumstances need be described which occur with such frequency as to indicate a general business practice;
 - (4) a description of the rights established under sections 8 and 9 of this Act and the manner in which such rights may be exercised; and
 - (5) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.
- (C) In lieu of the notice prescribed in subsection (B), the insurance institution or agent may provide an abbreviated notice informing the applicant or policyholder that:
- (1) personal information may be collected from persons other than the individual or individuals proposed for coverage,
 - (2) such information as well as other personal or privileged information subsequently collected by the insurance institution or agent may in certain circumstances be disclosed to third parties without authorization,
 - (3) a right of access and correction exists with respect to all personal information collected, and
 - (4) the notice prescribed in subsection (B) will be furnished to the applicant or policyholder upon request.
- (D) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

Drafting Note: If permitted under section 4(A), an insurance institution or agent may include the notice in the insurance policy or certificate.

Section 5. Marketing and Research Surveys.

An insurance institution or agent shall clearly specify those questions designed to obtain information solely for marketing or research purposes from an individual in connection with an insurance transaction.

Section 6. Content of Disclosure Authorization Forms.

Notwithstanding any other provision of law of this State, no insurance institution, agent or insurance-support organization may utilize as its disclosure authorization form in connection with insurance transactions a form or statement which authorizes the disclosure of personal or privileged information about an individual to the insurance institution, agent or insurance-support organization unless the form or statement:

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- (A) is written in plain language;
- (B) is dated;
- (C) specifies the types of persons authorized to disclose information about the individual;
- (D) specifies the nature of the information authorized to be disclosed;
- (E) names the insurance institution or agent and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;
- (F) specifies the purposes for which the information is collected;
- (G) specifies the length of time such authorization shall remain valid, which shall be no longer than:
 - (1) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement or a request for change in policy benefits:
 - (a) thirty (30) months from the date the authorization is signed if the application or request involves life, health or disability insurance,
 - (b) one (1) year from the date the authorization is signed if the application or request involves property or casualty insurance;
 - (2) in the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy,
 - (a) the term of coverage of the policy if the claim is for a health insurance benefit,
 - (b) the duration of the claim if the claim is not for a health insurance benefit; and
- (H) advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form.

Drafting Note: The standard established by this section for disclosure authorization forms is intended to supersede any existing requirements a state may have adopted even if such requirements are more specific or applicable to particular authorizations such as medical information authorizations. This section is intended to be the exclusive statutory standard for all authorization forms utilized by insurance institutions, agents or insurance-support organizations. This section does not preclude the inclusion of a disclosure authorization in an application form nor invalidate any disclosure authorizations in effect prior to the effective date of this Act. Nor does this section preclude an insurance institution, agent or insurance-support organization from obtaining, in addition to its own authorization form which complies with this section, an additional authorization form required by the person from whom disclosure is sought.

Section 7. Investigative Consumer Reports.

- (A) No insurance institution, agent or insurance-support organization may prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement or a change in insurance benefits unless the insurance institution or agent informs the individual:
 - (1) that he or she may request to be interviewed in connection with the preparation of the investigative consumer report, and
 - (2) that upon a request pursuant to section 8, he or she is entitled to receive a copy of the investigative consumer report.
- (B) If an investigative consumer report is to be prepared by an insurance institution or agent, the insurance institution or agent shall institute reasonable procedures to conduct a personal interview requested by an individual.

- (C) If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or agent desiring such report shall inform the insurance-support organization whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct such interviews, if requested.

Section 8. Access to Recorded Personal Information.

- (A) If any individual, after proper identification, submits a written request to an insurance institution, agent or insurance-support organization for access to recorded personal information about the individual which is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, agent or insurance-support organization, the insurance institution, agent or insurance-support organization shall within thirty (30) business days from the date such request is received:
- (1) inform the individual of the nature and substance of such recorded personal information in writing, by telephone or by other oral communication, whichever the insurance institution, agent or insurance-support organization prefers;
 - (2) permit the individual to see and copy, in person, such recorded personal information pertaining to him or her or to obtain a copy of such recorded personal information by mail, whichever the individual prefers, unless such recorded personal information is in coded form, in which case an accurate translation in plain language shall be provided in writing;
 - (3) disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, agent or insurance-support organization has disclosed such personal information within two (2) years prior to such request, and if the identity is not recorded, the names of those insurance institutions, agents, insurance-support organizations or other persons to whom such information is normally disclosed; and
 - (4) provide the individual with a summary of the procedures by which he or she may request correction, amendment or deletion of recorded personal information.
- (B) Any personal information provided pursuant to subsection (A) above shall identify the source of the information if such source is an institutional source.
- (C) Medical-record information supplied by a medical-care institution or medical professional and requested under subsection (A), together with the identity of the medical professional or medical care institution which provided such information, shall be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, agent or insurance-support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, agent or insurance-support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional.
- (D) Except for personal information provided under section 10, an insurance institution, agent or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.
- (E) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (A), an insurance institution, agent or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.
- (F) The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation

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of a claim or civil or criminal proceeding involving them.

- (G) For purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency" except to the extent this section imposes more stringent requirements on a consumer reporting agency than other state or federal law.

Section 9. Correction, Amendment or Deletion of Recorded Personal Information.

- (A) Within thirty (30) business days from the date of receipt of a written request from an individual to correct, amend or delete any recorded personal information about the individual within its possession, an insurance institution, agent or insurance-support organization shall either:
- (1) correct, amend or delete the portion of the recorded personal information in dispute; or
 - (2) notify the individual of:
 - (a) its refusal to make such correction, amendment or deletion,
 - (b) the reasons for the refusal, and
 - (c) the individual's right to file a statement as provided in subsection (C).
- (B) If the insurance institution, agent or insurance-support organization corrects, amends or deletes recorded personal information in accordance with subsection (A)(1) above, the insurance institution, agent or insurance-support organization shall so notify the individual in writing and furnish the correction, amendment or fact of deletion to:
- (1) any person specifically designated by the individual who may have, within the preceding two (2) years, received such recorded personal information;
 - (2) any insurance-support organization whose primary source of personal information is insurance institutions if the insurance-support organization has systematically received such recorded personal information from the insurance institution within the preceding seven (7) years; provided, however, that the correction, amendment or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual; and
 - (3) any insurance-support organization that furnished the personal information that has been corrected, amended or deleted.
- (C) Whenever an individual disagrees with an insurance institution's, agent's or insurance-support organization's refusal to correct, amend or delete recorded personal information, the individual shall be permitted to file with the insurance institution, agent or insurance-support organization:
- (1) a concise statement setting forth what the individual thinks is the correct, relevant or fair information, and
 - (2) a concise statement of the reasons why the individual disagrees with the insurance institution's, agent's or insurance-support organization's refusal to correct, amend or delete recorded personal information
- (D) In the event an individual files either statement as described in subsection (C) above, the insurance institution, agent or insurance-support organization shall:
- (1) file the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of the individual's statement and have access to it, and
 - (2) in any subsequent disclosure by the insurance institution, agent or support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter or matters in dispute and provide the individual's statement along with the recorded personal information being disclosed, and

- (3) furnish the statement to the persons and in the manner specified in subsection (B) above.
- (E) The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent or insurance-support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.
- (F) For purposes of this section, the term "insurance-support organization" does not include "consumer reporting agency" except to the extent that this section imposes more stringent requirements on a consumer reporting agency than other state or federal law.

Section 10. Reasons for Adverse Underwriting Decisions.

- (A) In the event of an adverse underwriting decision the insurance institution or agent responsible for the decision shall:
 - (1) either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such person that upon written request he or she may receive the specific reason or reasons in writing, and
 - (2) provide the applicant, policyholder or individual proposed for coverage with a summary of the rights established under subsection (B) and sections 8 and 9 of this Act.
 - (B) Upon receipt of a written request within ninety (90) business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance institution or agent shall furnish to such person within twenty-one (21) business days from the date of receipt of such written request:
 - (1) the specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to subsection (A)(1);
 - (2) the specific items of personal and privileged information that support those reasons; provided, however:
 - (a) the insurance institution or agent shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the Commissioner, that the applicant, policyholder or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation or material nondisclosure, and
 - (b) specific items of medical-record information supplied by a medical-care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution or agent prefers, and
- Drafting Note: The exception in paragraph (10)(B)(2)(a) to the obligation of an insurance institution or agent to furnish the specific items of personal and privileged information that support the reasons for an adverse underwriting decision extends only to information about criminal activity, fraud, material misrepresentation or material nondisclosure that is privileged information and not to all information.
- (3) the names and addresses of the institutional sources that supplied the specific items of information pursuant to subsection (B)(2); provided, however, that the identity of any medical professional or medical-care institution shall be disclosed either directly to the individual or to the designated medical professional, whichever the insurance institution or agent prefers.
- (C) The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

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- (D) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subsection (A) may be given orally.

Section 11. Information Concerning Previous Adverse Underwriting Decisions.

No insurance institution, agent or insurance-support organization may seek information in connection with an insurance transaction concerning:

- (A) any previous adverse underwriting decision experienced by an individual, or
- (B) any previous insurance coverage obtained by an individual through a residual market mechanism,

unless such inquiry also requests the reasons for any previous adverse underwriting decision or the reasons why insurance coverage was previously obtained through a residual market mechanism.

Section 12. Previous Adverse Underwriting Decisions.

No insurance institution or agent may base an adverse underwriting decision in whole or in part:

- (A) on the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism; provided, however, an insurance institution or agent may base an adverse underwriting decision on further information obtained from an insurance institution or agent responsible for a previous adverse underwriting decision;
- (B) on personal information received from an insurance-support organization whose primary source of information is insurance institutions; provided, however, an insurance institution or agent may base an adverse underwriting decision on further personal information obtained as the result of information received from such insurance-support organization.

Section 13. Disclosure Limitations and Conditions.

An insurance institution, agent or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

- (A) with the written authorization of the individual, provided:
- (1) if such authorization is submitted by another insurance institution, agent or insurance-support organization, the authorization meets the requirement of section 6 of this Act, or
- (2) if such authorization is submitted by a person other than an insurance institution, agent or insurance-support organization, the authorization is:
- (a) dated,
- (b) signed by the individual, and
- (c) obtained one (1) year or less prior to the date a disclosure is sought pursuant to this subsection; or
- (B) to a person other than an insurance institution, agent or insurance-support organization, provided such disclosure is reasonably necessary:
- (1) to enable such person to perform a business, professional or insurance function for the disclosing insurance institution, agent or insurance-support organization and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:
- (a) would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization, or

- (b) is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent or insurance-support organization; or
- (2) to enable such person to provide information to the disclosing insurance institution, agent or insurance-support organization for the purpose of:
 - (a) determining an individual's eligibility for an insurance benefit or payment, or
 - (b) detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction; or
- (C) to an insurance institution, agent, insurance-support organization, or self-insurer, provided the information disclosed is limited to that which is reasonable necessary:
 - (1) to detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions, or
 - (2) for either the disclosing or receiving insurance institution, agent or insurance-support organization to perform its function in connection with an insurance transaction involving the individual; or
- (D) to a medical-care institution or medical professional for the purpose of:
 - (1) verifying insurance coverage or benefits,
 - (2) informing an individual of a medical problem of which the individual may not be aware, or
 - (3) conducting an operations or services audit to verify the individuals treated by the medical professional or at the medical-care institution,provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes; or
- (E) to an insurance regulatory authority; or
- (F) to a law enforcement or other governmental authority:
 - (1) to protect the interests of the insurance institution, agent or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it, or
 - (2) if the insurance institution, agent or insurance-support organization reasonably believes that illegal activities have been conducted by the individual; or
- (G) otherwise permitted or required by law; or
- (H) in response to a facially valid administrative or judicial order, including a search warrant or subpoena; or
- (I) made for the purpose of conducting actuarial or research studies, provided:
 - (1) no individual may be identified in any actuarial or research report,
 - (2) materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed, and
 - (3) the actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization; or
- (J) to a party or representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurance institution, agent or insurance-support organization, provided:

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- (1) prior to the consummation of the sale, transfer, merger or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger or consolidation, and
 - (2) the recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance-support organization; or
- (K) to a person whose only use of such information will be in connection with the marketing of a product or service, provided:
- (1) no medical-record information, privileged information, or personal information relating to an individual's character, personal habits, mode of living or general reputation is disclosed, and no classification derived from such information is disclosed,
 - (2) the individual has been given an opportunity to indicate that he or she does not want personal information disclosed for marketing purposes and has given no indication that he or she does not want the information disclosed, and
 - (3) the person receiving such information agrees not to use it except in connection with the marketing of a product or service; or
- (L) to an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service, provided the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons; or
- (M) by a consumer reporting agency, provided the disclosure is to a person other than an insurance institution or agent; or
- (N) to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services, provided the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit; or
- (O) to a professional peer review organization for the purpose of reviewing the service or conduct of a medical-care institution or medical professional; or
- (P) to a governmental authority for the purpose of determining the individual's eligibility for health benefits for which governmental authority may be liable; or
- (Q) to a certificateholder or policyholder for the purpose of providing information regarding the status of an insurance transaction.

Section 14. Power of Commissioner.

- (A) The Commissioner shall have power to examine and investigate into the affairs of every insurance institution or agent doing business in this State to determine whether the insurance institution or agent has been or is engaged in any conduct in violation of this Act.
- (B) The Commissioner shall have the power to examine and investigate into the affairs of every insurance-support organization acting on behalf of an insurance institution or agent which either transacts business in this State or transacts business outside this State that has an effect on a person residing in this State in order to determine whether such insurance-support organization has been or is engaged in any conduct in violation of this Act.

Section 15. Hearings, Witnesses, Appearances, Production of Books and Service of Process.

- (A) Whenever the Commissioner has reason to believe that an insurance institution, agent or insurance-support organization has been or is engaged in conduct in this State which violates this Act, or if the Commissioner believes that an insurance-support organization has been or is engaged in conduct outside this State which has an effect on a person residing in this State and which violates this Act, the Commissioner shall issue and serve upon such

insurance institution, agent or insurance-support organization a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than (insert number) days after the date of service.

- (B) At the time and place fixed for such hearing the insurance institution, agent or insurance-support organization charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the Commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.
- (C) At any hearing conducted pursuant to this section the Commissioner may administer oaths, examine and cross-examine witnesses and receive oral and documentary evidence. The Commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents which are relevant to the hearing. A stenographic record of the hearing shall be made upon the request of any party or at the discretion of the Commissioner. If no stenographic record is made and if judicial review is sought, the Commissioner shall prepare a statement of the evidence for use on the review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this State.
- (D) Statements of charges, notices, orders and other processes of the Commissioner under this Act may be served by anyone duly authorized to act on behalf of the Commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered mail. A copy of the statement of charges, notice, order or other process shall be provided to the person or persons whose rights under this Act have been allegedly violated. A verified return setting forth the manner of service, or return postcard receipt in the case of registered mail, shall be sufficient proof of service.

Section 16. Service of Process—Insurance-Support Organizations.

For the purpose of this Act, an insurance-support organization transacting business outside this State which has an effect on a person residing in this State shall be deemed to have appointed the Commissioner to accept service of process on its behalf, provided the Commissioner causes a copy of such service to be mailed forthwith by registered mail to the insurance-support organization at its last known principal place of business. The return postcard receipt for such mailing shall be sufficient proof that the same was properly mailed by the Commissioner.

Section 17. Cease and Desist Orders and Reports.

- (A) If, after a hearing pursuant to section 15, the Commissioner determines that the insurance institution, agent or insurance-support organization charged has engaged in conduct or practices in violation of this Act, the Commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon such insurance institution, agent or insurance-support organization a copy of such findings and an order requiring such insurance institution, agent or insurance-support organization to cease and desist from the conduct or practices constituting a violation of this Act.
- (B) If, after a hearing pursuant to section 15, the Commissioner determines that the insurance institution, agent or insurance-support organization charged has not engaged in conduct or practices in violation of this Act, the Commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the insurance institution, agent or insurance-support organization charged and upon the person or persons, if any, whose rights under this Act were allegedly violated.
- (C) Until the expiration of the time allowed under section 19 of this Act for filing a petition for review or until such petition is actually filed, whichever occurs first, the Commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed under section 19 of this Act for filing a petition for review, if no such petition has been duly filed, the Commissioner may, after notice and opportunity for hearing, alter, modify or set aside, in whole or in part, any order or report issued under this section whenever conditions of fact or law warrant such action or if the public interest so requires.

Section 18. Penalties.

- (A) In any case where a hearing pursuant to section 15 results in the finding of a knowing violation of this Act, the Commissioner may, in addition to the issuance of a cease and desist order as prescribed in section 17, order payment of a monetary penalty of not more than (\$500) for each violation but not to exceed (\$10,000) in the aggregate for multiple violations.
- (B) Any person who violates a cease and desist order of the Commissioner under section 17 of this Act may, after notice and hearing and upon order of the Commissioner, be subject to one or more of the following penalties, at the discretion of the Commissioner:
 - (1) a monetary fine of not more than (\$10,000) for each violation,
 - (2) a monetary fine of not more than (\$50,000) if the Commissioner finds that violations have occurred with such frequency as to constitute a general business practice, or
 - (3) suspension or revocation of an insurance institution's or agent's license.

Section 19. Judicial Review of Orders and Reports.

- (A) Any person subject to an order of the Commissioner under section 17 or section 18 or any person whose rights under this Act were allegedly violated may obtain a review of any order or report of the Commissioner by filing in the (insert title) court of (insert county) county, within (insert number) days from the date of the service of such order or report, a written petition requesting that the order or report of the Commissioner be set aside. A copy of such petition shall be simultaneously served upon the Commissioner, who shall forthwith certify and file in such court a transcript of the entire record of the proceeding giving rise to the order or report which is the subject of the petition. Upon filing of the petition and transcript the (insert title) court shall have jurisdiction to make and enter a decree modifying, affirming or reversing any order or report of the Commissioner, in whole or in part. The findings of the Commissioner as to the facts supporting any order or report, if supported by clear and convincing evidence, shall be conclusive.
- (B) To the extent an order or report of the Commissioner is affirmed, the court shall issue its own order commanding obedience to the terms of the order or report of the Commissioner. If any party affected by an order or report of the Commissioner shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to produce such evidence in prior proceedings, the court may order such additional evidence to be taken before the Commissioner in such manner and upon such terms and conditions as the court may deem proper. The Commissioner may modify his or her findings of fact or make new findings by reason of the additional evidence so taken and shall file such modified or new findings along with any recommendation, if any, for the modification or revocation of a previous order or report. If supported by clear and convincing evidence, the modified or new findings shall be conclusive as to the matters contained therein.
- (C) An order or report issued by the Commissioner under sections 17 or 18 shall become final:
 - (1) upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the Commissioner may modify or set aside an order or report to the extent provided in section 17(C), or
 - (2) upon a final decision of the (insert title) court if the court directs that the order or report of the Commissioner be affirmed or the petition for review dismissed.
- (D) No order or report of the Commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order or report from any liability under any law of this State.

Section 20. Individual Remedies.

- (A) If any insurance institution, agent or insurance-support organization fails to comply with

sections 8, 9 or 10 of this Act with respect to the rights granted under those sections, any person whose rights are violated may apply to the (insert title) court of this State, or any other court of competent jurisdiction, for appropriate equitable relief.

- (B) An insurance institution, agent or insurance-support organization which discloses information in violation of section 13 of this Act shall be liable for damages sustained by the individual about whom the information relates; provided, however, that no individual shall be entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of section 13 of this Act.
- (C) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.
- (D) An action under this section must be brought within two years from the date the alleged violation is or should have been discovered.
- (E) Except as specifically provided in this section, there shall be no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provisions of this Act.

Section 21. Immunity.

No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this Act, nor shall such a cause of action arise against any person for furnishing personal or privileged information to an insurance institution, agent or insurance-support organization; provided, however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

Section 22. Obtaining Information Under False Pretenses.

Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent or insurance-support organization under false pretenses shall be fined not more than (\$10,000) or imprisoned for not more than one (1) year, or both.

Section 23. Severability.

If any provisions of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 24. Effective Date.

- (A) This Act shall take effect on (insert a date which allows at least a one (1) year interval between the date of enactment and the effective date).
- (B) The rights granted under sections 8, 9 and 13 of this Act shall take effect on (insert effective date) regardless of the date of the collection or receipt of the information which is the subject of such sections.

Legislative History (all references are to Proceedings of the NAIC)

1980 NAIC Proc. I

1980 Proc. II

(14) miscellaneous: insurance against any other kind of loss, damage, or liability properly a subject of insurance and not within another kind of insurance as defined in this chapter, if the insurance is not disapproved by the director as being contrary to law or public policy.

(b) Provision of medical, hospital, surgical, and funeral benefits, and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under (a) (1), (2), (4), and (10) of this section, shall for all purposes be considered to be the same kind of insurance to which it is incidental, and shall not be subject to provisions of this title applicable to life or disability insurances. (§ 1 ch 120 SLA 1966)

ALR references.—Validity of auto- ALR 377; 13 ALR 135; 19 ALR 879; mobile liability insurance policy, 6 23 ALR 879; 41 ALR 508.

Sec. 21.12.080. Surety insurance defined. Surety insurance includes

(1) fidelity insurance, which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) insurance guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) insurance indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against loss, resulting from any cause, of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts or other valuable papers, documents, money, precious metals and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, precious and semiprecious stones, including loss while being transported in armored motor vehicles or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to an insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein, caused by burglary, robbery, theft, vandalism, or malicious mischief, or attempted burglary, robbery, theft, vandalism, or malicious mischief. (§ 1 ch 120 SLA 1966)

Am. Jur. and C.J.S. references.—

29 Am. Jur., Suretyship, § 324 et seq.

44 C.J.S. Insurance § 891.

Sec. 21.12.090. Marine, wet marine and transportation insurance defined. (a) "Marine insurance" includes

(1) insurance against any and all kinds of loss or damage to

(A) vessels, craft, aircraft, cars, automobiles and vehicles of every kind, as well as all goods, freights, cargoes, merchandise, effects, disbursements, profits, money, bullion, precious stones, securities, choses in action, evidences of debt, valuable papers, bottomry and respondentia interests and all other kinds of prop-

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1 THE PROPOSED ALASKA CORPORATIONS CODE: AN OVERVIEW
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4 The Need for Revision: The current Alaska Business
5 Corporations Act (ABCA) was adopted in 1957. It was a copy of
6 the then existing corporations code in the State of Oregon which
7 was, in turn, a version of the Model Business Corporation Act.
8 The Model Act, or MBCA, was drafted by the business law section
9 of the American Bar Association and has been adopted, in whole or
10 in part, by more than half of the states. It is thus evident
11 that it is a "general" statute which has been drawn up without
12 regard to the economic, physical, or social conditions which may
13 require attention in any specific state. The Model Act went
14 through major revisions in 1962 and 1969 and experienced lesser
15 changes in 1973 and 1977. This activity is suggestive of the
16 fact that business problems and the climate of their legal
17 regulation are not static. While there have been occasional
18 amendments to the Alaska code, there has been no attempt to react
19 to the significant changes in the Model Act which have been
20 recommended since that time.

21 In the nearly thirty years since the ABCA's enactment other
22 jurisdictions have devoted substantial energy to rethinking and
23 redrafting the content of their corporate laws. Delaware, New
24 York, and California have evolved approaches which may prove more
25 attractive to Alaskans than either the historical or current