

ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672

4813 HLAB HB 218 - HB 227

385

It is my hope that the center use the income from the \$5,000,000 for operations in future years, negating the need for further appropriations from the general fund. The substantive measure also provides that the center may charge fees for services it provides to those other than the state, and although these program receipts must, by law, be deposited in the general fund, I will urge future legislatures to appropriate these receipts to the center in order to guarantee sufficient funding to sustain its operations.

The Alaska Center for International Business represents one component of the state's efforts to promote economic development and international trade. The center's programs will be coordinated with those of the Department of Commerce and Economic Development (DCED) and the Office of International Trade. I am also proposing, through the budget process, to rejuvenate the economic development advocates program in DCED; to increase funding in conjunction with the affected industries for both the Alaska Seafood Marketing Institute and the division of tourism in DCED; and to enhance the programs of the Office of International Trade (Alaska Foreign Offices), as well as moving it to the Governor's Office to heighten its visibility in the international business community. We are also planning to extend the technical assistance provided by the Small Business Development Centers through the field offices of the Department of Community and Regional Affairs (DCRA), in order to reach nascent entrepreneurs throughout Alaska. In addition, Commissioner Smith, DCED, is working closely with the legislature to assure passage of SB 64, which would allow the Alaska Industrial Development Authority to offer export financing. And, finally, I will shortly be offering a proposal to initiate a pilot program of applied scientific research, which will be designed to meet the basic information needs of Alaska industries and to leverage funds available from the federal government and private sources.

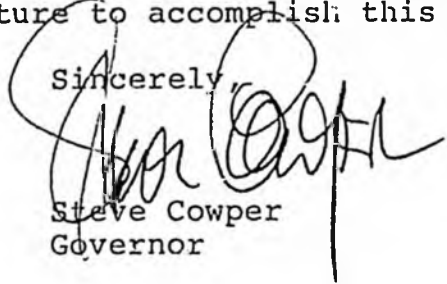
The efforts of all of these entities, as well as of any other state agencies that have an interest in a particular international trade project, or unique expertise, will be integrated into a trade promotion program designated as "Trade Alaska." We are working with many Alaskans who share an interest in trade in order to devise goals and specific activities that will best meet the needs of the private sector as well as our public policy objective of broadening the state's economic base.

It should be understood that government in isolation from society can't create wealth. Creating wealth is a matter of

private initiative. What government can do is make information available about opportunities, help solve technical problems through basic and applied research, identify barriers that impede our opportunities for trade and development, educate our people in order to give them the skills to compete in the international marketplace, and generally promote a social climate that is attractive to business.

I believe that the Alaska Center for International Business, as well as the other initiatives I have outlined, will help us achieve our goal of economic prosperity independent of the fluctuations of world commodity prices. I look forward to working with the legislature to accomplish this goal.

Sincerely,



Steve Cowper
Governor

**STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE**

No. 1

REQUEST:

Bill Version : HB 218
Publish Date : HOUSE 3/27/87

Revision Date: _____
Title: An Act Creating the Alaska Center
for International Business
Sponsor: Rules
Requestor: Governor

Agency Affected: Univ. of Alaska
BRU: So. Central University and
Community College
Components: Ak. Center for International
Business

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES		0	0	0	0	0
TRAVEL		0	0	0	0	0
CONTRACTUAL		0	0	0	0	0
SUPPLIES		0	0	0	0	0
EQUIPMENT		0	0	0	0	0
LAND & STRUCTURES		0	0	0	0	0
GRANTS, CLAIMS		0	0	0	0	0
MISCELLANEOUS		0	0	0	0	0
TOTAL OPERATING		0	0	0	0	0

CAPITAL		0	0	0	0	0
---------	--	---	---	---	---	---

REVENUE						
---------	--	--	--	--	--	--

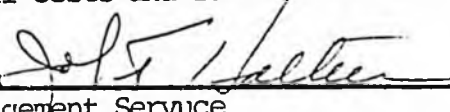
FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL		0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary) The University has included the ACIB in its current budget proposal. Future spending will be from the University Foundation. This additional appropriation will supplement the budget request to defray organizational costs and fund the centers staff.

Prepared by: John Halteman  Phone: 465-3568
Division: Audit and Management Service Date: 3/25/87

Approved by Commissioner: _____ Date: _____
Agency: _____

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

Alaska State Legislature

House of Representatives



Labor and Commerce Committee

March 18, 1987

M E M O R A N D U M

To: Members, House Labor and Commerce Committee

From: Representative Dave Donley, Chair
House Labor and Commerce Committee

Re: Bill Draft #2 - amendments to "happy hour" law

This measure was introduced in response to the liquor and cabaret industry request to address needed changes in the "happy hour" legislation adopted in 1986.

Under the "happy hour" law a license holder for premises where liquor is sold by the glass is prohibited from offering free drinks as a marketing device to the general public or from offering discounted drinks at specific times as a promotional device (traditional "happy hours").

Bill draft #2 clarifies circumstances where the set price for drinks may change, such as increasing the price when entertainment begins, and separates the responsibilities of the license holders from the possible actions of their patrons (i.e. a license holder may not promote a game where the prize is alcohol, but they are not responsible if their patrons are having a private wager among themselves).



UNIVERSITY OF ALASKA, ANCHORAGE

3211 Providence Drive
Anchorage, Alaska 99508

ALASKA CENTER FOR
INTERNATIONAL BUSINESS

ORGANIZATION
AND
IMPLEMENTATION PLAN
FOR
ALASKA CENTER FOR INTERNATIONAL BUSINESS

Submitted to

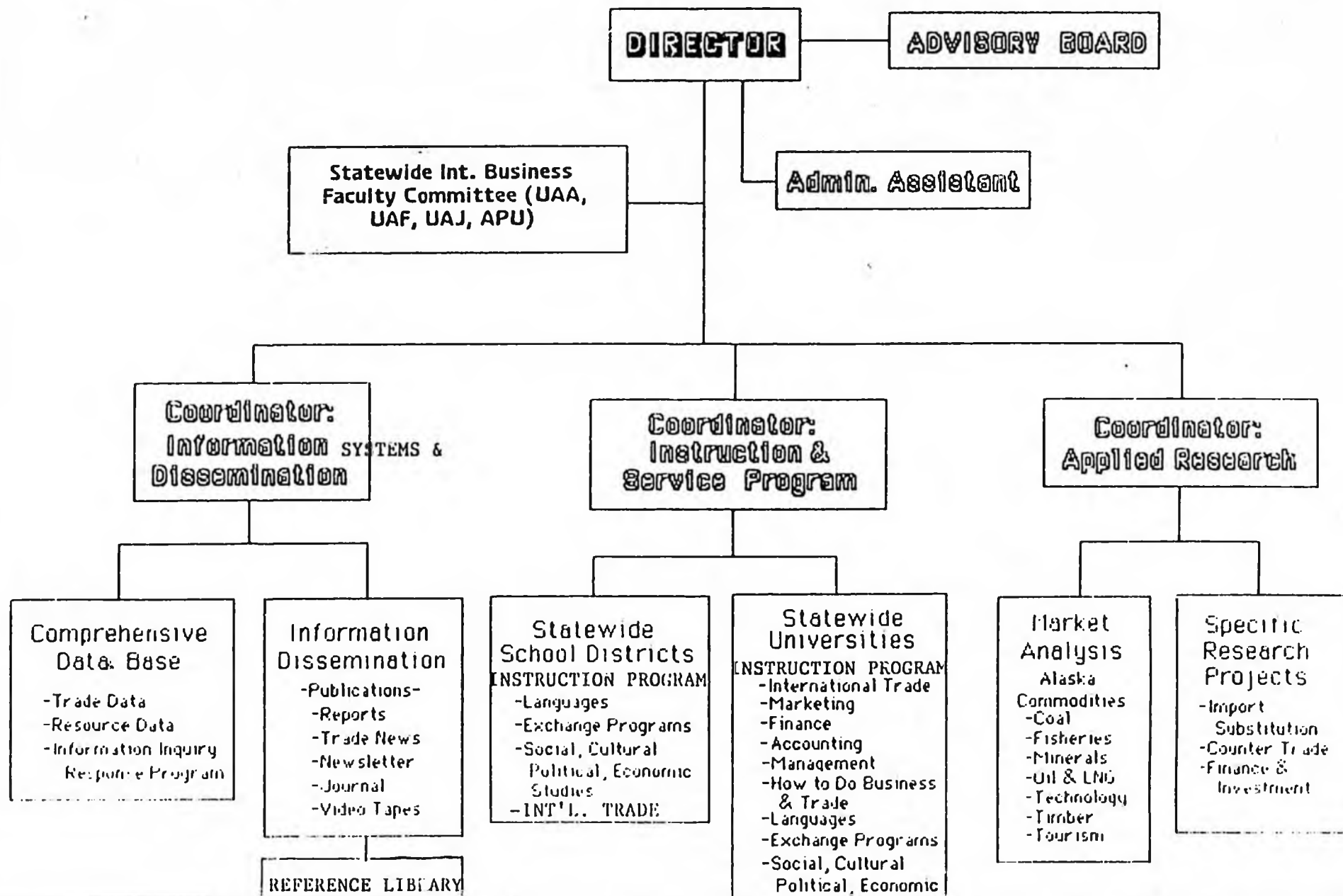
The Honorable Steve Cowper
Governor of the State of Alaska

by

John Choon K. Kim, Ph.D., Director
Alaska Center for International Business

March 6, 1987

UNIVERSITY OF ALASKA
ALASKA CENTER FOR INTERNATIONAL BUSINESS





UNIVERSITY OF ALASKA, ANCHORAGE

3211 Providence Drive
Anchorage, Alaska 99578

ALASKA CENTER FOR
INTERNATIONAL BUSINESS

THE ALASKA CENTER FOR INTERNATIONAL BUSINESS (ACIB)

Mission Statement

The primary mission of the Center is to facilitate the development of sound business and economic relationships with nations of the Asia-Pacific region and other nations of the world, thus directly helping the State of Alaska to diversify its economy and to expand its economic base through international trade.

In carrying out the mission, four objectives are identified:

1. To carry out research in both opportunities for and barriers to the development of international markets by examining issues such as the short and long-run demand/supply projections for specific commodity groups (such as fisheries, timber, petroleum, coal, minerals, technologies, and tourism), research our Alaska competitors in the Pacific Rim to identify competitive cost structures, protective government actions, etc., and research our appropriate marketing strategies and opportunities for foreign direct investment.
2. To provide members of business and government, through instructions and training, the specific skills and techniques needed for doing business with nations in the Asia-Pacific region and other regions of the world.
3. To foster a better understanding of business and economic relationships between Alaska and Asia-Pacific nations by training teachers and students of public schools and universities throughout the State in languages, cultures, political, social and economic systems (Pacific Rim Studies).
4. To establish a comprehensive computerized data base for the acquisition, analysis, and dissemination of information specifically related to international markets, and Alaska resources and economic conditions.

Organization and Task Structure for the Statewide Mission

The Alaska Center for International Business (ACIB), headquartered at the Anchorage Campus of the University of Alaska, shall operate under the direction of the seven member Advisory Board appointed by the Governor and the President of the University of Alaska. Prominent international members may be appointed to the Board when it deems necessary. The Director is charged with operations of the Center.

A Statewide International Business Faculty Committee (UAA, UAJ, UAF, APU, and others) shall be formed to assist the Director in developing information systems, instructional and service programs, and research programs.

Mission Statement, Pg. 2

In order to achieve the Center's mission and objectives, the Center is structured around three major program components: Applied Research, Instruction and Service, and Information Systems and Dissemination. A Coordinator will be charged with operations of each program. Five core international business faculty members shall be primarily committed to the Center's programs.

1. Applied Research

Under the applied research program, the Research Coordinator will be charged with organizing a number of research teams along with the Center's core faculty members and research fellows drawn from a Statewide talents pool of University of Alaska system (UAA, UAF, UAJ), Alaska Pacific University, state and federal agencies, and other research organizations. Each team, in cooperation with researchers of Pacific Rim countries, shall be assigned to conduct either market studies for Alaska's resource groups (Petroleum, coal, timber, fisheries, minerals, technologies, and Tourism) or a specific research project (such as counter-trade, import substitution, investment opportunities and barriers in Alaska, or opportunities for and barriers to trade development). The Coordinator will also be charged with developing research proposals for funding from State, local, and federal agencies, foundations, private firms, and other countries. Research Associates and/or Research Assistants shall be assigned to each research project. In addition to the Research Coordinator and the core faculty members, the applied research component will be comprised of five Research Associates and ten Research Assistants.

2. Instruction and Service

The instructional and service program deals with a wide range of audiences. The Coordinator will be charged with developing and providing the following three major programs:

- a) Pacific Rim studies for the State's school districts;
- b) Pacific Rim studies for universities and colleges; and
- c) professional development and training for business people, government officials, and faculty.

In implementing the first program, the Center shall coordinate with school district(s) and a regional university or college to offer Pacific Rim curriculum for school teachers and students' training in languages (Japanese, Chinese, Korean), culture, history, social-political-economic-legal systems, and international trade and business. A regional university or college shall be awarded funds in delivering the curriculum through regular or intensive modes and/or through a summer school program. The Center shall also provide opportunities for student and teacher exchanges between Alaska and nations in the Asia-Pacific region.

Mission Statement, Pg. 3

For the implementation of the second program, universities shall offer regular and/or intensive courses on international marketing, international finance and banking, international business management, international trade, international accounting, international economics, and courses in languages (Chinese, Japanese, Korean), culture, history, socio-political, economic-legal systems. Programs for English as a second language shall also be strengthened by allocating more funds. Students and faculty members shall be exchanged between Alaska and nations in the Asia-Pacific region under the Governor's Pacific-Rim Fellows Program and other agreements. The Center shall operate international business summer schools in Alaska and in the Asia-Pacific nations each year.

In implementing the professional training and development, the Center shall conduct workshops, seminars, symposia, and intensive courses for Alaska business and government leaders on important international trade topics and/or "how to do business with the Asia-Pacific nations," and for business and government leaders of the Asia-Pacific nations on "how to do business in Alaska and the U.S." The Center shall also arrange faculty, business and government executive seminar exchanges between Alaska and the Asia-Pacific nations.

All these instructional and service programs shall be offered by the Center's core faculty, faculty and/or experts drawn from the Statewide talents pool of the University of Alaska system, APU, State-local-federal agencies, national or international visiting fellows, and the Governor's Distinguished Fellows. The Center shall establish the Governor's Distinguished International Business Scholar-in-Residence, the Governor's Distinguished Executive-in-Residence, and the Governor's Distinguished Corporate Executive-in-Residence. Telecommunication systems, video-tapes, and films shall also be used for delivering instructions.

3. Information Systems and Dissemination

The coordinator will be charged with developing and maintaining a comprehensive data base (acquisition and analysis) and disseminating information to state government, business community, universities, and interested public.

Information systems contain quantitative data on commodity and nation's specific trade flows and other market information relative to Asia-Pacific nations, and information on Alaska's resources and commodities relative to potential Asia-Pacific markets, and they include information inquiry response programs.

Information shall be disseminated through publications such as reports, trade news, newsletters, journals, video-tapes, and films, etc.

The Center shall also have an international trade reference library that will contain information on:

- a) Alaska resources, goods and service of potential interest to Asia-Pacific market potential;

Mission Statement, Pg. 4

- b) trade and market information focusing on Pacific-Rim nations' markets and business practices; and
- c) reference materials focusing on international trade and business services provided by governmental agencies, businesses, and other organizations.

In Summary

For the implementation of the Governor's goals and the Center's mission, the Center will be comprised of:

- a) Five core international business faculty members including the Director.
- b) A number of faculty members and experts drawn from the Statewide talents pool.
- c) Seven research associates (two for data base and dissemination, and five for applied research).
- d) Ten to twelve research assistants (based on needs on each campus).
- e) Governor's Distinguished Fellows and other visiting fellows.

The interest earnings of the \$5 million endowment may not be sufficient enough to support all the needed staff to perform the Center's tasks. The Center is committed to raise more endowment funds, to bring research funds, and to raise other funds from many sources, such as federal, state, local agencies, private firms, foundations, foreign nations, and individual contributions.

Mission Statement, Pg. 5

Immediate Action Plan Facilitating Implementation of the Governor's Goals and the Center's Mission

1. Conducting seven one-day workshops (or brainstorming sessions) for Alaska resource commodity groups (petroleum, coal, fisheries, timber, minerals, technologies and tourism) between April and May.

a) Participation for each commodity group (approximately 15-20):

- Governor's Office
- State agencies, such as DCED, DNR, DF&G, ASMI, etc.
- Federal agencies
- Industry Representatives and/or commodity owners
- Native village and regional corporations
- Universities
- Research organizations
- Experts

b) Things to accomplish:

- Networking and establishing a Statewide talent pool.
- Assessing the needs for trade development of a specific commodity group.
- Identifying major needs for information, research and instructional services.
- Prioritize programs for fulfilling the needs through participants' consensus.
- Exploring various ways for implementation.

2. Conduct a one-day workshop for information systems and dissemination (in April).

a) Participants (approximately 15-20):

- Governor's Office
- State, local and federal agencies
- Industry representatives
- Data-base firms
- Universities and computer centers
- Research organizations
- Experts in information systems
- Native village and regional corporations

b) Things to accomplish:

- Networking and establishing a statewide talent pool.
- Needs assessment for international trade and resource data.
- Identifying major needs and prioritizing them through participants' consensus.
- Exploring various ways to implement programs.

Mission Statement, Pg. 6

3. Evaluating faculty resources in international business and trade and the current Pacific Rim programs on each campus of the University of Alaska system and Alaska Pacific university for establishing a Statewide talent pool.
4. Establishing close working relationships between the Center and resource programs within the University of Alaska system, such as fisheries, telecommunications, mining, agriculture, and other technological areas.
5. Conduct one-day workshop focusing on opportunities of rural Alaskan participation in Pacific Rim trade.
6. Conducting two one-day workshops for Pacific Rim Studies curriculum development for school districts and for universities.
 - a) Participants:
 - Each school district's curriculum development representative(s).
 - Teachers and faculty members who are involved in Pacific Rim studies or are interested in the field.
 - b) Things to accomplish:
 - Networking and establishing a Statewide talent pool.
 - Identifying major needs in each region.
 - Developing and prioritizing projects and activities to fulfill the needs through the participants' consensus.
 - Exploring the ways to implement them successfully.

HB

222

(7)

HOUSE COMMITTEE REPORT

Date referred: 3/27/87

FURTHER REFERRALS: Finance

DATE: 4/7/87

The Labor & Commerce Committee has considered HB 222

"An Act relating to occupational licensing; and providing for an effective date."

RECOMMENDS:

- replace with _____ the same title
- attached amendment(s) a new title
- do pass
- do not pass
- no recommendation
- individual recommendations
- additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s):

- fiscal impact same as previous fiscal note published _____
- zero fiscal note same as previous zero fiscal note published _____
- zero with analysis

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

Alto Kopona

Ellis

Cliff Davidson

Sam Merrimack

Walt Fournace

Dave Donley

Dave Donley

 Chairman's signature

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

May, 1988

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

HL+C

4-7-87

1:30 p.m.

HB 222: An Act relating to occupational licensing and providing for an effective date.

The House Labor and Commerce committee submitted this legislation at the request of the Department of Commerce and Economic Development. The department is interested in streamlining procedures for the boards regulated by the Division of Occupational Licensing under the Centralized Licensing Code AS 08.01.

Because each of these boards has been created by separate legislative action, there exists no standardization in board membership, terms of office, duties, renewal dates, and enforcement powers. The purpose of this bill is to provide that standardization.

There are three very significant changes that this bill institutes. The first is the standardization of license renewal. Under the provisions of this bill, all licenses would be renewed on a biennial basis. Last year, the Legislature authorized the division to set fees for licenses at rates that would make occupational licensing self-supporting. However, with eight boards renewing their licenses on a quadrennial basis, the division can only be self-supporting over the average of four years. Biennial renewal will allow the division to be self-supporting on an annual basis.

The second major change alters the disciplinary powers of the boards. Again as each board was created by separate legislative action, there is a variance in the powers that the individual boards have. This bill would standardize and increase the sanctions boards can utilize in disciplining incompetent or dishonest professionals. New provisions added which are not currently utilized by boards are:

- (a)(5) require a licensee to submit to peer review
- (8) impose a civil fine not to exceed \$5,000.00
- (e) A board may accept the voluntary surrender of a license

These provisions will increase the enforcement capability of the boards and provide less expensive and time-consuming means of disciplining licensees when license revocation or suspension is not warranted.

The third change gives the department the authority to issue citations for unlicensed activity. Currently, the department can issue Cease and Desist Orders administered in accordance with the Administrative Procedure Act. This is a time-consuming and expensive process and it is not uncommon for the process to drag on for a year. In FY 86, a total of 19 Cease and Desist Orders were issued. The citations will require a prompt mandatory court appearance and penalty fees for each continued day of unlicensed activity.

7178t
05487b

HB 222 - "OMNIBUS" LICENSING ACT:

HB 222 was introduced by the House Labor and Commerce Committee on the request of the Division of Occupational Licensing in DCED.

HB 222 puts all boards and commissions on a bi-annual licensing renewal system. It increases penalties for non-licensed practice and substantially increases the disciplinary powers of all boards to more effectively police their own practitioners. The measure also cleans up numerous technical problems in existing statutes.

The Finance CS made one change on page one, requiring that a board members has to have three or more unexcused absences before it is grounds for dismissal.

HB 222 is a critical part of the Governor's overall budget balancing plan in that the bi-annual renewal system will assure that the Division has a constant flow of program receipts to fund their operations.

The measure also increases the effectiveness of Boards as consumer protection advocates and as regulators of licensed professions in Alaska.

The measure passed the House L&C and Finance Committee unanimously. It has a zero fiscal note.

It needs to pass this year!

HB 222: "An act relating to occupational licensing, and providing for an effective date."

HB 222 provides for miscellaneous amendments to the centralized licensing act (AS 08.01) and to various regulatory board statutes to bring them into compliance with the amendments to AS 08.01. The intent of the proposals is to standardize board membership, terms of office, duties, renewal dates and enforcement powers and are primarily housekeeping amendments. Three of the proposals, however, are substantive.

Section 6. Disciplinary Powers of Boards not only standardizes but increases the sanctions boards can utilize in disciplining incompetent or dishonest professionals. The new provisions, which are not currently utilized by any boards, are:

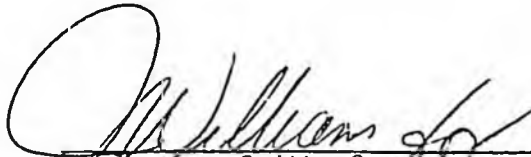
- (a)(5) require a licensee to submit to peer review
- (8) impose a civil fine not to exceed \$5,000.00
- (e) A board may accept the voluntary surrender of a license.

These provisions will increase the enforcement capability of the boards and provide less expensive and time-consuming means of disciplining licensees when license revocation or suspension is not warranted.

Section 7. License Renewal permits the department to renew all occupations on a biennial basis in order to even out the revenue collected from year to year. Currently, eight boards renew their licenses every four years. Although the average revenue collected over a four-year period is sufficient to cover the costs of operating the division from year to year, the revenue varies from year to year to the extent that expenditures are not covered by licensing fees. Biennial renewals will also insure that fees collected can be adjusted on a more timely basis when there are severe fluctuations in the economy.

Section 10. Citation for Unlicensed Practice gives the department the authority to issue citations for unlicensed activity. Currently, the department can issue cease and desist orders which allow for hearings under the Administrative Procedures Act. This is a time consuming and expensive process. Citations, on the other hand, require a mandatory court appearance and penalty fees for each continued day of unlicensed activity.

In summary, the department supports any efforts at increasing the effectiveness and efficiency of the enforcement capability of the regulatory boards.



J. Anthony Smith, Commissioner
Department of Commerce and Economic
Development

4/3/87

Date

HB

227

OFFICIAL N.A.I.C. MODEL INSURANCE LAWS REGULATIONS and GUIDELINES

PUBLISHED BY ~~NARS~~ CORPORATION
UNDER THE AUSPICES OF

THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS



EST
1871

- DOL w/c position
- success in other states

Tennessee
RI / Virginia
Maine / Maryland / Massachusetts / New York / New Jersey

VOLUME I

**PRIVATE EMPLOYER WORKERS' COMPENSATION GROUP
SELF-INSURANCE MODEL ACT**

Table of Contents

Section 1.	Scope
Section 2.	Definitions
Section 3.	Authority
Section 4.	Qualification for Approval
Section 5.	Certificate of Approval; Termination
Section 6.	Examinations
Section 7.	Board of Trustees: Membership, Powers, Duties, Prohibitions
Section 8.	Group Membership; Termination; Liability
Section 9.	Service Companies
Section 10.	Licensing of Agents
Section 11.	Financial Statements and Other Reports
Section 12.	Taxes
Section 13.	Fees and Assessments
Section 14.	Misrepresentation Prohibited
Section 15.	Investments
Section 16.	Rates and Reporting of Rates
Section 17.	Refunds
Section 18.	Premium Payment; Reserves
Section 19.	Deficits and Insolvencies
Section 20.	Guaranty Mechanism
Section 21.	Monetary Penalties
Section 22.	Cease and Desist Orders
Section 23.	Revocation of Certificate of Approval
Section 24.	Notice and Hearings
Section 25.	Rules and Regulations
Section 26.	Severability Clause

Section 1. Scope.

The provisions of this Act shall apply to workers' compensation self-insurance groups. This Act shall not apply to public employees or governmental entities. Groups which are issued a certificate of approval by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the insurance laws and regulations except as otherwise provided herein.

Section 2. Definitions.

- A. "Administrator" means an individual, partnership or corporation engaged by a workers' compensation self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day to day management of the group.
- B. "Commissioner" means the Commissioner of Insurance.

Drafting Note: See Discussion on the regulation of groups by either the insurance department or workers' compensation agency on pp. 72-75 in the NAIC Study Committee report.

- C. "Insolvent" or "Insolvency" means the inability of a workers' compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

CORRECTION

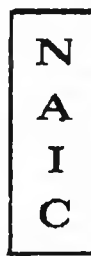
**THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY**

HB 227

OFFICIAL N.A.I.C. MODEL INSURANCE LAWS REGULATIONS and GUIDELINES

PUBLISHED BY NAIRS CORPORATION
UNDER THE AUSPICES OF

THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS



EST
1871

- DOL w/c position
- success in other states

Tennessee
RI / Virginia
Maine / Maryland / Missouri / Arizona / New York / New Jersey

VOLUME I

OFFICIAL N.A.I.C. MODEL LAWS, REGULATIONS and GUIDELINES

Copyright 1977 by
NIARS Corporation and
the
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS
All rights reserved.

Library of Congress Catalog Card NO. 77-76602

International Standard Book NO. 0-9601244-1-X

The information contained in this publication has been compiled from the official Proceedings of the National Association of Insurance Commissioners (NAIC) and other sources and is, in the opinion of the publisher, an accurate representation of the current position of the NAIC.

Tabulations of apparent individual state positions with respect to the various models have been compiled from reliable sources and each state has been contacted in an attempt to verify the state's position. Because state positions frequently change, the publisher cannot guarantee that the tabulations of apparent regulatory postures represent the "official position" of the several states.

No part of this publication may be reproduced or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise without the prior written permission of the publisher.

Prepared by NIARS Corporation in cooperation with
the
NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS

Thomas C. Billig, Editor and Publisher

Del Sachwitz, Senior Editor

NIARS Corporation
8120 Penn Avenue South
Minneapolis, Minnesota 55431
(612) 884-8600

**PRIVATE EMPLOYER WORKERS' COMPENSATION GROUP
SELF-INSURANCE MODEL ACT**

Table of Contents

Section 1.	Scope
Section 2.	Definitions
Section 3.	Authority
Section 4.	Qualification for Approval
Section 5.	Certificate of Approval; Termination
Section 6.	Examinations
Section 7.	Board of Trustees; Membership, Powers, Duties, Prohibitions
Section 8.	Group Membership; Termination; Liability
Section 9.	Service Companies
Section 10.	Licensing of Agents
Section 11.	Financial Statements and Other Reports
Section 12.	Taxes
Section 13.	Fees and Assessments
Section 14.	Misrepresentation Prohibited
Section 15.	Investments
Section 16.	Rates and Reporting of Rates
Section 17.	Refunds
Section 18.	Premium Payment; Reserves
Section 19.	Deficits and Insolvencies
Section 20.	Guaranty Mechanism
Section 21.	Monetary Penalties
Section 22.	Cease and Desist Orders
Section 23.	Revocation of Certificate of Approval
Section 24.	Notice and Hearings
Section 25.	Rules and Regulations
Section 26.	Severability Clause

Section 1. Scope.

The provisions of this Act shall apply to workers' compensation self-insurance groups. This Act shall not apply to public employees or governmental entities. Groups which are issued a certificate of approval by the commissioner shall not be deemed to be insurers or insurance companies and shall not be subject to the provisions of the insurance laws and regulations except as otherwise provided herein.

Section 2. Definitions.

- A. "Administrator" means an individual, partnership or corporation engaged by a workers' compensation self-insurance group's board of trustees to carry out the policies established by the group's board of trustees and to provide day to day management of the group.
- B. "Commissioner" means the Commissioner of Insurance.

Drafting Note: See Discussion on the regulation of groups by either the insurance department or workers' compensation agency on pp. 72-75 in the NAIC Study Committee report.

- C. "Insolvent" or "Insolvency" means the inability of a workers' compensation self-insurance group to pay its outstanding lawful obligations as they mature in the regular course of business, as may be shown either by an excess of its required reserves and other liabilities over its assets or by its not having sufficient assets to reinsure all of its outstanding liabilities after paying all accrued claims owed by it.

- D. "Net premium" means premium derived from standard premium adjusted by any advance premium discounts.
- E. "Service company" means a person or entity which provides services not provided by the administrator, including but not limited to, (a) claims adjustment, (b) safety engineering, (c) compilation of statistics and the preparation of premium, loss and tax reports, (d) preparation of other required self-insurance reports, (e) development of members' assessments and fees, and (f) administration of a claim fund.
- F. "Standard premium" means the premium derived from the manual rates adjusted by experience modification factors but before advance premium discounts.
- G. "Workers' compensation," when used as a modifier of "benefits," "liabilities," or "obligations," means both workers' compensation and employers' liability.

Drafting Note: In those states where workers' compensation does not include employers' liability, "employers' liability" should be eliminated from the definition.

- H. "Workers' compensation self-insurance group" or "group" means a not-for-profit unincorporated association consisting of five or more employers who are engaged in the same or similar type of business, who are members of the same bona fide trade or professional association which has been in existence for not less than five years, and who enter into agreements to pool their liabilities for workers' compensation benefits and employers' liability in this state.

Drafting Note: States may wish to use other terminology to describe groups, e.g. associations, funds, or pools.

Before a state chooses to delete the language "who are engaged in the same or similar type of business" it is recommended that the drafter carefully review the discussion of the issues involved. See pp. 22-25 of the NAIC Study Committee report.

Section 3. Authority to Act as a Workers' Compensation Self-Insurance Group.

No person, association or other entity shall act as a workers' compensation self-insurance group unless it has been issued a certificate of approval by the commissioner.

Section 4. Qualifications for Initial Approval and Continued Authority to Act As A Worker's Compensation Self-Insurance Group.

- A. A proposed workers' compensation self-insurance group shall file with the commissioner its application for a certificate of approval accompanied by a non-refundable filing fee in the amount of \$_____. The application shall include the group's name, location of its principal office, date of organization, name and address of each member, and such other information as the commissioner may reasonably require, together with the following:
 1. Proof of compliance with the provisions of Subsection B of this Section.
 2. A copy of the articles of association, if any.
 3. A copy of agreements with the administrator and with any service company.
 4. A copy of the bylaws of the proposed group.

5. A copy of the agreement between the group and each member securing the payment of workers' compensation benefits, which shall include provision for payment of assessments as provided for in Section 19.
6. Designation of the initial board of trustees and administrator.
7. The address in this state where the books and records of the group will be maintained at all times.
8. A pro forma financial statement on a form acceptable to the commissioner showing the financial ability of the group to pay the workers' compensation obligations of its members.
9. Proof of payment to the group by each member of not less than 25% of that member's first year estimated annual net premium on a date prescribed by the commissioner. Each payment shall be considered to be part of the first year premium payment of each member, if the proposed group is granted a certificate of approval.

B. To obtain and to maintain its certificate of approval a workers' compensation self-insurance group shall comply with the following requirements as well as any other requirements established by law or regulation:

1. A combined net worth of all members of a group of private employers of at least \$1,000,000.
2. Security in a form and amount prescribed by the commissioner which shall be provided by either a surety bond, security deposit or financial security endorsement or any combination thereof. If a surety bond is used to meet the security requirement, it shall be issued by a corporate surety company authorized to transact business in this state. If a security deposit is used to meet the security requirement, securities shall be limited to bonds or other evidences of indebtedness issued, assumed, or guaranteed by the United States of America, or by an agency or instrumentality thereof; certificates of deposit in a federally insured bank; shares or savings deposits in a federally insured savings and loan association or credit union; or any bond or security issued by a State of the United States of America and backed by the full faith and credit of the State. Any such securities shall be deposited with the (state treasurer) and assigned to and made negotiable by the (chairman of the workers' compensation agency) pursuant to a trust document acceptable to the commissioner. Interest accruing on a negotiable security so deposited shall be collected and transmitted to the depositor provided the depositor is not in default. A financial security endorsement, issued as part of an acceptable excess insurance contract, may be used to meet all or part of the security requirement. The bond, security deposit, or financial security endorsement shall be (a) for the benefit of the state solely to pay claims and associated expenses and (b) payable upon the failure of the group to pay workers' compensation benefits it is legally obligated to pay.

The commissioner may establish and adjust from time to time, requirements for the amount of security based on differences among groups in their size, types of employment, years in existence, and other relevant factors.

3. Specific and aggregate excess insurance in a form, in an amount, and by an insurance company acceptable to the commissioner. The commissioner may establish minimum requirements for the amount of specific and aggregate excess insurance based on differences among groups in their size, types of employment, years in existence and other relevant factors, and may permit a group to meet this requirement by placing in a designated depository securities of the type referred to in Paragraph 2 of this Subsection.

4. An estimated annual standard premium of at least \$250,000 during a group's first year of operation. Thereafter, the annual standard premium shall be at least \$500,000.
 5. An indemnity agreement jointly and severally binding the group and each member thereof to meet the workers' compensation obligations of each member. The indemnity agreement shall be in a form prescribed by the commissioner and shall include minimum uniform substantive provisions prescribed by the commissioner. Subject to the commissioner's approval, a group may add other provisions needed because of its particular circumstances.
 6. A fidelity bond for the administrator in a form and amount prescribed by the commissioner.
 7. A fidelity bond for the service company in a form and amount prescribed by the commissioner. The commissioner may also require the service company providing claim services to furnish a performance bond in a form and amount prescribed by the commissioner.
- C. A group shall notify the commissioner of any change in the information required to be filed under Subsection A of this Section or in the manner of its compliance with Subsection B of this Section no later than 30 days after such change.
- D. The commissioner shall evaluate the information provided by the application required to be filed under Subsection A of this Section to assure that no gaps in funding exist and that funds necessary to pay workers' compensation benefits will be available on a timely basis.
- E. The commissioner shall act upon a completed application for a certificate of approval within 60 days. If, because of the number of applications, the commissioner is unable to act upon an application within this period, the commissioner shall have an additional 60 days to so act.
- F. The commissioner shall issue to the group a certificate of approval upon finding that the proposed group has met all requirements or the commissioner shall issue an order refusing such certificate setting forth reasons for such refusal upon finding that the proposed group does not meet all requirements.
- G. Each workers' compensation self-insurance group shall be deemed to have appointed the commissioner as its attorney to receive service of legal process issued against it in this state. The appointment shall be irrevocable, shall bind any successor in interest, and shall remain in effect as long as there is in this state any obligation or liability of the group for workers' compensation benefits.

Section 5. Certificate of Approval; Termination.

- A. The certificate of approval issued by the commissioner to a workers' compensation self-insurance group authorizes the group to provide workers' compensation benefits. The certificate of approval remains in effect until terminated at the request of the group or revoked by the commissioner, pursuant to provisions of Section 23 of this Act.
- B. The commissioner shall not grant the request of any group to terminate its certificate of approval unless the group has insured or reinsured all incurred workers' compensation obligations with an authorized insurer under an agreement filed with and approved in writing by the commissioner. Such obligations shall include both known claims and expenses associated therewith and claims incurred but not reported and expenses associated therewith.

Subject to the approval of the commissioner, a group may merge with another group engaged in the same or similar type of business only if the resulting group assumes in full all obligations of the merging groups. The commissioner may hold a hearing on the merger and shall do so if any party, including a member of either group, so requests.

Drafting Note: Before a state chooses to delete the language "engaged in the same or similar type of business," it is recommended that the drafter carefully review the discussion of the issues involved. See pp. 22-25 of the NAIC Study Committee report.

Section 6. Examinations.

The commissioner may examine the affairs, transactions, accounts, records and assets and liabilities of each group as often as the commissioner deems advisable. The expense of such examinations shall be assessed against the group in the same manner that insurers are assessed for examinations.

Drafting Note: It is recommended that this examination requirement be consistent with the existing requirement for examining insurance companies, e.g. not less often than once every three (five) years.

Section 7. Board of Trustees: Membership, Powers, Duties, and Prohibitions.

Each group shall be operated by a board of trustees which shall consist of not less than five persons whom the members of a group elect for stated terms of office. At least two-thirds of the trustees shall be employees, officers, or directors of members of the group. The group's administrator, service company, or any owner, officer, employee of, or any other person affiliated with, such administrator or service company shall not serve on the board of trustees of the group. All trustees shall be residents of this state or officers of corporations authorized to do business in this state. The board of trustees of each group shall ensure that all claims are paid promptly and take all necessary precautions to safeguard the assets of the group, including all of the following:

A. The board of trustees shall:

1. Maintain responsibility for all monies collected or disbursed from the group and segregate all monies into a claims fund account and an administrative fund account. At least 70% of the net premium shall be placed into a designated depository for the sole purpose of paying claims, allocated claims expenses, reinsurance or excess insurance, and special fund contributions, including second injury and other loss-related funds. This shall be called the claims fund account. The remaining net premium shall be placed into a designated depository for the payment of taxes, general regulatory fees and assessments, and administrative costs. This shall be called the administrative fund account. The commissioner may approve an administrative fund account of more than 30% and a claims fund account of less than 70% only if the group shows to the commissioner's satisfaction that (a) more than 30% is needed for an effective safety and loss control program or (b) the group's aggregate excess insurance attaches at less than 70%.

Drafting Note: Administrative costs include guaranty fund assessments.

2. Maintain minutes of its meetings and make such minutes available to the commissioner.
3. Designate an administrator to carry out the policies established by the board of trustees and to provide day to day management of the group, and delineate in the written minutes of its meetings the areas of authority it delegates to the administrator.
4. Retain an independent certified public accountant to prepare the statement of financial condition required by Subsection A of Section 11.

B. The board of trustees shall not:

1. Extend credit to individual members for payment of a premium, except pursuant to payment plans approved by the commissioner.
2. Borrow any monies from the group or in the name of the group except in the ordinary course of business, without first advising the commissioner of the nature and purpose of the loan and obtaining prior approval from the commissioner.

Section 8. Group membership; Termination; Liability.

- A. An employer joining a workers' compensation self-insurance group after the group has been issued a certificate of approval shall (1) submit an application for membership to the board of trustees or its administrator and (2) enter into the indemnity agreement required by Subsection B.5 of Section 4. Membership takes effect no earlier than each member's date of approval. The application for membership and its approval shall be maintained as permanent records of the board of trustees.
- B. Individual members of a group shall be subject to cancellation by the group pursuant to the bylaws of the group. In addition, individual members may elect to terminate their participation in the group. The group shall notify the commissioner and the workers' compensation agency of the termination or cancellation of a member within 10 days and shall maintain coverage of each cancelled or terminated member for 30 days after such notice, at the terminating member's expense, unless the group is notified sooner by the workers' compensation agency that the cancelled or terminated member has procured workers' compensation insurance, has become an approved self-insurer, or has become a member of another group.
- C. The group shall pay all workers' compensation benefits for which each member incurs liability during its period of membership. A member who elects to terminate its membership or is cancelled by a group remains jointly and severally liable for workers' compensation obligations of the group and its members which were incurred during the cancelled or terminated member's period of membership.
- D. A group member is not relieved of its workers' compensation liabilities incurred during its period of membership except through payment by the group or the member of required workers' compensation benefits.
- E. The insolvency or bankruptcy of a member does not relieve the group or any other member of liability for the payment of any workers' compensation benefits incurred during the insolvent or bankrupt member's period of membership.

Drafting Note: This language should not be interpreted as negating any other statute or case law limiting defenses.

Section 9. Service Companies.

- A. No service company or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, an administrator. No administrator or its employees, officers or directors shall be an employee, officer or director of, or have either a direct or indirect financial interest in, a service company.
- B. The service contract shall state that unless the commissioner permits otherwise the service company shall handle, to their conclusion, all claims and other obligations incurred during the contract period.

Section 10. Licensing of Agent.

Except for a salaried employee of a group, its administrator or its service company, any person soliciting membership in a workers' compensation self-insurance group must be licensed as provided (in Section _____ of the insurance code).

Section 11. Financial Statements and Other Reports.

- A. Each group shall submit to the commissioner a statement of financial condition audited by an independent certified public accountant on or before the last day of the sixth month following the end of the group's fiscal year. The financial statement shall be on a form prescribed by the commissioner and shall include, but not be limited to, actuarially appropriate reserves for (1) known claims and expenses associated therewith, (2) claims incurred but not reported and expenses associated therewith, (3) unearned premiums and (4) bad debts, which reserves shall be shown as liabilities. An actuarial opinion regarding reserves for (1) known claims and expenses associated therewith and (2) claims incurred but not reported and expense associated therewith shall be included in the audited financial statement. The actuarial opinion shall be given by a member of the American Academy of Actuaries or other qualified loss reserve specialist as defined in the annual statement adopted by the National Association of Insurance Commissioners.
- B. No person shall make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, in connection with the solicitation of membership of a group.
- C. The commissioner may prescribe the format and frequency of other reports which may include, but shall not be limited to, payroll audit reports, summary loss reports, and quarterly financial statements.

Section 12. Taxes.

Drafting Note: A state that imposes a premium tax or other tax on workers' compensation insurers will have to decide whether such tax should be imposed on groups. However, a state that dedicates a premium tax or other tax on workers' compensation insurance principally for workers' compensation purposes, e.g., administration or a special fund, should impose such tax on groups. See pp. 45-47 of the NAIC Study Committee report.

Section 13. Fees and Assessments.

Drafting Note: Fees and assessments for second injury funds or other special funds or for administrative funds associated with the insurance department or the workers' compensation agency should be imposed on groups in the same manner that they are imposed on insurance companies or self-insurers. See pp. 45-47 of the NAIC Study Committee report.

Section 14. Misrepresentation Prohibited.

No person shall make a material misrepresentation or omission of a material fact in connection with the solicitation of membership of a group.

Section 15. Investments.

Funds not needed for current obligations may be invested by the board of trustees in accordance with (Section _____ of the insurance code regarding investments of property and casualty insurers).

Section 16. Rates and Reporting of Rates.

- A. Every workers' compensation self-insurance group shall adhere to the uniform classification system, uniform experience rating plan, and manual rules filed with the commissioner by an advisory organization designated by the commissioner.
- B. Premium contributions to the group shall be determined by applying the manual rates and rules to the appropriate classification of each member which shall be adjusted by each member's experience credit or debit. Subject to approval by the commissioner, premium contributions may also be reduced by an advance premium discount reflecting the group's expense levels and loss experience.
- C. Notwithstanding Subsection B of this Section, a group may apply to the commissioner for permission to make its own rates. Such rates shall be based on at least five years of the group's experience.

Drafting Note: States that have adopted the Alternative Model Workers' Compensation Competitive Rating Act should use the following provision in place of Subsections B and C above:

Every group shall use the pure premium rates filed with the commissioner by the designated advisory organization plus an additional amount representing the member's portion of estimated expenses. A group may contract with an advisory organization approved by the commissioner for assistance in developing appropriate rates.

- D. Each group shall be audited at least annually by an auditor acceptable to the commissioner to verify proper classifications, experience rating, payroll and rates. A report of the audit shall be filed with the commissioner in a form acceptable to the commissioner. A group or any member thereof may request a hearing on any objections to the classifications. If the commissioner determines that as a result of an improper classification a member's premium contribution is insufficient, he shall order the group to assess that member an amount equal to the deficiency. If the commissioner determines that as a result of an improper classification a member's premium is excessive, he shall order the group to refund to the member the excess collected. The audit shall be at the expense of the group.

Section 17. Refunds.

- A. Any monies for a fund year in excess of the amount necessary to fund all obligations for that fund year may be declared to be refundable by the board of trustees not less than 12 months after the end of the fund year.

Drafting Note: In those states where dividends may be paid earlier than 12 months, the time limit should be changed to conform to state practice.

- B. Each member shall be given a written description of the refund plan at the time of application for membership. A refund for any fund year shall be paid only to those employers who remain participants in the group for the entire fund year. Payment of a refund based on a previous fund year shall not be contingent on continued membership in the group after that fund year.

Section 18. Premium Payment; Reserves.

- A. Each group shall establish to the satisfaction of the commissioner a premium payment plan which shall include (1) an initial payment by each member of at least 25% of that member's annual premium before the start of the group's fund year and (2) payment of the balance of each member's annual premium in monthly or quarterly installments.

- B. Each group shall establish and maintain actuarially appropriate loss reserves which shall include reserves for (1) known claims and expenses associated therewith and (2) claims incurred but not reported and expenses associated therewith.
- C. Each group shall establish and maintain bad debt reserves based on the historical experience of the group or other groups.

Section 19. Deficits and Insolvencies.

- A. If the assets of a group are at any time insufficient to enable the group to discharge its legal liabilities and other obligations and to maintain the reserves required of it under this Act, it shall forthwith make up the deficiency or levy an assessment upon its members for the amount needed to make up the deficiency.
- B. In the event of a deficiency in any fund year, such deficiency shall be made up immediately, either from (a) surplus from a fund year other than the current fund year, (b) administrative funds, (c) assessment of the membership, if ordered by the group or, (d) such alternate method as the commissioner may approve or direct. The commissioner shall be notified prior to any transfer of surplus funds from one fund year to another.
- C. If the group fails to assess its members or to otherwise makeup such deficit within 30 days, the commissioner shall order it to do so.
- D. If the group fails to make the requirement assessment of its members within 30 days after the commissioner orders it to do so, or if the deficiency is not fully made up within 60 days after the date on which such assessment is made, or within such longer period of time as may be specified by the commissioner, the group shall be deemed to be insolvent.
- E. The commissioner shall proceed against an insolvent group in the same manner as the commissioner would proceed against an insolvent domestic insurer in this state as prescribed in (Section _____ of the insurance code regarding liquidation, conservation, etc.). The commissioner shall have the same powers and limitations in such proceedings as are provided under those laws, except as otherwise provided in this Act.
- F. In the event of the liquidation of a group, the commissioner shall levy an assessment upon its members for such an amount as the commissioner determines to be necessary to discharge all liabilities of the group, including the reasonable cost of liquidation.

Section 20. Guaranty Mechanism. (OPTIONAL)

In the event of a liquidation pursuant to Section 19, after exhausting the security required pursuant to Section 4.B.2., the commissioner shall levy an assessment against all groups to assure prompt payment of such benefits. The assessment on each group shall be based on the proportion that the premium of each group bears to the total premium of all groups. The commissioner may exempt a group from assessment upon finding that the payment of the assessment would render the group insolvent. Such assessment shall not relieve any member of an insolvent group of its joint and several liability. After any member of an insolvent group of its joint and several liability. After any such assessment is made, the commissioner shall take action to enforce the joint and several liability provisions of the insolvent group's indemnity agreement, and shall recoup (1) all costs incurred by the commissioner in enforcing such joint and several liability provisions, (2) amounts that the commissioner assessed any other groups pursuant to this Section, and (3) any obligations included within Subsection F of Section 19.

Drafting Note: Each state should evaluate carefully the financial security requirements it imposes on workers' compensation groups and, in keeping with its regulatory philosophy regarding workers' compensation benefit guarantees, should make its own decision on whether a guaranty mechanism is needed for groups. If a state decides to establish a guaranty mechanism for groups, the guaranty mechanism should not (1) take the place of any financial security requirements, (2) relieve the members of an insolvent group of their joint and several liabilities, or (3) be refunded except for minimum administrative expenses.

Section 21. Monetary Penalties.

After notice and opportunity for a hearing, the commissioner may impose a monetary penalty on any person or group found to be in violation of any provision of this Act or of any rules or regulations promulgated thereunder. Such monetary penalty shall not exceed \$1,000 for each act or violation and shall not exceed \$10,000 in the aggregate. The amount of any such monetary penalty shall be paid to the commissioner for the use of the state.

Drafting Note: The disposition of monetary penalties will have to be set forth by each state according to its own practices.

Section 22. Cease and Desist Orders.

- A. After notice and opportunity for a hearing, the commissioner may issue an order requiring a person or group to cease and desist from engaging in an act or practice found to be in violation of any provision of this Act or of any rules or regulations promulgated thereunder.
- B. Upon a finding, after notice and opportunity for a hearing, that any person or group has violated any cease and desist order, the commissioner may do either or both of the following:
 - (a) impose a monetary penalty of not more than \$10,000 for each and every act or violation of such order not to exceed an aggregate monetary penalty of \$100,000 or
 - (b) revoke the group's certificate of approval or any insurance license held by the person.

Section 23. Revocation of Certificate of Approval.

After notice and opportunity for a hearing, the commissioner may revoke a group's certificate of approval if it (1) is found to be insolvent, (2) fails to pay any premium tax, regulatory fee or assessment, or special fund contribution imposed upon it, or (3) fails to comply with any of the provisions of this Act, with any rules promulgated thereunder, or with any lawful order of the commissioner within the time prescribed. In addition, the commissioner may revoke a group's certificate of approval if, after notice and opportunity for hearing, the commissioner finds that (a) any certificate of approval that was issued to the group was obtained by fraud; (b) there was a material misrepresentation in the application for the certificate of approval; or (c) the group or its administrator has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any monies that belong to a member, an employee of a member, or a person otherwise entitled thereto and that have been entrusted to the group or its administrator in its fiduciary capacities.

Section 24. Notice and Hearings.

Drafting Note: This section should conform to the state's administrative procedures act and insurance code for notices and hearings resulting in orders of suspension, revocation, cease and desist and monetary penalties.

Section 25. Rules and Regulations.

The commissioner shall have power to make rules and regulations in order to implement this Act.

Section 26. Severability Clause.

If any provision of this Act, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this Act.

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

1984 Proc. I 6, 23, 662, 705, 706-718 (adopted).

1984 Proc. II 10, 20, 715, 808, 809-811 (amended).

1985 Proc. I 19, 38-39, 767, 792, 804-805 (corrected).

Model Regulation Service - October 1987

PRIVATE EMPLOYER WORKERS' COMPENSATION GROUP
SELF-INSURANCE MODEL ACT

The date in parentheses is the effective date of the legislation or regulation, with latest amendments.

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Alabama	NO ACTION TO DATE	
Alaska	NO ACTION TO DATE	
Arizona	NO ACTION TO DATE	
Arkansas	NO ACTION TO DATE	
California	NO ACTION TO DATE	
Colorado	NO ACTION TO DATE	
Connecticut	NO ACTION TO DATE	
Delaware	NO ACTION TO DATE	
D.C.	NO ACTION TO DATE	
Florida	NO ACTION TO DATE	
Georgia		GA. CODE ANN. §§ 34-9-150 to 34-9-188 (1982); GA. ADMIN. COMP. ch. 120-2-34 (1982).
Guam	NO ACTION TO DATE	
Hawaii	NO ACTION TO DATE	
Idaho	NO ACTION TO DATE	
Illinois		ILL. ADMIN. REG. tit. 50 §§ 2901.10 to 2901.50 (1981/1986).
Indiana	NO ACTION TO DATE	
Iowa		IOWA ADMIN. CODE §§ 191-56.1 to 191-56.22 (1984/1986).

Model Regulation Service - October 1987

PRIVATE EMPLOYER WORKERS' COMPENSATION GROUP
SELF-INSURANCE MODEL ACT

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
Kansas	NO ACTION TO DATE	
Kentucky	NO ACTION TO DATE	
Louisiana	NO ACTION TO DATE	
Maine		ME. REV. STAT. ANN. tit. 39 § 23 (1981/1987); ME. INS. REG. ch. 250 § 1 (1981).
Maryland		MD. ANN. CODE art. 48A §§ 598 to 599 (1986).
Massachusetts		MASS. GEN. LAWS ch 152 § 25A (1943/1972).
Michigan	NO ACTION TO DATE	
Minnesota		MINN. STAT. § 176.181 (1953/1984); MINN. INS. REG. §§ 2780.2100 to 2780.3400 (1984).
Mississippi	NO ACTION TO DATE	
Missouri		MO. ADMIN. CODE tit. 4 § 190-18.030 (1982).
Montana	NO ACTION TO DATE	
Nebraska	NO ACTION TO DATE	
Nevada		NEV. ADMIN. CODE §§ 610.100 to 610.204 (1980/1984).
New Hampshire	NO ACTION TO DATE	
New Jersey	NO ACTION TO DATE	
New Mexico	N.M. STAT. ANN. §§ 52-6-1 to 52-6-25 (1986/1987).	N.M. REGS. ch. 52 Rule 2 (1986) [SCC-86-2]; Rule 4 (1986) [DCC-86-5].

Model Regulation Service - October 1987

PRIVATE EMPLOYER WORKERS' COMPENSATION GROUP
SELF-INSURANCE MODEL ACT

NAIC MEMBER	MODEL/SIMILAR LEGIS.	RELATED LEGIS./REGS.
New York	NO ACTION TO DATE	
North Carolina	NO ACTION TO DATE	
North Dakota	NO ACTION TO DATE	
Ohio	NO ACTION TO DATE	
Oklahoma	NO ACTION TO DATE	
Oregon	NO ACTION TO DATE	
Pennsylvania	NO ACTION TO DATE	
Puerto Rico	NO ACTION TO DATE	
Rhode Island		R.I. INS. REG. XXXIII (1983).
South Carolina	NO ACTION TO DATE	
South Dakota	NO ACTION TO DATE	
Tennessee	TENN. ADMIN. COMP. ch. 0780-1-54 (1986).	
Texas	NO ACTION TO DATE	
Utah	NO ACTION TO DATE	
Vermont	NO ACTION TO DATE	
Virgin Islands	NO ACTION TO DATE	
Virginia		VA. INS. REG. 16 (Case 20194) (1980/1985).
Washington	NO ACTION TO DATE	
West Virginia	NO ACTION TO DATE	
Wisconsin	NO ACTION TO DATE	
Wyoming	NO ACTION TO DATE	

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

PROPERTY STATE CAPITAL
BUREAU ALASKA HOUSE
1227 STATE HOUSE

MEMORANDUM

March 15, 1988

SUBJECT: Joint insurance arrangements
CSHB 227(C&RA)

TO: Representative Heinrich Springer

FROM: Michael F. Ford *M.F. Ford*
Legislative Counsel

I wanted to point out two concerns with CSHB 227(C&RA) as passed out of the committee. On page 2, line 16, the word "authorized" should be "unauthorized", in order to allow the board additional authority to purchase insurance. Also, the new language in section 5, is redundant when compared with the last sentence of that section. The last sentence should be deleted.

Please contact me if you have further questions.

MFF:gc
WKG2:54

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to joint insurance arrangements."
Sponsor: Tavlör
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
Division: Municipal & Regional Assistance Date: _____
Approved by Commissioner: [Signature] Date: _____
Agency: Community & Regional Affairs

Distribution (by preparer):
Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

STATE OF ALASKA
1988 LEGISLATIVE SESSION

No. 2
BILL VERSION: CSHB 227 CRA
PUBLISH DATE: HOUSE 3/16/88

FISCAL NOTE

REQUEST:

Revision Date: 02/05/88 Agency Affected: Commerce & Economic Dev.
Title: An Act relating to joint insurance BRU: Insurance
arrangements
Sponsor: Taylor Components: Public Protection
Requester: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John L. George, Director *John L. George* Phone: 465-2515
Division: Division of Insurance Date: February 5, 1988

Approved by Commissioner: J. Anthony Smith *J. Anthony Smith* Date: February, 1988
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

Legislative Finance
Legislative Sponsor
Requestor
Office of Management and Budget
Impacted Agency(ies)

page 1 of 1

dg1/0645K/020588a



STATE OF ALASKA
OFFICE OF THE GOVERNOR
BILL ANALYSIS

10 HB 227

FEB 19 1988

DEPARTMENT Commerce & Econ. Dev.	DIVISION Insurance	BILL NUMBER HB 227	SPONSOR Taylor
SHORT TITLE OF BILL An Act relating to joint insurance arrangements			
DEPARTMENT POSITION Not in favor			
PREPARED BY John L. George	DATE 02/ /88	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 2/19/88

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Not Known	CONSTITUENT GROUP(S) AFFECTED BY BILL Insurance purchasers in Alaska
ORGANIZATIONAL SUPPORT FOR BILL Not Known	ORGANIZATIONAL OPPOSITION TO BILL Not Known

BUDGETARY IMPACT: NONE FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

The bill removes from state regulation insurance by groups of persons who form mutual or cooperative insurers or purchasing arrangements. Under this legislation, a wide variety of groups would be able to opt out of insurance regulation.

ANALYSIS OF BILL/PROGRAM EFFECTS

This legislation expands legislation adopted in 1976 to allow groups other than government groups to create their own insurers which are outside the regulation of the the Division of Insurance. This generally will mean underfunded insurance companies. Presently, the Federal Risk Retention Act permits the purchase of liability insurance only, with no regulation applied to the group. It is inappropriate to apply this approach to other forms of insurance for a variety of reasons, not the least of which is consideration of the level of protection afforded the injured party. A small insurer of the size that would generally be seen under these provisions would not begin to measure up to the financial standards established by the Legislature for other insurers and likely to be hazardous to its participants.

AMENDMENTS PROPOSED

In its present form, there are a few technical changes needed in the bill. These are discussed on the attached page. These changes do not address the basic concerns with or philosophy of the bill.

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

AMENDMENTS PROPOSED

On Page 1, Lines 20-21.

Delete. This inclusion is in conflict with Federal Law cited. That law provides that regulation should be limited to the state of formation, which in this case would be Alaska. This legislation provides that no regulation will occur.

On Page 2, Lines 6-8.

Following the word "arrangement" on line 6, insert the words, "formed by a group," described in AS 21.76.010(a)(1)-(3).

This revision recognizes that the type of accounting is not appropriate for groups other than municipalities, school districts and regional educational attendance areas.

On Page 2, Lines 16.

Change the word "authorized" to read "unauthorized".

A licensed surplus lines broker cannot accept business under his license from an authorized insurer.

HB 227: "An Act relating to joint insurance arrangements.

FEB 19 1988

The Department of Commerce and Economic Development is not in favor of this legislation.

The Alaska Insurance Code defines "insurance," in AS 21.90.900(15), to mean "a contract whereby one undertakes to indemnify another or pay or provide a specified or determinable amount or benefit upon determinable contingencies." The pooling of contributions, as provided for in this bill, is classic insurance. The bill involves the same concepts as the very first insurer in the United States, called a contributorship, established by Ben Franklin in the 1700's. More than 100 years ago, the states uniformly determined that insurance was in need of state oversight.

Insurance is interstate commerce; however, it is regulated by the various states pursuant to the McCarran-Ferguson Act. The Act provides that, to the degree that the states regulate insurance, the federal government will not, with the exception of cases of boycott, coercion and intimidation, regulate the business of insurance. If the State of Alaska abrogates regulation of insurance as this legislation proposes, it invites federal regulation.

Insurance uses the concept of the "law of large numbers" and "spreading of risk." If there is a risk of loss and one can spread that risk to a large number of people, the cost of loss on an individual basis can be greatly reduced. Alaska has suffered a lack of large numbers to make this principal work properly.

In 1986, the Legislature adopted AS 21.76 which created joint insurance arrangements. Since the governmental entities referenced in the legislation could draw on an ongoing tax base to deal with any fiscal problems that might arise, it was not necessary to provide for the level of regulation set forth in the Insurance Code. Therefore, a lower level of regulation was deemed acceptable.

This proposal provides that a wide variety of groups can form a joint insurance arrangement to retain risk (act as an insurance company) or to buy insurance. It also goes on to remove totally the insurance product of those groups from insurance regulation.

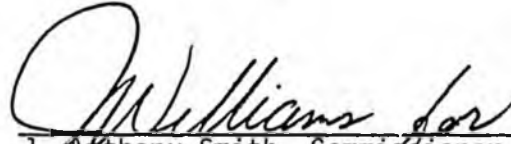
It is one thing to promote small insurers for Alaska property type risks where amounts of potential loss are somewhat controllable and fixed, subject to adequate numbers of participants. If such an enterprise fails, then the only ones hurt are those who are a part of and participants of the joint insurance arrangement. This mechanism is currently in place in the Insurance Code (AS 21.75.300-340). These sections of law have not been used since they were placed on the books in 1978.

It is quite another issue, however, to extend this concept to a line of insurance, such as workers' compensation where liability is not subject to limit, or to liability insurance which is highly unpredictable, particularly in a small population state like Alaska. Currently, workers'

Position Paper
HB 227
Page 2

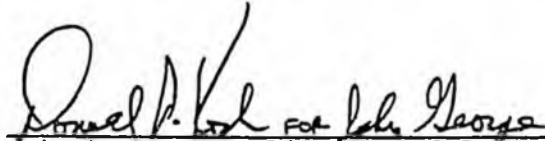
compensation insurance can only be purchased from an admitted insurer and all policies issued are protected by the Alaska Guaranty Association Act, without limitation on the loss. This provides a considerable degree of protection to injured claimants who have no voice in how the employer provides the coverages required by law. If such an enterprise fails, not only those who are a part of and participants of the joint insurance arrangement are hurt but also those entitled to a benefit or a recovery from the participant.

The principal barrier to formation of small insurers in the past has been the financial stability of the proposals. An underfinanced insurer is hazardous to the financial health of its insureds. Insurance regulation is designed to provide public protection for purchasers and those entitled to a benefit from the insurance. It does this through financial standards established by the Legislature through trade practice regulation, through limitations on activities of the insurer, and, generally, through the structure of insurance regulation that has been established by past Legislatures. We believe this structure should continue to apply to insurers for the protection of all Alaskans.



J. Anthony Smith, Commissioner
Department of Commerce & Economic
Development

Date: 2-19-88



John L. George, Director of Insurance

Date: 2/19/88

DK/dg10237K
021888b


Alaska
MUNICIPAL
League

(8) HB 227

TELEPHONE
(907) 586-1325

105 MUNICIPAL WAY, SUITE 301
JUNEAU, ALASKA 99801

TO: Representative Henry Springer, Chair
Members of the House Community and Regional Affairs Committee

FROM: Scott A. Burgess, Executive Director 

DATE: February 17, 1988

SUBJECT: HB 227 - Joint Insurance Arrangements

As the beneficiary and the main proponent of HB 506 (Chapter 136, SLA 1986) also sponsored by Representative Taylor, and the main statute HB 277 proposes to amend, the Alaska Municipal League supports the concept of HB 227. Granting entities the ability to "pool" their risk management needs and costs in the face of the failures of the traditional insurance industry to provide reasonable, available and affordable coverage, should be supported. However, there are certain aspects of the bill that the AML cannot support because it may not provide needed protection for the potential valid claimant or the bill would, as proposed, diminish the current statute provisions. I am sure neither of these possibilities were intended by the sponsor.

The 1986 legislation, HB 506, was a result of a lot of compromise between the sponsor, the AML, the State Director of Insurance and the insurance industry, embodied in one individual. The bill was often held hostage, unfairly and inappropriately, in the tort reform debate which was occurring at the same time in the Legislature. This bill is an attempt to expand the beneficiaries of joint insurance arrangements and to "win back" some of the concessions made by the sponsor.

The AML is currently in the second year of the process of forming a joint insurance arrangement on behalf of public entities - municipalities and school districts. Because it has not been formed and because it has not been reviewed by the Director of Insurance, the AML is not sure the current law, as a result of the compromises, is unnecessarily restrictive.

The law, in particular AS 21.76.020, is more restrictive than we wanted and more restrictive than similar legislation in other states; however, the major concern of the Director was that the program be financially secure in order to pay potential, valid claims. The AML cannot not argue with that goal, and, at this time, we are unsure if the provisions in the statute to insure financial security are unreasonable or too restrictive to make the JIA feasible. If they are, we will seek changes in the statutes ourselves.

We agree with the testimony of the Division of Insurance that public entities do have better collateral, e.g. the ability to tax, than some of the other organizations the bill would authorize to form a JIA. A case for minimum oversight or regulation by the State to insure the ability of a JIA without such "collateral" to pay claims has merit which the Committee should consider. The AML is sure that if our JIA

House C&RA Committee Re: HB 227
February 17, 1988
Page 2

is feasible, and if municipalities and school districts participate, and if they control their losses, it will provide stable and available risk protection for the members with long-term savings.

We would request two specific changes to the proposed legislation. In Section 5 on page 2, lines 17 through 26 should not be deleted. This is a provision AML asked for as part of the "compromise" to allow us to participate in a "super-pool" set up by municipal leagues through the National League of Cities for excess insurance coverage.

Secondly, in Section 8, page 3, line 17, AS 21.76.010 (d) should not be repealed. This subsection allows JIA's to provide worker's compensation coverage which is a critical line of coverage.

Again, the AML supports the concept of HB 227, and I look forward to working with the Committee and the sponsor on this legislation. Thank you.

cc: Representative Robin Taylor



LABOR AND COMMERCE COMMITTEE

SENATOR TIM KELLY
ANCHORAGE/EAGLE RIVER
CHAIRMAN

SENATOR DICK ELIASON
SITKA
VICE CHAIRMAN

② HB 227

MEMBERS
SENATOR BETTYE FAHRENKAMP
FAIRBANKS

SENATOR RICK UEHLING
ANCHORAGE

SENATOR MIKE SZYMANSKI
ANCHORAGE

JAN 26 1988

MEMORANDUM

TO: All Legislators

FROM: Senator Tim Kelly *TDK*
Chairman, Senate Labor & Commerce Committee

DATE: January 25, 1988

RE: Update on Municipal Insurance Pooling Program

Enclosed is a summary of the presentation from the Municipal League. I thought you would find this of interest.

Phil Younker, Chairman, Board of Trustees of the Alaska Municipal League Joint Insurance Arrangement, gave a brief presentation regarding pooling insurance. Mr. Younker was joined in the committee meeting by several of the Board of Trustees. Mr. Younker explained that the program came about after legislation was passed by the Legislature permitting the Municipal League to create the joint insurance arrangement. Mr. Younker went on to say that a few years ago, the League attempted to put together an insurance pool. The insurance market had gotten very hard and the availability to the municipalities in Alaska was almost impossible. The price was totally prohibitive in some cases. The League backed off and left it alone for about five years. About four years ago, the market hit one of its all time hard spots. Mr. Younker stated that the municipality he served had a half a million dollar rate increase in one year. Many municipalities in Alaska were forced to give up carrying insurance. The Municipal League again began its efforts to start a joint insurance arrangement. It worked through the staff of the Municipal League and the Board of Directors to promote the legislation and allow the pools to be created in Alaska. After the legislation was adopted, the Municipal League immediately went through the Frank B. Hall Company and began to develop the joint insurance arrangement. In the interim there were municipalities who could not buy insurance, especially some of the rural municipalities, so a joint purchase agreement was formed through the broker at

the Old Republican Insurance Company in Pennsylvania. They were able to place 109 municipalities and rural school districts in that program for two years.

Mr. Younker stated that last year the goal was to begin to write insurance July 1, 1987. In the early spring of 1987, the Trustees met and reviewed the program. There was a problem because there were no excess carriers available and there wasn't a way to set up financial reserves. The Board of Trustees decided to delay the pool one year. In less than two weeks after that decision was made, they got a letter from the Old Republican Insurance Company cancelling 109 communities in the state. The League hustled to get the Old Republican Insurance Company to come back into the market in Alaska for at least another year until the pool could be put together. They agree to do that. The League was then able to provide coverage for 52 communities in the state.

Mr. Younker further stated that as of July 1, 1988, the Municipal League will issue its first policies. A solution was found in the excess markets for the financial reserves. The markets are available at reasonable costs. They can reinsure themselves through those excess companies so that they can control their liability. Mr. Younker stated that they can do this at a rate that will save the municipalities money or at least be competitive in the market place.

Mr. Younker stated that the pools throughout the nation have proven that the availability of insurance through the pools have been very stable. He further stated that fifty percent of all public entities in the United States are now under some form of pool. While the availability looks very stable to the municipalities and school districts, the price begins to stabilize out too. The pool is nonprofit and the money will not be shipped outside. The reserves will be kept in Alaska. As the reserves grow, they will buy less excess coverage and have more total self-control.

Mr. Younker explained that he felt they would be up and operating July 1, 1988.

(13) CS HB 227
(C&RA)

Original sponsor: Taylor

1 IN THE HOUSE

BY THE COMMUNITY AND REGIONAL
AFFAIRS COMMITTEE

2

CS FOR HOUSE BILL NO. 227 (C&RA)

3

IN THE LEGISLATURE OF THE STATE OF ALASKA

4

FIFTEENTH LEGISLATURE - SECOND SESSION

5

A BILL

6

For an Act entitled: "An Act relating to joint insurance arrangements."

7

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

8

* Section 1. AS 21.76.010(a) is repealed and reenacted to read:

9

(a) The following groups may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses on a group basis or purchase coverage on a group basis:

15

(1) municipalities;

16

(2) school districts;

17

(3) regional educational attendance areas;

18

(4) incorporated or unincorporated associations;

19

(5) regional electrical associations;

20

(6) entities qualified to do business under 15 U.S.C.

21

3901 - 3904 (Product Liability Risk Retention Act);

22

(7) groups that would be considered valid under this title for the type of insurance for which the joint insurance arrangement is established.

25

* Sec. 2. AS 21.76.010(b) is amended to read:

26

(b) A joint insurance arrangement may be for any kind of insurance defined by this title except for [DISABILITY INSURANCE, HEALTH INSURANCE,] life insurance [,] and title insurance.

29

* Sec. 3. AS 21.76.020 is repealed and reenacted to read:

1 Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. A joint
2 insurance arrangement may not be considered insurance for the purpose
3 of any other law of the state and is not subject to regulations of the
4 director except as expressly provided in this chapter.

5 * Sec. 4. AS 21. 140 is amended by adding a new subsection to read:

6 (c) A joint insurance arrangement shall use a method of account-
7 ing that conforms with generally accepted government accounting prin-
8 ciples.

9 * Sec. 5. AS 21.76.070 is amended to read:

10 Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may
11 authorize the board of directors to purchase excess or catastrophic
12 insurance on behalf of the joint insurance arrangement. The cost of
13 the insurance shall be apportioned in the manner specified in the
14 joint insurance agreement. The board may purchase insurance under
15 this section only from an insurer authorized to do business in the
16 state or from an authorized insurer if the insurance is placed through
17 a licensed surplus lines broker, except that an arrangement formed by
18 municipalities or school districts may purchase insurance under this
19 section from a risk-sharing pool established by a national associa-
20 tion of similar entities if the risk-sharing pool meets the qualifica-
21 tions for an unauthorized insurer under AS 21.34.040(b) and (d) and
22 21.34.220 and has capital and policyholders surplus in an amount at
23 least as great as would be required if the association were a domestic
24 multiple line insurer. An arrangement may purchase insurance under
25 this section for property and liability risks from unauthorized in-
26 surers allowed for use by licensed Alaska surplus lines brokers.

27 * Sec. 6. AS 21.76.080(e) is amended to read:

28 (e) Within 60 days of the end of the fiscal year, the adminis-
29 trator shall furnish a detailed report of the operation and condition

1 of the fund to the board of directors and the director of insurance.
2 The report furnished to the director of insurance shall be

3 (1) FILED IN THE GENERAL FORM AND CONTEXT ACCEPTABLE TO
4 THE DIRECTOR;

5 (2) IN ACCORDANCE WITH ACCOUNTING PRINCIPLES ESTABLISHED
6 UNDER THIS TITLE; AND

7 (3) available for public inspection.

8 * Sec. 7. AS 21.76.110 is repealed and reenacted to read:

9 Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has
10 a cause of action for reimbursement of money paid to a participating
11 member for a loss or injury if the participating member recovers money
12 for the loss or injury from a third party. The joint insurance ar-
13 rangement also has a direct cause of action for reimbursement against
14 a third party responsible for loss or injuries sustained by a partic-
15 ipating member if the joint arrangement has paid money to the partic-
16 ipating member for the loss or injuries.
17
18
19
20
21
22
23
24
25
26
27
28
29

STATE OF ALASKA
1988 LEGISLATIVE SESSION

(1.1) (CS) HB 227
CS
BILL VERSION: HB 227
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An act relating to joint insurance arrangements.
Sponsor: Taylor
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL						
REVENUE						

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director Phone: 465-4750
Division: Municipal & Regional Assistance Date: _____
Approved by Commissioner: [Signature] Date: _____
Agency: Community & Regional Affairs

- Distribution (by preparer):
 Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

(1.2) (60) HB 227

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: ^{CS} HB 227
PUBLISH DATE: 03/30/87

FISCAL NOTE

REQUEST:

Revision Date: 02/05/88 Agency Affected: Commerce & Economic Dev.
Title: An Act relating to joint insurance BRU: Insurance
arrangements
Sponsor: Taylor Components: Public Protection
Requester: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John L. George, Director *John L. George* Phone: 465-2515
Division: Division of Insurance Date: February 5, 1988

Approved by Commissioner: J. Anthony Smith *J. Anthony Smith* Date: February, 1988
Agency: Department of Commerce and Economic Development

Distribution (by preparer):

- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

File Contents

HB 227 - Joint Insurance Arrangements

<u>No.</u>	<u>Description</u>
1.	Bill - HB 227
1.1	<i>DCRA</i>
1.2	<i>DC+D</i>
2.	To: All Legislators, From: Sen. Kelly Update on Municipal Ins. Pooling Program
3.	Solutions to Insurance Crisis - House Research Request 87.080
4.	"We the People" - publication
5.	Zero Fiscal Note - DCED, Division of Insurance
6.	Bill Review - HCRA Staff, Harrison
7.	DCRA - Zero Fiscal Note
8.	Position Paper - AML
9.	Position Paper - DCED (Commerce)
10.	Bill Analysis/Proposed AMENDMENTS - DCED
11.	<i>Com Rpt 4DP</i>
12.	<i>Legal Svcs memo on CSNB 227 (CRA)</i>
13.	<i>CSNB 227 (CRA)</i>

5^{HA} 227

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HB 227
PUBLISH DATE: 03/30/87

FISCAL NOTE

REQUEST:

Revision Date: 02/05/88 Agency Affected: Commerce & Economic Dev.
Title: An Act relating to joint insurance BRU: Insurance
arrangements
Sponsor: Taylor Components: Public Protection
Requester: _____

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

REVENUE	0.0	0.0	0.0	0.0	0.0	0.0
---------	-----	-----	-----	-----	-----	-----

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME	0.0	0.0	0.0	0.0	0.0	0.0
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: John L. George, Director *John L. George* Phone: 465-2515
Division: Division of Insurance Date: February 5, 1988
Approved by Commissioner: J. Anthony Smith *J. Anthony Smith* Date: February, 1988
Agency: Department of Commerce and Economic Development

- Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)



Alaska State Legislature

6 HB227

(a)

House of Representatives

Committee on
Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

MEMORANDUM

To: Rep. Henry Springer, Chairman
HCRA

From: HCRA Staff - Harrison *DCH*

Date: February 8, 1988

Subject: Bill Review
HB 227 - "An Act relating to joint insurance arrangements."

*Section 1. AS 21.76.010(a) is repealed and reenacted to read...

Comment: This section allows not only municipalities, school districts and Regional Educational Attendance Areas (REAs) to pool contributions, inter into cooperative insurance agreements, etc., but now includes associations, entities qualified to do business under 15 U.S.C. 3901-3904 (Product Liability Retention Act) (see attached); and groups that would be considered valid under this title for the type of insurance for which this joint insurance arrangement is established. The assumption is that the insurance would be more readily available and costs might be less.

*Sec. 2. AS 21.76.010(b) is amended to read...

Comment: This section indicates joint cooperative insurance arrangements may be made for types of insurance defined in this title except life insurance and title insurance.

*Sec. 3. AS 21.76.020 is repealed and reenacted to read:
....REGULATION BY DIVISION OF INSURANCE....

Comment: Repealed parts of the law concerning joint insurance approval by the director and conditions pertaining to the usual joint insurance arrangements. Please see attached 1986 SLA CH 136, page 2, Lines 4-24.

*Sec. 4. AS 21.76.040.... (c) A joint insurance arrangement shall use a method of accounting that

conforms with generally accepted government accounting principles.

Comment: It is possible that the inclusion of this (c) can take care of some particulars under Sec. 3 AS 21.76.020.

*Sec. 5. AS 21.76.070....

Authorizes that a board of directors can do business from an authorized insurer if the insurance is placed through a licensed surplus lines broker.

Comment: The deleted section relates to the deletion of exceptions that municipalities or school districts may purchase insurance under this section as stated. The addition of language in Line 16 probably precludes the rest of the conditions spelled out in this section; therefore deleted.

*Sec. 6. AS 21.76.080(e) is amended to read....

Comment: Deletions are deleted to conform to previous amended sections of this section of the law.

*Sec. 7. AS 21.76.110 is repealed and reenacted to read....

Comment: Attempts to address financial arrangements and cause for actions interrelated with joint insurance arrangements.

*Sec. 8. AS 21.76.010(d) repealed.

Comment: Refers to a joint insurance arrangement being considered to be an association duly authorized to transact workers' compensation insurance in the state. If this is repealed this may leave workmen's compensation in uncertainties as to issues under joint insurance arrangements. Renews responsibilities of parties involved with workmen's compensation--is there sufficient insurance or protection where required for workmen's compensation.

(b)

Chapter 136

AN ACT

Relating to joint insurance arrangements; and providing for an effective date.

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

CHAPTER 76. JOINT INSURANCE ARRANGEMENTS.

Sec. 21.76.010. AUTHORITY TO ESTABLISH JOINT INSURANCE ARRANGEMENTS. (a) Municipalities, city and borough school districts, and regional educational attendance areas may enter into cooperative agreements with each other for the purpose of establishing, operating, or participating in joint insurance arrangements through which the participating members agree to pool contributions in order to either assume risks from losses to the participants on a group basis or purchase coverage for the participants on a group basis.

21.76.010--
21.76.900

(b) A joint insurance arrangement may be for any kind of insurance defined by this title except for disability insurance, health insurance, life insurance, and title insurance.

(c) A joint insurance arrangement shall be considered an alternative or supplement to any other policy or contract of insurance authorized or required by law, including insurance under AS 21.75.

(d) For purposes of AS 23.30.075, a joint insurance arrangement is considered to be an association duly authorized to transact workers' compensation insurance in the state.

Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE. (a) A joint insurance arrangement may not be considered insurance for the

Chapter 136

1 purpose of any other law of the state and is not subject to regula-
 2 tions of the director except as expressly provided in (b) - (d) of
 3 this section and other provisions of this chapter.

4 (b) A joint insurance arrangement is subject to examination by
 5 the division under AS 21.06.140 - 21.06.230.

6 (c) A joint insurance arrangement is subject to approval by the
 7 director. As a condition of approval by the director, a joint insur-
 8 ance arrangement shall have and maintain, as to the coverage provided,

9 (1) a certificate of excess insurance or reinsurance

10 (A) for property insurance, to the value of the single
 11 most valuable property covered;

12 (B) for liability insurance, to the highest policy
 13 limit provided by the arrangement;

14 (C) for workers' compensation, to the extent of all
 15 benefits allowed by law above retention;

16 (2) a certificate of insurance limiting the arrangement's
 17 total exposure for liability and workers' compensation to the
 18 arrangement's aggregate retention;

19 (3) assets allowable under AS 21.21.020 - 21.21.140, 21.-
 20 21.225, or 21.21.230 in an amount no less than the arrangement's
 21 aggregate retention plus an amount considered adequate by the director
 22 to cover administrative and adjustment expenses.

23 (d) The value of assets and liabilities under (c) of this sec-
 24 tion shall be determined in accordance with AS 21.18.

25 Sec. 21.76.030. GENERAL PROVISIONS OF COOPERATIVE AGREEMENTS. A
 26 cooperative agreement shall provide for the proper operation of the
 27 joint insurance arrangement, and include provisions for

28 (1) administration of the arrangement by a board of direc-
 29 tors, specifying the number of members of the board and other

Chapter 136

- 1 requirements necessary for the proper functioning of the board;
- 2 (2) appointment of an administrator and other persons as
- 3 necessary for the proper functioning of the arrangement;
- 4 (3) organization of the arrangement, including a roster of
- 5 participating members and the names of the members of the board of
- 6 directors;
- 7 (4) procedures to establish and promote an aggressive risk
- 8 management and program among the members of the arrangement, including
- 9 procedures for identifying and reducing the risks that can be reduced
- 10 through implementing better safety technologies and improved work
- 11 techniques and procedures;
- 12 (5) enforcing the collection of contributions or payments
- 13 in default from members of the arrangement;
- 14 (6) the addition of new members to the arrangement or the
- 15 withdrawal of members from the arrangement;
- 16 (7) the method of apportioning costs and disposition of
- 17 excess contributions;
- 18 (8) transmission of financial statements and audit reports
- 19 of the arrangement to participating members;
- 20 (9) terminating the arrangement and disposing of its as-
- 21 sets; and
- 22 (10) establishing and administering a joint insurance fund.

23 Sec. 21.76.040. FINANCIAL PROVISIONS OF AGREEMENTS. (a) A
24 cooperative agreement must include a provision requiring an annual
25 determination by a casualty actuary who is a member of the American
26 Academy of Actuaries that procedures for establishing reserves for
27 losses of the joint insurance arrangement are actuarially sound.

28 (b) A joint insurance arrangement shall be subject to an annual
29 independent audit. The audit shall be conducted in accordance with

Chapter 136

1 generally accepted auditing standards and must include a review of the
2 actuarial assumptions used for establishing the reserves under (a) of
3 this section. The audit report must include certification from a
4 casualty actuary who is a member of the American Academy of Actuaries
5 that the actuarial assumptions continue to be sound and the level of
6 the reserves are adequate.

7 Sec. 21.76.050. CONTRACTING WITH PRIVATE ADMINISTRATORS. A
8 cooperative agreement may authorize the board of directors to enter
9 into contracts for services necessary to perform the functions of a
10 joint insurance arrangement. The person contracting to perform the
11 functions must be appropriately licensed under this title if this
12 title so requires.

13 Sec. 21.76.060. DELEGATION OF POWER TO SETTLE CLAIMS. A cooper-
14 ative agreement may delegate to the board of directors, or authorize
15 delegation by the board to another person or group, the power to
16 compromise, arbitrate, or otherwise settle claims on behalf of the
17 arrangement.

18 Sec. 21.76.070. EXCESS INSURANCE. A cooperative agreement may
19 authorize the board of directors to purchase excess or catastrophic
20 insurance on behalf of the joint insurance arrangement. The cost of
21 the insurance shall be apportioned in the manner specified in the
22 joint insurance agreement. The board may purchase insurance under
23 this section only from an insurer authorized to do business in the
24 state, except that an arrangement formed by municipalities or school
25 districts may purchase insurance under this section from a risk-shar-
26 ing pool established by a national association of similar entities if
27 the risk-sharing pool meets the qualifications for an unauthorized
28 insurer under AS 21.34.040(b) and (d) and 21.34.220 and has capital
29 and policyholders surplus in an amount at least as great as would be

Chapter 136

1 required if the association were a domestic multiple line insurer. An
2 arrangement may purchase insurance under this section for property and
3 liability risks from unauthorized insurers allowed for use by licensed
4 Alaska surplus lines brokers.

5 Sec. 21.76.080. JOINT INSURANCE FUND. (a) A joint insurance
6 arrangement shall establish a joint insurance fund. The fund consists
7 of money

8 (1) contributed by members of the joint insurance arrange-
9 ment through budgetary appropriations or transfers from a self-insur-
10 ance reserve;

11 (2) contributed by officers and employees of members of the
12 joint insurance arrangement under an employee benefit plan; and

13 (3) collected by the joint insurance arrangement through
14 subrogation of a claim paid from the fund to a member of the arrange-
15 ment.

16 (b) An expenditure may be made from a joint insurance fund only
17 to pay claims, losses, or benefits, including interest on them, and
18 the administrative and adjustment expenses incurred in connection with
19 them, involving the types of protection for which the fund provides
20 coverage as specified in the joint insurance agreement.

21 (c) The administrator shall keep the fund separate from other
22 funds of a member of a joint insurance arrangement.

23 (d) For each type of protection offered by the joint insurance
24 arrangement, the method of accounting must show the order, source,
25 date, and amount of each payment from the fund.

26 (e) Within 60 days of the end of the fiscal year, the adminis-
27 trator shall furnish a detailed report of the operation and condition
28 of the fund to the board of directors and the director of insurance.
29 The report furnished to the director of insurance shall be

Chapter 136

1 (1) filed in the general form and context acceptable to the
2 director;

3 (2) in accordance with accounting principles established
4 under this title; and

5 (3) available for public inspection.

6 (f) Money held by a fund as reserves and money not needed for
7 daily operations may be invested by the board of directors.

8 (g) A fund may not be terminated unless the administrator certi-
9 fies that an amount of money sufficient to pay accrued and contingent
10 expenditures has been placed in a fully collateralized escrow account.

11 Sec. 21.76.090. FILING OF AGREEMENT. The board of directors
12 shall file a copy of the cooperative agreement with the director of
13 insurance at least 60 days before the effective date of the agreement.
14 The agreement shall be available for public inspection.

15 Sec. 21.76.100. REGULATIONS. A cooperative agreement may au-
16 thorize the board of directors to adopt rules not inconsistent with
17 law for the fair and equitable administration of the joint insurance
18 arrangement and the joint insurance fund.

19 Sec. 21.76.110. SUBROGATION. A joint insurance arrangement has
20 a right of subrogation with respect to its participants to the same
21 extent that an insurer has a right of subrogation with respect to one
22 of its insureds.

23 Sec. 21.76.900. DEFINITIONS. In this chapter

24 (1) "adjustment expenses" means expenses for investigative,
25 processing, legal, actuarial, arbitration, and settlement services
26 incurred in the adjustment of losses, claims, or benefits;

27 (2) "administrator" means a person or group appointed by
28 the board of directors to administer a joint insurance arrangement or
29 a joint insurance fund;

Chapter 136

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

(3) "board" or "board of directors" means the board of directors provided for in a cooperative agreement;

(4) "cooperative agreement" means a written agreement entered into by two or more entities described in AS 21.76.010 for the purpose of establishing, operating, or participating in a joint insurance arrangement;

(5) "fund" or "joint insurance fund" means a fund established under AS 21.76.080;

(6) "joint insurance arrangement" means a joint insurance arrangement authorized under AS 21.76.010.

* Sec. 2. AS 21.36.190 is amended by adding a new subsection to read:

(e) This section does not apply to insurance coverage under a joint insurance arrangement authorized by AS 21.76.

21.36.190(e)

* Sec. 3. AS 21.39.155(a) is amended to read:

(a) The director may require carriers, except a reciprocal insurer formed by and insuring only a group of municipalities or nonprofit public utilities under AS 21.75 or a joint insurance arrangement formed under AS 21.76, as a condition of writing a line of insurance dealing with workers' compensation, to participate in an assigned risk pool if the director finds that mandatory carrier participation is in the public interest.

21.39.155(a)

* Sec. 4. AS 21.80.180(5) is amended to read:

(5) "insolvent insurer" means an insurer

21.80.180(5)

(A) authorized to transact insurance in this state, except an assessable reciprocal insurer formed by and insuring only municipalities or nonprofit public utilities, a joint insurance arrangement formed under AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health Care Providers Joint Underwriting Association established under AS 21.88, either at the

Chapter 136

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

time the policy was issued or when the insured event occurred,
and

(B) determined to be insolvent by a court of competent
jurisdiction;

* Sec. 5. AS 21.80.180(6) is amended to read:

21.80.180(6)

(6) "member insurer" means a person, except an assessable
reciprocal insurer formed by and insuring only municipalities or
nonprofit public utilities, a joint insurance arrangement formed under
AS 21.76, the Medical Indemnity Corporation of Alaska, and the Health
Care Providers Joint Underwriting Association established under
AS 21.88, who

(A) writes any kind of insurance to which this chapter
applies under AS 21.80.020 including the exchange of reciprocal
or interinsurance contracts, and

(B) is licensed to transact insurance in this state;

* Sec. 6. This Act takes effect immediately in accordance with AS 01.-
10.070(c).

Eff. 6/10/86

UNITED STATES CODE ANNOTATED

Title 15
Commerce and Trade
§ 1701 to End

1987
Cumulative Annual Pocket Part

Replacing 1986 pocket part in back of volume

Includes the Laws of the
99th CONGRESS, SECOND SESSION (1986)

For close of Notes of Decisions
See page III

For Later Laws and Cases
Consult
USCA
Supplementary Pamphlet Service

RECEIVED

APR 29 1987

LEGISLATIVE AFFAIRS ST. PAUL, MINN.
Reference Lib WEST PUBLISHING CO.

55 U.S.C.A.—1
1987 P.P.

55

§ 3713. Authorization of appropriations

[See main volume for text of section]

(Pub.L. 96-480, § 17, formerly § 14, Oct. 21, 1980, 94 Stat. 2320, renumbered § 18 by Pub.L. 99-502, § 2, Oct. 20, 1986, 100 Stat. 1785, renumbered § 17 by Pub.L. 99-502, § 9(e)(1), Oct. 20, 1986, 100 Stat. 1797.)

§ 3714. Spending authority

No payments shall be made or contracts shall be entered into pursuant to the provisions of this chapter (other than sections 3710a, 3710b and 3710c of this title) except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub.L. 96-480, § 18, formerly § 15, Oct. 21, 1980, 94 Stat. 2320, renumbered § 19 and amended by Pub.L. 99-502, §§ 2, 9(b)(13), Oct. 20, 1986, 100 Stat. 1785, 1796, renumbered § 18 and amended by Pub.L. 99-502, §§ 9(e)(1), (4), Oct. 20, 1986, 100 Stat. 1797.)

Codification. Amendment by section 9(e)(4) of Pub.L. 99-502, directing that "sections 11, 12, and 13" be substituted for "sections 12, 13, and 14" was not executed in view of renumbering of sections 12, 13, and 14 of Pub.L. 96-480 as sections 11, 12 and 13, respectively, of Pub.L. 96-480 by section 9(e)(1) of Pub.L. 99-502. Since both references translate as "sections 3710a, 3710b, and 3710c of this title", amendment by section 9(e)(4) of Pub.L. 99-502 resulted in no change in text.

1986 Amendment. Pub.L. 99-502, § 9(b)(13), added exception relating to sections 3710a, 3710b and 3710c of this title.

Pub.L. 99-502, § 9(e)(4), substituted references to sections 11, 12 and 13 of Pub.L. 96-480 for references to sections 12, 13 and 14 of Pub.L. 96-480. See Codification note set out under this section.

Legislative History. For legislative history and purpose of Pub.L. 99-502, see 1986 U.S. Code Cong. and Adm. News, p. 3442.

CHAPTER 64—METHANE TRANSPORTATION RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Library References

War and National Emergency § 36, 40.
C.J.S. War and National Defense §§ 44, 48.

§ 3803. Duties of Secretary of Energy

[See main volume for text of (a) and (b)]

(c) Assurance respecting scope of program activities

In assuring the effective management of this program, the Secretary shall have specific responsibility to ascertain that the program includes activities to—

[See main volume for text of (1) to (7)]

(8) ascertain any changes in fuel supply patterns, tax policies, and standards governing the manufacture of vehicles which are needed to facilitate the manufacture and use of methane-fueled vehicles.

[See main volume for text of (d)]

(As amended Pub.L. 97-375, Title I, § 106(c), Dec. 21, 1982, 96 Stat. 1820.)

1982 Amendment. Subsec. (c)(8). Pub.L. 97-375 struck out "and report to the Congress on" after "ascertain".

Legislative History. For legislative history and purpose of Pub.L. 97-375, see 1982 U.S. Code Cong. and Adm. News, p. 3435.

Code of Federal Regulations

Review and certification of agreements, see 10 CFR 478.1.

CHAPTER 65—LIABILITY RISK RETENTION

- | Sec. | | Sec. | |
|-------|---|-------|--|
| 3902. | Risk retention groups. | | (f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws. |
| | (c) [See main volume for text]. | | (g) State powers to enforce State laws. |
| (d) | Documents for submission to State insurance commissioners. | | (h) States' authority to sue. |
| (e) | Power of courts to enjoin conduct. | 3905. | Clarification concerning permissible State authority. |
| (f) | State powers to enforce State laws. | | (a) State motor vehicle no-fault and motor vehicle financial responsibility laws. |
| (g) | States' authority to sue. | | (b) Applicability of exemptions. |
| (h) | State authority to regulate or prohibit ownership interests in risk retention groups. | | (c) Prohibited insurance policy coverage. |
| 3903. | Purchasing groups. | | (d) State authority to specify acceptable means of establishing financial responsibility. |
| | (a) to (c) [See main volume for text]. | 3906. | Injunctive orders issued by United States district courts. |
| (d) | Notice to State insurance commissioners of intent to do business. | | |
| (e) | Designation of agent for service of documents and process. | | |

Library References

Insurance § 31.1.
Insurance § 91 et seq.

§ 3901. Definitions

(a) As used in this chapter—

(1) "insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(2) "liability"—

(A) means legal liability for damages (including costs of defense, legal costs and fees, and other claims expenses) because of injuries to other persons, damage to their property, or other damage or loss to such other persons resulting from or arising out of—

(i) any business (whether profit or nonprofit), trade, product, services (including professional services), premises, or operations, or

(ii) any activity of any State or local government, or any agency or political subdivision thereof; and

(B) does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.);

(3) "personal risk liability" means liability for damages because of injury to any person, damage to property, or other loss or damage resulting from any personal, familial, or household responsibilities or activities, rather than from responsibilities or activities referred to in paragraphs (2)(A) and (2)(B);

(4) "risk retention group" means any corporation or other limited liability association—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which—

(i) is chartered or licensed as a liability insurance company under the laws of a State and authorized to engage in the business of insurance under the laws of such State; or

(ii) before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or Cayman Islands and, before such date, had certified to the insurance commissioner of at least one State that it satisfied the capitalization requirements of such State, except that any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since such date and only for the purpose of

continuing to provide insurance to cover product liability or completed operations liability (as such terms were defined in this section before the date of the enactment of the Risk Retention Act of 1986);

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(E) which—

(I) has as its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group; or

(II) has as its sole owner an organization which has as—

(I) its members only persons who comprise the membership of the risk retention group; and

(II) its owners only persons who comprise the membership of the risk retention group and who are provided insurance by such group;

(F) whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations;

(G) whose activities do not include the provision of insurance other than—

(I) liability insurance for assuming and spreading all or any portion of the similar or related liability exposure of its group members; and

(II) reinsurance with respect to the similar or related liability exposure of any other risk retention group (or any member of such other group) which is engaged in businesses or activities so that such group (or member) meets the requirement described in subparagraph (F) for membership in the risk retention group which provides such reinsurance; and

(H) the name of which includes the phrase "Risk Retention Group".

(5) "purchasing group" means any group which—

(A) has as one of its purposes the purchase of liability insurance on a group basis;

(B) purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in subparagraph (C);

(C) is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar, or common business, trade, product, services, premises, or operations; and

(D) is domiciled in any State;

(6) "State" means any State of the United States or the District of Columbia; and

(7) "hazardous financial condition" means that, based on its present or reasonably anticipated financial condition, a risk retention group is unlikely to be able—

(A) to meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(B) to pay other obligations in the normal course of business.

(b) Nothing in this chapter shall be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State, and the definitions of liability, personal risk liability, and insurance under any State law shall not be applied for the purposes of this chapter, including recognition or qualification of risk retention groups or purchasing groups.

(As amended Pub.L. 98-193, Dec. 1, 1983, 97 Stat. 1344; Pub.L. 99-563, §§ 3, 4, 12(b), Oct. 27, 1986, 100 Stat. 3170-3172, 3177.)

1983 Amendment. Subsec. (b). Pub.L. 98-193 substituted provision that nothing in this chapter would be construed to affect either the tort law or

the law governing the interpretation of insurance contracts of any State, and that the definitions of product liability and product liability insurance

under any State law would not be applied for the purposes of this chapter, including recognition or qualification of risk, retention groups or purchasing groups for provision that the definition of product liability in this section would not be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State.

References in Text. The date of the enactment of the Risk Retention Act of 1986, referred to in subsec. (a)(4)(C)(ii), probably refers to the date of the enactment of the Risk Retention Amendments of 1986 [Pub.L. 99-563] which was approved Oct. 27, 1986.

Effective Date of 1986 Amendment. Section 11(a), (b) of Pub.L. 99-563 provided that:

"(a) General rule.—Subject to subsection (b), this Act [enacting sections 3905 and 3906 of this title, amending this section and sections 3902 and 3903 of this title and sections 9671-9675 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section; and sections 9671 of Title 42] shall take effect on the date of its enactment [Oct. 27, 1986].

"(b) Special rule regarding feasibility study.—The provisions of section 3(d) of the Liability Risk Retention Act of 1986 [section 3902(d) of this title] (as added by section 5(b) of this Act), relating to the submission of a feasibility study, shall not apply with respect to any line or classification of liability insurance which—

"(1) was defined in the Product Liability Risk Retention Act of 1981 [this chapter] before the date of the enactment of this Act [Oct. 27, 1986]; and

"(2) was offered before such date of enactment by any risk retention group which has been chartered and operating for not less than 3 years before such date of enactment [Oct. 27, 1986]."

Short Title of 1986 Amendment. Section 1 of Pub.L. 99-563 provided that: "This Act [enacting sections 3905 and 3906 of this title, amending this section, sections 3902 and 3903 of this title, the short title note under this section, and sections 9671 to 9675 of Title 42, The Public Health and Welfare, and enacting provisions set out as notes under this section and section 9671 of Title 42] may be cited as the 'Risk Retention Amendments of 1986'."

Short Title. Section 1 of Pub.L. 97-45, as amended Pub.L. 99-563, § 12(a), Oct. 27, 1986, 100 Stat. 3177, provided that: "This Act [this chapter] may be cited as the 'Liability Risk Retention Act of 1986'."

Oversight of Implementation of Risk Retention Amendments of 1986; Reports to Congress. Section 10 of Pub.L. 99-563 provided that:

"(a) In general.—(1) Not later than September 1, 1987, and not later than September 1, 1989, the Secretary of Commerce shall submit reports to the Congress concerning implementation of this Act [see Short Title of 1986 Amendment note under this section].

"(2) Such report shall be based on—

"(A) the Secretary's consultation with State insurance commissioners, risk retention groups, purchasing groups, and other interested parties; and

"(B) the Secretary's analysis of other information available to the Secretary.

"(b) Contents of the report.—The report shall describe the Secretary's views concerning—

"(1) the contribution of this Act [see Short Title of 1986 Amendment note under this section] toward resolution of problems relating to the unavailability and unaffordability of liability insurance;

"(2) the extent to which the structure of regulation and preemption established by this Act [see Short Title of 1986 Amendment note under this section] is satisfactory;

"(3) the extent to which, in the implementation of this Act [see Short Title of 1986 Amendment note under this section], the public is protected from unsound financial practices and other commercial abuses involving risk retention groups and purchasing groups;

"(4) the causes of any financial difficulties of risk retention groups and purchasing groups;

"(5) the extent to which risk retention groups and purchasing groups have been discriminated against under State laws, practices, and procedures contrary to the provisions and underlying policy of this Act [see Short Title of 1986 Amendment note under this section] and the Product Liability Risk Retention Act [see Short Title note under this section] (as amended by this Act); and

"(6) such other comments and conclusions as the Secretary deems relevant to assessment of the implementation of this Act [see Short Title of 1986 Amendment note under this section]."

State Powers and Authorities under Pub.L. 99-563 Additional to Powers and Authorities under CERCLA. Powers and authorities of States under amendments to this chapter by Pub.L. 99-563 additional to powers and authorities under Comprehensive Environmental Response, Compensation, and Liability Act of 1980, see section 210(b) of Pub.L. 99-499, as added by section 11(c)(1) of Pub.L. 99-563, set out as a note under section 9671 of Title 42, The Public Health and Welfare.

Other Federal Environmental Laws. Section 11(c)(2) of Pub.L. 99-563 provided that: "Nothing in this Act [see Short Title of 1986 Amendment note under this section] shall be construed, interpreted or applied to diminish the obligations of any person to establish or maintain evidence of financial responsibility or otherwise comply with any of the requirements of Federal environmental laws, including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 [42 U.S.C.A. § 9601 et seq.] and the Solid Waste Disposal Act [42 U.S.C.A. § 6901 et seq.]."

Legislative History. For legislative history and purpose of Pub.L. 98-193, see 1983 U.S. Code Cong. and Adm. News, p. 2075. See, also, Pub.L. 99-563, 1986 U.S. Code Cong. and Adm. News, p. 5303.

Notes of Decisions

1. Product liability coverage

Subject matter of insurance provided to member home builders to reimburse them for losses arising out of structural defects and builder default under

Note 1

home warranty was product liability coverage within scope of the Product Liability Risk Retention Act of 1981, § 2 et seq., as amended, 15 U.S.C.A. § 3901 et seq., even though entity providing such insurance undertook to provide coverage applicable only to risk, damage to or loss of

product, which would not generally be recognized as products liability risk. Home Warranty Corp. v. Caldwell, C.A.11 (Ga.) 1985, 777 F.2d 1455, rehearing denied 794 F.2d 687, certiorari denied 107 S.Ct. 183.

§ 3902. Risk retention groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

- (1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

[See main volume for text of (A) and (B)]

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of liability insurance losses and expenses incurred on policies written through such mechanism;

(D) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process;

(E) submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(1) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(2) any such examination shall be coordinated to avoid unjustified duplication and unjustified repetition;

(F) comply with a lawful order issued—

(1) in a delinquency proceeding commenced by the State insurance commissioner if there has been a finding of financial impairment under subparagraph (E); or

(2) in a voluntary dissolution proceeding;

(G) comply with any State law regarding deceptive, false, or fraudulent acts or practices, except that if the State seeks an injunction regarding the conduct described in this subparagraph, such injunction must be obtained from a court of competent jurisdiction;

(H) comply with an injunction issued by a court of competent jurisdiction, upon a petition by the State insurance commissioner alleging that the group is in hazardous financial condition or is financially impaired; and

(I) provide the following notice, in 10-point type, in any insurance policy issued by such group:

"NOTICE

"This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and regulations of your State. State insurance insolvency guaranty funds are not available for your risk retention group."

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to laws governing the insurance business pertaining to—

(1) liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of liability insurance coverage for a risk retention group; and

(3) the provision of—

(A) insurance related services;

(B) management, operations, and investment activities; or

(C) loss control and claims administration (including loss control and claims administration services for uninsured risks retained by any member of such group);

for a risk retention group or any member of such group with respect to liability for which the group provides insurance.

[See main volume for text of (c)]

(d) Documents for submission to State insurance commissioners

Each risk retention group shall submit—

(1) to the insurance commissioner of the State in which it is chartered—

(A) before it may offer insurance in any State, a plan of operation or a feasibility study which includes the coverages, deductibles, coverage limits, rates, and rating classification systems for each line of insurance the group intends to offer; and

(B) revisions of such plan or study if the group intends to offer any additional lines of liability insurance;

(2) to the insurance commissioner of each State in which it intends to do business, before it may offer insurance in such State—

(A) a copy of such plan or study (which shall include the name of the State in which it is chartered and its principal place of business); and

(B) a copy of any revisions to such plan or study, as provided in paragraph (1)(B) (which shall include any change in the designation of the State in which it is chartered); and

(3) to the insurance commissioner of each State in which it is doing business, a copy of the group's annual financial statement submitted to the State in which the group is chartered as an insurance company, which statement shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by—

(A) a member of the American Academy of Actuaries, or

(B) a qualified loss reserve specialist.

(e) Power of courts to enjoin conduct

Nothing in this section shall be construed to affect the authority of any Federal or State court to enjoin—

(1) the solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; or

(2) the solicitation or sale of insurance by, or operation of, a risk retention group that is in hazardous financial condition or is financially impaired.

(f) State powers to enforce State laws

(1) Subject to the provisions of subsection (a)(1)(G) of this section (relating to injunctions) and paragraph (2), nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a risk retention group is not exempt under this chapter.

(2) If a State seeks an injunction regarding the conduct described in paragraphs (1) and (2) of subsection (e) of this section, such injunction must be obtained from a Federal or State court of competent jurisdiction.

(g) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(h) State authority to regulate or prohibit ownership interests in risk retention groups

Nothing in this chapter shall be construed to affect the authority of any State to regulate or prohibit the ownership interest in a risk retention group by an insurance company in that State, other than in the case of ownership interest in a risk retention group whose members are insurance companies.

(As amended Pub.L. 99-563, §§ 5, 7, R(a), 12(c), Oct. 27, 1986, 100 Stat. 3172, 3176, 3178.)

Legislative History. For legislative history and purpose of Pub.L. 99-563, see 1986 U.S. Code Cong. and Adm. News, p. 5303.

Notes of Decisions

Exemption from state control 2
Home builders Insurance 1

1. Home builders insurance

In action brought against State Insurance Commissioner seeking injunctive relief and a declaratory judgment that entity providing insurance to member home builders to reimburse them for losses arising out of structural defects during first ten years after sale of house and coverage for builder default under home warranty was a risk retention group under this chapter. Issue of fact was raised as to whether entity, which could rely upon coverage for major structural defects but not coverage for builder default under home warranty

to demonstrate that it was a risk retention group, was a firm whose primary activity consisted of assuming and spreading product liability risk exposure of its group members, thereby precluding summary judgment. *Home Warranty Corp. v. Elliott, D.C.Del.1983, 572 F.Supp. 1059.*

2. Exemption from State control

When a risk retention group formulates a program for purpose of spreading the product liability risks of its members, inclusion of ancillary provisions necessary to the viability of the program does not render the program or any segment thereof subject to regulations by the state; thus, program for insuring new homes against product liability risks was exempt from state regulation even though it contained a provision allowing insurer to seek reimbursement from the builder if builder defaulted on his obligations under its warranty issued for the first two years of the program. *Home Warranty Corp. v. Elliott, D.C.Del.1984, 585 F.Supp. 443.*

§ 3903. Purchasing groups

(a) Exemptions from State laws, rules, regulations, or orders

Except as provided in this section and section 3905 of this title, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

[See main volume for text of (1) to (8)]

(b) Scope of exemptions

The exemptions specified in subsection (a) of this section apply to—

(1) liability insurance, provided to—

- (A) a purchasing group; or
- (B) any person who is a member of a purchasing group; and

(2) the provision of—

- (A) liability coverage;
- (B) insurance related services; or
- (C) management services;

to a purchasing group or member of the group.

[See main volume for text of (c)]

(d) Notice to State Insurance commissioners of intent to do business

(1) A purchasing group which intends to do business in any State shall furnish notice of such intention to the insurance commissioner of such State. Such notice—

- (A) shall identify the State in which such group is domiciled;
- (B) shall specify the lines and classifications of liability insurance which the purchasing group intends to purchase;
- (C) shall identify the insurance company from which the group intends to purchase insurance and the domicile of such company; and
- (D) shall identify the principal place of business of the group.

(2) Such purchasing group shall notify the commissioner of any such State as to any subsequent changes in any of the items provided in such notice.

(e) Designation of agent for service of documents and process

A purchasing group shall register with and designate the State insurance commissioner of each State in which it does business as its agent solely for the purpose of receiving service of legal documents or process, except that such requirement shall not apply in the case of a purchasing group—

(1) which—

- (A) was domiciled before April 1, 1980; and

(B) is domiciled on and after September 26, 1981; in any State of the United States;

(2) which—

(A) before September 26, 1981, purchased insurance from an insurance carrier licensed in any State; and

(B) since September 26, 1981, purchases its insurance from an insurance carrier licensed in any State;

(3) which was a purchasing group under the requirements of this chapter before October 27, 1986; and

(4) as long as such group does not purchase insurance that was not authorized for purposes of an exemption under this chapter as in effect before October 27, 1986.

(f) Purchases of insurance through licensed agents or brokers acting pursuant to surplus lines laws

A purchasing group may not purchase insurance from a risk retention group that is not chartered in a State or from an insurer not admitted in the State in which the purchasing group is located, unless the purchase is effected through a licensed agent or broker acting pursuant to the surplus lines laws and regulations of such State.

(g) State power to enforce State laws

Nothing in this chapter shall be construed to affect the authority of any State to make use of any of its powers to enforce the laws of such State with respect to which a purchasing group is not exempt under this chapter.

(h) States' authority to sue

Nothing in this chapter shall affect the authority of any State to bring an action in any Federal or State court.

(As amended Pub.L. 99-563, §§ 6, 8(b), 12(d), Oct. 27, 1986, 100 Stat. 3174, 3175, 3178.)

Legislative History. For legislative history and purpose of Pub.L. 99-563, see 1986 U.S. Code Cong. and Adm. News, p. 5303.

§ 3905. Clarification concerning permissible State authority

(a) State motor vehicle no-fault and motor vehicle financial responsibility laws

Nothing in this chapter shall be construed to exempt a risk retention group or purchasing group authorized under this chapter from the policy form or coverage requirements of any State motor vehicle no-fault or motor vehicle financial responsibility insurance law.

(b) Applicability of exemptions

The exemptions provided under this chapter shall apply only to the provision of liability insurance by a risk retention group or the purchase of liability insurance by a purchasing group, and nothing in this chapter shall be construed to permit the provision or purchase of any other line of insurance by any such group.

(c) Prohibited insurance policy coverage

The terms of any insurance policy provided by a risk retention group or purchased by a purchasing group shall not provide or be construed to provide insurance policy coverage prohibited generally by State statute or declared unlawful by the highest court of the State whose law applies to such policy.

(d) State authority to specify acceptable means of establishing financial responsibility

Subject to the provisions of section 3902(a)(4) of this title relating to discrimination, nothing in this chapter shall be construed to preempt the authority of a State to specify acceptable means of demonstrating financial responsibility where the State has required a demonstration of financial responsibility as a condition for obtaining a license or permit to undertake specified activities. Such means may include or exclude insurance coverage obtained from an admitted insurance company, an excess lines company, a risk retention group, or any other source regardless of whether

CODE

ANNOTATED

Judiciary and Judicial Procedure.

Labor.

General Lands and Mining.

Money and Finance.

National Guard.

Navigation and Navigable Waters.

Army (See Title 10, Armed Forces).

Consent.

Fraternities and Observances.

Pay and Allowances of the Uniformed Services.

Veterans' Benefits.

Postal Service.

Public Buildings, Property, and Works.

Public Contracts.

Public Health and Welfare.

Public Lands.

Public Printing and Documents.

Roads.

Shipping.

Telegraphs, Telephones, and Radiotelegraphs.

Territories and Insular Possessions.

Transportation.

War and National Defense.

UNITED STATES CODE

ANNOTATED

Title 15

Commerce and Trade

Section 1701 to End

Comprising All Laws of a General and Permanent Nature
Under Arrangement of Official Code of
the Laws of the United States

with

Annotations from Federal and State Courts

ST. PAUL, MINN.
WEST PUBLISHING CO.

CHAPTER 65—PRODUCT LIABILITY RISK RETENTION

Sec.

- 3901. Definitions.
- 3902. Risk retention groups.
 - (a) Exemptions from State laws, rules, regulations, or orders.
 - (b) Scope of exemptions.
 - (c) Licensing of agents or brokers for risk retention groups.
- 3903. Purchasing groups.
 - (a) Exemptions from State laws, rules, regulations, or orders.
 - (b) Scope of exemptions.
 - (c) Licensing of agents or brokers for purchasing groups.
- 3904. Securities laws.
 - (a) Ownership interest of members in risk retention groups.
 - (b) Investment companies.
 - (c) State blue sky laws.

§ 3901. Definitions

(a) As used in this chapter—

(1) “completed operations liability” means liability arising out of the installation, maintenance, or repair of any product at a site which is not owned or controlled by—

(A) any person who performs that work; or

(B) any person who hires an independent contractor to perform that work;

but shall include liability for activities which are completed or abandoned before the date of the occurrence giving rise to the liability;

(2) “insurance” means primary insurance, excess insurance, reinsurance, surplus lines insurance, and any other arrangement for shifting and distributing risk which is determined to be insurance under applicable State or Federal law;

(3) “product liability” means liability for damages because of any personal injury, death, emotional harm, consequential economic damage, or property damage (including damages resulting from the loss of use of property) arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product, but does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred;

(4) “risk retention group” means any corporation or other limited liability association taxable as a corporation, or as an insurance company, formed under the laws of any State, Bermuda, or the Cayman Islands—

(A) whose primary activity consists of assuming and spreading all, or any portion, of the product liability or completed operations liability risk exposure of its group members;

(B) which is organized for the primary purpose of conducting the activity described under subparagraph (A);

(C) which is chartered or licensed as an insurance company and authorized to engage in the business of insurance under the laws of any State, or which is so chartered or licensed and authorized before January 1, 1985, under the laws of Bermuda or the Cayman Islands, except that any group so chartered or licensed and authorized under the laws of Bermuda or the Cayman Islands shall be considered to be a risk retention group only after it has certified to the insurance commissioner of at least one State that it satisfies the capitalization requirements of such State;

(D) which does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person; and

(E) which is composed of members each of whose principal activity consists of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or products;

(5) "purchasing group" means any group of persons which has as one of its purposes the purchase of product liability or completed operations liability insurance on a group basis; and

(6) "State" means any State of the United States or the District of Columbia.

(b) The definition of "product liability" in paragraph (4) of subsection (a) of this section shall not be construed to affect either the tort law or the law governing the interpretation of insurance contracts of any State.

(Pub.L. 97-45, § 2, Sept. 25, 1981, 95 Stat. 949.)

Historical Note

Short Title. Section 1 of Pub.L. 97-45 provided that: "This Act [this Chapter] may be cited as the 'Product Liability Risk Retention Act of 1981'."

Legislative History. For legislative history and purpose of Pub.L. 97-45, see 1981 U.S. Code Cong. and Adm. News, p. 1432.

§ 3902. Risk retention groups

Exemptions from State laws, rules, regulations, or orders

(a) Except as provided in this section, a risk retention group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) make unlawful, or regulate, directly or indirectly, the operation of a risk retention group except that the jurisdiction in which it is chartered may regulate the formation and operation of such a group and any State may require such a group to—

(A) comply with the unfair claim settlement practices law of the State;

(B) pay, on a nondiscriminatory basis, applicable premium and other taxes which are levied on admitted insurers and surplus lines insurers, brokers, or policyholders under the laws of the State;

(C) participate, on a nondiscriminatory basis, in any mechanism established or authorized under the law of the State for the equitable apportionment among insurers of product liability or completed operations liability insurance losses and expenses incurred on policies written through such mechanism;

(D) submit to the appropriate authority reports and other information required of licensed insurers under the laws of a State relating solely to product liability or completed operations liability insurance losses and expenses;

(E) register with and designate the State insurance commissioner as its agent solely for the purpose of receiving service of legal documents or process, and, upon request, furnish such commissioner a copy of any financial report submitted by the risk retention group to the commissioner of the chartering or licensing jurisdiction;

(F) submit to an examination by the State insurance commissioner in any State in which the group is doing business to determine the group's financial condition, if—

(i) the commissioner has reason to believe the risk retention group is in a financially impaired condition; and

(ii) the commissioner of the jurisdiction in which the group is chartered has not begun or has refused to initiate an examination of the group; and

(G) comply with a lawful order issued in a delinquency proceeding commenced by the State insurance commissioner if the commissioner of the jurisdiction in which the group is chartered has failed to initiate such a proceeding after notice of a finding of financial impairment under subparagraph (F) of this paragraph;

(2) require or permit a risk retention group to participate in any insurance insolvency guaranty association to which an insurer licensed in the State is required to belong;

(3) require any insurance policy issued to a risk retention group or any member of the group to be countersigned by an insurance agent or broker residing in that State; or

(4) otherwise discriminate against a risk retention group or any of its members, except that nothing in this section shall be construed to affect the applicability of State laws generally applicable to persons or corporations.

(b) The e

(1) f
erage f

(2) t
urance

(3) t
vices f

(c) A Sta
agent or bro
except that
discriminate
(Pub.L. 97-4

Legislative fi
and purpose o
Code Cong. an

§ 3903.

(a) Excep
any State la
regulation, (

(1) p

(2) n
insuran
advant
other p
matters

(3) p
urance
tion;

(4) p
basis b
of time
minim

(5) r
of men

Scope of exemptions

(b) The exemptions specified in subsection (a) of this section apply to—

(1) product liability or completed operations liability insurance coverage provided by a risk retention group for—

(A) such group; or

(B) any person who is a member of such group;

(2) the sale of product liability or completed operations liability insurance coverage for a risk retention group; and

(3) the provision of insurance related services or management services for a risk retention group or any member of such group.

Licensing of agents or brokers for risk retention groups

(c) A State may require that a person acting, or offering to act, as an agent or broker for a risk retention group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub.L. 97-45, § 3, Sept. 25, 1981, 95 Stat. 950.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97-45, see 1981 U.S. Code Cong. and Adm. News, p. 1432.

§ 3903. Purchasing groups**Exemptions from State laws, rules, regulations, or orders**

(a) Except as provided in this section, a purchasing group is exempt from any State law, rule, regulation, or order to the extent that such law, rule, regulation, or order would—

(1) prohibit the establishment of a purchasing group;

(2) make it unlawful for an insurer to provide or offer to provide insurance on a basis providing, to a purchasing group or its members, advantages, based on their loss and expense experience, not afforded to other persons with respect to rates, policy forms, coverages, or other matters;

(3) prohibit a purchasing group or its members from purchasing insurance on the group basis described in paragraph (2) of this subsection;

(4) prohibit a purchasing group from obtaining insurance on a group basis because the group has not been in existence for a minimum period of time or because any member has not belonged to the group for a minimum period of time;

(5) require that a purchasing group must have a minimum number of members, common ownership or affiliation, or a certain legal form;

(6) require that a certain percentage of a purchasing group must obtain insurance on a group basis;

(7) require that any insurance policy issued to a purchasing group or any members of the group be countersigned by an insurance agent or broker residing in that State; or

(8) otherwise discriminate against a purchasing group or any of its members.

Scope of exemptions

(b) The exemptions specified in subsection (a) of this section apply to—

(1) product liability or completed operations liability insurance, and comprehensive general liability insurance which includes either of these coverages, provided to—

(A) a purchasing group; or

(B) any person who is a member of a purchasing group; and

(2) the provision of—

(A) product liability or completed operations insurance, and comprehensive general liability coverage;

(B) insurance related services; or

(C) management services;

to a purchasing group or member of the group.

Licensing of agents or brokers for purchasing groups

(c) A State may require that a person acting, or offering to act, as an agent or broker for a purchasing group obtain a license from that State, except that a State may not impose any qualification or requirement which discriminates against a nonresident agent or broker.

(Pub.L. 97-45, § 4, Sept. 25, 1981, 95 Stat. 951.)

Historical Note

Legislative History. For legislative history and purpose of Pub.L. 97-45, see 1981 U.S. Code Cong. and Adm. News, p. 1432.

§ 3904. Securities laws

Ownership interests of members in risk retention groups

(a) The ownership interests of members in a risk retention group shall be—

(1) considered to be exempted securities for purposes of section 77e of this title and for purposes of section 78i of this title; and

(2) considered to be securities for purposes of the provisions of section 77q of this title and the provisions of section 78j of this title.

(b) A risk retention company for purposes of 80a-1 et seq.).

(c) The ownership shall be considered securities (Pub.L. 97-45, § 5, S

References in Text. The Company Act of 1940, referred to in title I of Act Aug. 22, 1940, 789, which is classified in 80a-1 et seq. of this title.

TITLE 15

Investment companies

(b) A risk retention group shall not be considered to be an investment company for purposes of the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

State blue sky laws

(c) The ownership interests of members in a risk retention group shall not be considered securities for purposes of any State blue sky law.

(Pub.L. 97-45, § 5, Sept. 25, 1981, 95 Stat. 952.)

Historical Note

References in Text. The Investment Company Act of 1940, referred to in subsec. (b), is title I of Act Aug. 22, 1940, c. 686, 54 Stat. 789, which is classified principally to section 80a-1 et seq. of this title.

Legislative History. For legislative history and purpose of Pub.L. 97-45, see 1981 U.S. Code Cong. and Adm. News, p. 1432.

INDEX

TO

TITLE 15—COMMERCE AND TRADE

See last volume of Title 15

END OF VOLUME

STATE OF ALASKA
1988 LEGISLATIVE SESSION

⑦ HB227

BILL VERSION: HB 227

PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: "An act relating to joint insurance arrangements."
Sponsor: Taylor
Requestor: _____

Agency Affected: Community & Regional Affairs
BRU: _____

Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

FUNDING: (Thousands of Dollars)

GENERAL FUND	-0-	-0-	-0-	-0-	-0-	-0-
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

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

ANALYSIS : (Attach a separate page if necessary)

Prepared by: Jim Plasman, Deputy Director
Division: Municipal & Regional Assistance
Phone: 465-4750
Date: _____

Approved by Commissioner: [Signature]
Agency: Community & Regional Affairs
Date: _____

- Distribution (by preparer):
- Legislative Finance
 - Legislative Sponsor
 - Requestor
 - Office of Management and Budget
 - Impacted Agency(ies)

We the People

of the United States
secure domestic Tranquillity, provide for the common Defence, promote
and our Prosperity, do ordain and establish this Constitution for the United States

Article I.

Section 1. All legislative Powers herein granted, shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, in which State they shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and seven Years, and who, when elected, shall have been seven Years a Citizen of that State in which he shall be chosen. The Electors in each State shall have the Qualification requisite for Electors in that State.

Section 3. The Senate of the United States shall be composed of two Senators from each State, chosen by the Electors in that State, for six Years, and each Senator shall have one Vote. Immediately after the Expiration of the first Term of one of the Senators a Vacancy may occur. The Vice President of the United States shall be chosen by the Electors in each State, and the Electors in each State shall have the Qualification requisite for Electors in that State. The Senate shall choose their other Officers, and also a President pro tempore of the Senate, who shall act as President in the Absence of the President of the Senate. The Senate shall have the sole Power to try all Impeachments, when the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

JUSTICE FOR ALL

Section 4. The Senators and Representatives shall receive Compensation for their Services, which shall be ascertained in each Case by the Majority of the Electors in that State. They shall, in all Cases, except Impeachments, be held inviolable for Opinions and Speeches made in the Senate or House of Representatives respectively. The Senators and Representatives shall receive no Increase of Compensation during the Time for which they were elected. The House of Representatives shall be the Judge of the Elections, Returns and Qualifications of its Members. When Vacancies happen in the Representation from any State, the Electors in that State shall choose another Person in the Place of the Person so elected.

Section 5. The House of Representatives shall choose their Speaker and other Officers, and shall have the sole Power of Impeachment. The Senate shall have the sole Power to try all Impeachments, when the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present. The Senate shall have the sole Power to declare the Existence of a Rebellion or Invasion, and to suspend the Writ of Habeas Corpus, and to grant Letters of Marque and Reprisal, and to make Rules concerning the same, which shall be consistent with the Constitution. The Senate shall have the sole Power to confirm and reject all Appointments made by the President, and to grant and reject all Pardons and Reprieves granted by the President. The Senate shall have the sole Power to ratify and reject all Treaties, made by the President, which shall be consistent with the Constitution, and to grant and reject all Letters of Marque and Reprisal granted by the President. The Senate shall have the sole Power to confirm and reject all Appointments made by the President, and to grant and reject all Pardons and Reprieves granted by the President. The Senate shall have the sole Power to ratify and reject all Treaties, made by the President, which shall be consistent with the Constitution, and to grant and reject all Letters of Marque and Reprisal granted by the President.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

Amendment VII
Constitution of the United States

in consequence of the first
Expiration of the term
may be chosen every
may be temporary

have attained to the Age
which he shall be chosen
President of the Senate
President pro tempore
President of the United States
The Senate shall have the sole Power to try all Impeachments
the Chief Justice shall preside: And no Person shall be con

**THE ASSOCIATION OF
TRIAL LAWYERS OF
AMERICA**

**NATIONAL OFFICERS
1987-1988**

Eugene I. Pavalon
President

Bill Wagner
President-Elect

Ronald L. Motley
Vice President

Michael T. Gallagher
Secretary

Sidney Gilreath
Treasurer

Russ M. Herman
Parliamentarian

Robert L. Habush
Immediate Past President

Marianna S. Smith
Executive Director

EDITORIAL STAFF

Anne Grant
Executive Editor

Robert Lembo
Contributing Editor

Deborah Stashower
Contributing Editor

Jane D'Alelio
Ice House Graphics

Art Director

Elsie Henning
Chart Designer

Spyder Webb
Cartoonist

Gary Simmons
Typesetter

The Association of Trial Lawyers of America was founded as the National Association of Claimants' Compensation Attorneys in 1945. The objectives and goals of the Association are to uphold and defend the principles of the Constitution of the United States; to advance the science of jurisprudence; to train in all fields and phases of advocacy; to promote the administration of justice for the public good; to uphold the honor and dignity of the profession of law; and especially to advance the cause of those who are damaged in person or property and who must seek redress therefor; to encourage mutual support and cooperation among members of the bar; and to uphold and improve the adversary system and trial by jury.

Voting membership in the Association is open only to those who represent plaintiffs in civil trials and defendants in criminal trials. Voting members must be "committed and devoted to the concept of a fair trial, the adversary system, and a just result for the injured, the accused, and those whose rights are jeopardized."

**The Jury Speaks for
the American People**

Juries embrace community values, give ordinary citizens a vital role in government, and apply their collective wisdom to the fair resolution of hard cases. They do a good job, too. A study by the Institute of Civil Justice of the Rand Corporation says, "Our research shows that juries are usually sensible and that their decisions have been remarkably stable over 20 years." The jury, says Chief Justice Rehnquist, "represents the layman's common sense."

You'll find the facts
on pages 4 and 5.

**Equal and exact
justice to all men,
of whatever state
or persuasion, religious
or political.**

Thomas Jefferson
First Inaugural Address, March 4, 1801

**Court Filings
Keep Pace With
Population Growth**

The National Center for State Courts in a recent study found "no evidence to support the existence of a national 'litigation explosion' in state courts." The National Association of Attorneys General reports, "The facts do not bear out the allegations of an 'explosion' in litigation." Researchers at the University of Wisconsin point out that Americans do not litigate any more than people in England or Denmark or New Zealand—and they sue even less often than Yugoslavians. Americans go to court when they need to, because they believe in the system.

There are more facts
on pages 6 and 7.

Justice is the end of government. It is the end of civil society. It ever has been, and ever will be pursued, until it be obtained, or until liberty be lost in the pursuit.

James Madison
The Federalist No. 51 (1788)

**The Insurance
Industry Hides in
a Fog of Statistics**

In 1985, insurers' net income, according to the United States General Accounting Office, soared to an astonishing \$19 billion. This was during the period when the industry was bemoaning the "fact" that it was suffering record losses.

Insurers put money into a loss reserve not only to pay claims filed that may never be paid but also to pay claims that *might* be filed—and deduct the loss reserves, which are available for investment, as a business expense. Then, the insurers are allowed to claim—as individual investors cannot do—that the money they make on investments is not really income.

The details are on
pages 8 and 9.

**Juries Help Make Life
Safer for All of Us**

Doctors don't discipline their colleagues who do harm to patients, manufacturers sacrifice safety to profit, employers hire people who are a menace to the public—and juries tell all of them that this just won't do.

Jurors, seeking nothing for themselves, seek only to ensure that all citizens are treated fairly and that wrongdoers are held to account.

The jury has been rightly called the conscience of the community. Jurors ensure that community standards of justice are maintained.

The story begins on
pages 10 and 11.

**Manufacturers Listen
When Juries Speak
Out on Safety**

Humidifiers don't scald children any more, drain-cleaner cans don't blow out people's eyes any more, tractors don't geyser burning gas onto farmers any more, and children's clothes don't catch fire the way they used to. Each time, a jury spoke—and each time a manufacturer got the message.

Oil companies have heard, too: oil spills are down dramatically, and the theory is that damage awards for the harm done to the environment have made the companies more careful. Is this bad?

Pages 12 and 13 will
help you decide.

**Insurance Reform
Legislation Would
Improve the System**

Long ago, a lone person hurt by a corporation could do nothing but lick his wounds—and the corporations liked it that way. So did their insurers. They like to keep the money they take in.

Now a David who's wronged can take on a Goliath with some hope of winning—and the corporations and their insurers don't like it a bit. They're fighting back. It means and too often foul. And unlike other trades, insurers aren't regulated by federal antitrust laws. They can gang up on consumers without fear. Maybe there ought to be a law against it.

Some arguments are found
on pages 14 and 15.

**The Press Has
Commented on
the Insurance Crisis**

Read all about it on
page 16.

THE JURY SPEAKS FOR THE AMERICAN PEOPLE.

Anti-Jury Fun with Numbers

The insurance industry and the Justice Department have relied heavily in their attack on the law on reports produced by Jury Verdict Research, Inc. (JVR). Unfortunately, according to Philip J. Hermann, chairman of the board and founder of JVR, his company's work does not support that reliance. "A number of highly publicized news articles quoting our statistics have grossly misstated them," he said in testimony before the Subcommittee on Economic Stabilization of the House Committee on Banking, Finance, and Urban Affairs.

"JVR," he went on, "has neither asserted nor published any conclusions that the average size of jury verdicts has recently skyrocketed." His conclusions are that verdicts for the plaintiff have increased at an average rate of 15.23% over the past 10 years, and that the largest increases in verdicts coincided with the highest increases in the Consumer Price Index and with studies by the U.S. Health Care Financing Administration of the average annual growth rate for health care between 1978 and 1984.

Mr. Hermann emphasized that JVR reports do not cover verdicts for the defense, which would, of course, mean zero for the plaintiff. In medical malpractice cases that go to trial, for example, plaintiffs recover in far less than half the cases.

As for million-dollar verdicts, he told the subcommittee, "The increase in the number of million-

dollar verdicts may be the result of the inflation factor and not necessarily because jurors have simply decided to award larger amounts."

JVR statistics, Mr. Hermann said, are based on what the juries say the awards should be—not on what the plaintiffs receive after appeal, settlement, or remittitur.

Mr. Hermann had criticisms of insurance companies that went beyond their misuse of JVR statistics. "The number of insurance companies," he stated, "that depend on the partially educated guess in evaluating their claims is startling."



One unusually large verdict can skew the numbers. The JVR statistics took in the first Pinto verdict—more than \$127 million—in 1978, but it was later reduced to \$6.7 million.

Consumer Reports, August 1986



Of juries, on the other hand, he said, "I must confess that I have been impressed, with few exceptions, by the ability of the juries to resolve personal injury disputes in a fair and evenhanded manner. Juries reflect the community's prevailing social and cultural concerns and standards in their application of the law to the circumstances of each litigant in each individual case."

The Chief Justice and Trial by Jury

Chief Justice William Rehnquist has spoken to the importance of the jury system. In a 1979 case he said, "The founders of our Nation considered the right of trial by jury in civil cases an important bulwark against tyranny and corruption, a safeguard too precious to be left to the sovereign, or, it might be added, to the judiciary."

"Trial by a jury of laymen rather than by the sovereign's judges," he said further, "was important to the founders because juries represent the laymen's common sense, the 'passional elements in our nature,' and thus keep the administration of law in accord with the wishes and feelings of the community."



Would You Pay This Price For A Ticket To The "Lottery"?

Of 1,642 million-dollar verdicts between 1962 and 1985:

Permanent paralysis	362
Permanent brain damage	338
Wrongful death	362
Amputations	161
	1,223

Cool analysis is discrediting last year's horror stories about an epidemic of multimillion-dollar jury awards for relatively little cause. In a sample of 359 cases in the 1982-1985 period, mostly involving product liability, punitive damages were "insignificant," according to a study published by the American Enterprise Institute. "The civil litigation system is stable," says Mark Peterson of the Rand Institute for Civil Justice.

"The Crisis Is Over—But Insurance Will Never Be the Same," Business Week, May 25, 1987

It is important to recognize that the costs of injury and illness are not created by scientific knowledge but are revealed by it. These costs always existed; they simply were hidden by ignorance.

Cooper, "Trends in Liability Awards," 1986

The most troubling aspect of the current debate is the way all respect for the system—and especially for juries—seems to have evaporated in favor of finding ways to intervene on behalf of defendants and their insurance companies, as if there's a lynch mob out to get them.

As reporters who often study jury deliberations, we find the jury process more often than not to be an awe-inspiring, downright throat-lumping testimony to the common man's devotion to the value of law in a democracy. Most juries we've studied act not infallibly but rationally.

American Lawyer, May 1986

Not surprisingly, a jury of peers tends to increase awards over time by no more than the rise in medical costs, general inflation, and the value of lost work. Recent changes in average jury awards and numbers of lawsuits filed mirror increases in average wages, medical costs, life expectancy, and population growth.

Cooper, "Trends in Liability Awards," 1986

Why There Are More Million-Dollar Suits

The million-dollar verdict is still a freak occurrence, but it is true that there are more of them these days. Here are some of the reasons why:

- **Inflation:** In the past 20 years, the amount a dollar will buy has dropped by about two-thirds; it takes \$3 now to buy what \$1 would buy in 1965.

- **Earning Power:** The average American can now earn 30% more a year than he was able to earn 20 years ago.

- **Life Expectancy:** People now live longer than people used to 20 or even 10 years ago.

- **Increased Medical Costs:** In the past ten years the cost of hospital care alone has increased 56% faster than the Consumer Price Index has.

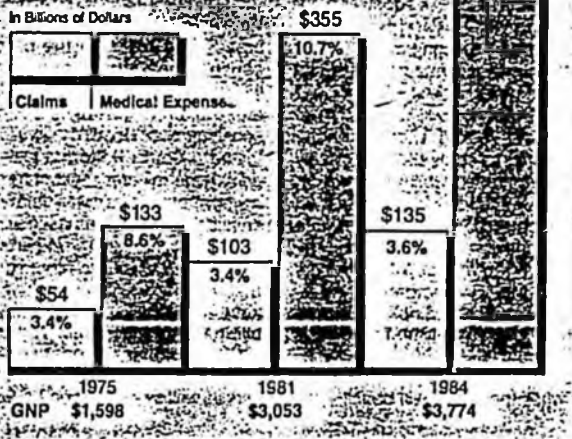
- **Medical Breakthroughs:** People with catastrophic injuries can now be saved, and sometimes even partially rehabilitated, but the technological costs of helping them to a viable life are high.

The Insurance Crisis: Real Solutions for Real Problems—A Consumer Perspective, p. 14

Insurance Claims Have Not Increased As Much As Medical Expenses

Although the amounts paid out for insurance claims increased, they held steady as a percentage of the gross national product, and they certainly did not increase as much as medical costs.

Source: Consumer Federation of America, 1986.



Else Hennig

Have Juries Run Wild?

That was the question the Consumer Federation of America (CFA) asked itself. It was answered in a CFA study of "Trends in Liability Awards" directed by Dr. Mark Cooper and released in May 1986. The answer summarized:

Far from running wild, juries have adjusted their awards to reflect the basic social and economic changes that have taken place in the past decade. They are making awards to their peers that are consistent with the increasing economic output of society and the value placed on life.

Dr. Cooper points out further in the section "How Juries Should Behave" that "juries can be expected to decide the magnitude of awards according to their experience with inflation and their knowledge that income and productivity grow over time and that

medical costs have increased sharply in recent decades. The number of cases brought can be expected to reflect the number of people in society and the . . . risks to which they are exposed."

The study shows that between 1975 and 1984 real income increased 17%, life expectancy 3%, and elderly income 10% compared to average income. As a result, there is an expected increase in lifetime income after inflation of 25% to 30%. At the same time, health care costs increased by 23% more than inflation, and hospital costs increased almost 56% more than inflation, and these factors must be considered in redressing wrongs that require extensive medical care.

Changes in median awards are generally smaller than changes in average awards, Cooper's report says. Average awards count money; median awards count people.

Medians thus represent typical awards. They show what juries are likely to do—what they do most often. Averages indicate that juries occasionally make much larger awards than they usually do.

What do juries factor into awards? Here are some facts from the Consumer Federation survey:

- Productivity of workers has increased dramatically over the past 20 years, and incomes have increased in response.

- Therefore, the loss of income suffered by an interruption of work in 1985 is larger not only because of inflation, but because of increases in real productivity.

- People are living longer, so the lifetime loss will be higher.

- While population has increased by 23% over the last 20 years, work force participation has increased by 52%—which means that many more people are exposed to hazards in the workplace.

What Juries Can Do

Juries fairly chosen from different walks of life bring into the jury box a variety of different experiences, feelings, intuitions, and habits. Such juries may reach completely different conclusions than would be reached by specialists in any single field, including specialists in the military field. On many occasions, fully known by the Founders of this country, jurors—plain people—have manfully stood up in defense of liberty against the importunities of judges and despite prevailing hysteria and prejudices. The acquittal of William Penn is an illustrious example. Unfortunately, instances could be cited where jurors have themselves betrayed the cause of justice by verdicts based on prejudice or pressure. In such circumstances independent trial judges and independent appellate judges have a most important place under our constitutional plan since they have power to set aside convictions.

Justice Hugh L. Black
Toth v. Quarles, 350 U.S. 11, 18-19 (1955).

In Tennessee, between 1980 and 1985: "The average plaintiff award per year fluctuated, peaking in 1984 at \$61,765 and decreasing to \$21,384 in 1985. In contrast, the median plaintiff award per year remained fairly stable between 1980 and 1985, not exceeding \$9,000 in any year except 1984, when it was \$20,617. Median award figures tend to give a more accurate picture than averages, because they ignore the effect of extreme values."

Tennessee Insurance Department
Performance Audit, 1987

What Happens After the Verdict

Remittitur—The trial judge reduces the jury verdict. The first multi-million-dollar verdict, won by actor John Henry Faulk for being blacklisted, was \$3.5 million dollars; it was reduced by the trial judge to \$450,000.

Appeal—The appeals court may reduce the award, or overturn it totally.

Settlement—To avoid the uncertainty and added expense of an appeal, some plaintiffs and defendants agree to an immediate post-trial settlement, which can be significantly lower than what the jury awarded.