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associations to complete its inclusion as an allowed depository above has been added .

Paragraph (2)(E) further defines allowable interest due or accrued as that earned on real estate mortgage loans which are allowed in the investments section of this title. Also changed is the exception that, when the interest or any taxes are overdue more than three months, none of the interest due or accrued may be allowed on that loan. This changes the exception in the current law from interest overdue 18 months to interest overdue for three months and includes the exception when taxes are overdue for three months. These modifications ensure that interest on only mortgages acceptable per this chapter are allowed and the exception eliminates those interest amounts not yet paid that may not be forthcoming.

Paragraph (2)(F) has been changed. It adds the requirement that, when collateral is accepted to guarantee the payment of rent more than three months overdue, the collateral must have a current market value that is at least 75% of the amount of total rent due. With this addition, when the current market value is less than 75% of the total rent due, the due and accrued rent cannot be allowed as an asset. This applies only when rent is more than three months overdue. All other due and accrued rent less than three months overdue is allowed as an asset without collateral as defined in current law.

Paragraph (2)(G) remains the same as the current law.

Paragraph (3) remains the same as the current law.

Paragraph (4) has been added to allow as an asset bills receivable for premiums and installment premiums for other than life insurance policies when the total of the receivable is not more than the unearned premium held for the policy and only when the payments are current.

This allows the insurance company to record premium receivable only when past payments have been made thereby showing a good chance that future payment will be received. The receivable is limited in that it cannot be more than the unearned premium held on the individual policy which ensures this is an ongoing policy that has some premium in reserve for future policy periods.

Old Paragraph (4) has been renumbered (5) and remains the same as the current law..

Old Paragraph (5) has been renumbered (6) and reformatted to add Subparagraph (A). To Subparagraph (A) has been added two subparagraph. These are regarding exemption from the limitation of allowing as assets only three months of premium in course of collection (less commissions) per policy.

Paragraph (6)(B) exempts reinsurance premiums from reinsurers authorized to do business in this state from this three-month limitation.

Paragraph (6)(C) allows as an asset more than three months of reinsurance premiums receivable from reinsurers when a corresponding liability is recorded by the reinsurance company but not when the amount due more than 90 days is more than 10% of the total assets reported in the last financial statement filed with the director. This helps to ensure the receivables are recognized by the reinsurer and the reinsurer has the ability to pay.

Paragraph (7) deals with premiums receivable less commissions payable from a person controlled by or controlling the insurer. This control is through ownership or by contract and when the person owes more than 50% of the insurer's premium in course of collection as reported in the financial statement.

In (7)(A), the premiums collected by the controlled or controlling person must be held in a trust account at a bank approved by the division. These funds must be kept separate from all other funds and paid only to the insurer or the insured. The investment income from the account can be allocated as the parties wish. All premiums collected by the controlled or controlling person must be deposited in the trust account within 5 working days. This ensures the receipt of premiums receivable by the insurer and reinforces the person's fiduciary responsibilities.

In (7)(B), the controlled or controlling person must provide a clean, unexpired irrevocable and unconditional letter of credit payable to the insurer for a term of at least one year which meets or exceeds the amount of the premiums payable to the insurer at any time. The letter of credit must have an automatic extension for one year unless the insurer has received 30 days prior to expiration written notice that the letter will not be renewed. The letter of credit must be issued by a Federal Reserve Bank and satisfactory to the division. This subsection is meant to ensure that premiums collected by a person controlled by or controlling an insurer will be available and paid to the insurer when due and, therefore, can be reported as an asset.

In (7)(C), the controlled or controlling person must provide a financial guaranty bond payable to the insurer for a term of at least one year which meets or exceeds the amount of the premiums payable to the insurer at any time. The guarantee bond must be of a continuous term and cancelable only when the insurer receives a 30 day written notice of termination with the bond continuing to cover any acts committed prior to the termination. The financial guaranty bond must be issued by an insurer authorized to transact business in Alaska, who is not related to the insurer or the purchaser of the bond and be satisfactory to the division. This subsection is meant to ensure that premiums collected by a person controlled by or controlling an insurer will be available and paid to the insurer when due and, therefore, can be reported as an asset.

In (7)(D), the premiums receivable from a controlled or controlling person can be allowed as an asset when a financial evaluation shows the person is solvent and able to pay. This financial evaluation can be called by the director and would be based on a review of books and records of the person.

Paragraph (8) is the same as Paragraph (7) of the existing law.

Paragraph (9) is the same as Paragraph (8) of the existing law.

Current law allows as an asset, amounts receivable by an assuming insurer when a solvent ceding insurer withholds funds under a reinsurance treaty. Paragraph (10), which is similar to Paragraph (9) of the existing law, has been amended to require the amount allowed as an asset not to exceed the amounts recorded as a liability by the assuming insurer for unpaid losses and reserves under the reinsurance treaty. This subsection requires that, when a ceding insurer withholds funds under a reinsurance treaty to guarantee the payment of amounts due, the assuming reinsurer may report these amounts withheld as an asset when they also have reported the payable as a liability. Any excess withheld over the liability may not be reported as an asset by the assuming insurer.

Paragraph (11) is the same as Paragraph (10) of the existing law.

Paragraph (12) defines the EDP equipment that is allowable as an asset. The asset can only be electronic data processing and related equipment and operating software that is a data processing, record keeping, or accounting system. The system must cost $50,000 or more and the cost must be depreciated fully (periodically charged to expense) over ten calendar years or less. The current law allows a system of $25,000 or more in cost, but the proposed law has increased this to $50,000 to ensure only true data processing systems are allowed as assets. The ten-year period for depreciation has not changed.

Paragraph (13) has been added to allow as an asset, receivables which arise from income tax allocations between organizations. These assets must stem from a tax allocation agreement which meets IRS regulations, describes the method of allocation, and sets a reasonable time for settling the balances receivable after filing of the tax return. The receivable must be due from a solvent organization that is not in default on its obligations and must meet all other requirements for admitted assets. The receivable must also have a related liability established by other organizations participating in the agreement. This Paragraph defines the requirements which must be met before a receivable based on a tax allocation can be allowed as an asset.

Paragraph (14) has been added to allow as an asset the effect of the excess of assets over liabilities on conversion to U.S. currency when the items are reported in foreign currencies. By way of explanation, if each of the asset and liability items is reported in foreign currency, this entry would convert the net total to U.S. dollars. If each individual line item is converted to U.S. dollars,

the resultant gain or loss in foreign exchange rates is recorded on the statement of operations.

Paragraph (15) is added to allow as an asset only the unsecured receivable from a solvent affiliate that is not more than six months past due and where a related liability has been reported by the affiliates. This ensures that the receivable is recognized as a payable by the affiliate and payment will be made within six months.

Paragraph (16) allows as an asset, a receivable from a wholly or partially uninsured accident and health plan. This would arise from a self-insurance plan of the insurer.

Paragraph (17) is substantially similar to Paragraph (12) of the existing law. but revises the process that requires the approval of the director as necessary for the reporting of assets not specifically listed in this chapter of statutes. It is replaced with an allowance for those assets included in the annual statement form and consistent with instructions published by the NAIC (as approved by the director).

Paragraph (18) is the same as Paragraph (13) of the existing law.

Section 23. AS 21.18.030. Assets Not Allowed
Page 22. line 2 to page 23. line 16.

Subsections (a)(1)-(3) remain the same as the current law.

Subsection (a)(4) is amended to specifically exclude from assets tangible personal property, including but not limited to that listed in the current law. It is also amended to remove the broad exception that allows property permitted under AS 21.21 (Investments) but retains the exemption in 21.21.270 regarding acquisitions of property through the foreclosure of chattel mortgages. These amendments add a broad definition of the types of property that cannot be held and limits the exceptions included in AS 21.21.

Subsection (a)(5) remains the same as the current law.

Subsection (a)(6) excludes bonds and notes which are secured by mortgages or deeds or trust which are in default.

Subsection (a)(7) is added to exclude the payments of Alternative Minimum Tax or other tax refunds receivable from U.S. or state taxing authorities which are in dispute. This eliminates the recording as an asset of long-term tax receivables in dispute and noncollectible.

Subsection (a)(8) is added to exclude the amount of committed commissions where the present value of future commissions is paid in advance to agents.

Subsection (a)(9) is added to exclude as assets the forwarding of commissions and fees before the earning of these amounts by agents. These subsections exclude what would be a prepayment amount to agents that would be highly uncollectible for the payment of liabilities.

Subsection (a)(10) excludes unsecured loans from outside sources since these are unknown collection risks.

Subsection (b) requires that all assets which are not allowed because of doubtful value or character be deducted from the gross assets unless the director permits a reserve (liability) instead. This section requires a full reporting of assets held and deducting assets with questionable value to determine an insurer's ability to meet its contractual obligations.

Section 24. AS 21.18.060(a). Unearned Premium Reserve
Page 23, lines 17-21.

This subsection has been amended only to reflect editorial changes. No change in the existing law or intent has been undertaken.

Section 25. AS 21.18.060(b). Unearned Premium Reserve
Page 23, line 22 to page 24, line 19.

This subsection has been amended only to reflect editorial changes. No change in the existing law or intent has been undertaken.

Section 26. AS 21.18.073. Unearned Premium Reserve for Title Insurance
Page 24, line 20 to page 26, line 2.

This section is added to require reserves in addition to those required to pay losses for Title insurance. This is to take the form of a guaranty fund or unearned premium reserve and such funds cannot be used for general purposes. Investment of these funds is allowed and interest can be included in the insurer's general income. This reserve shall be calculated for: (1) policies issued after January 1, 1991 as 10% of premiums written in the calendar year which will be reduced by 5% for each of the next 20 years; and (2) policies issued before January 1, 1991 as $.30 per $1,000 face amount of all policies issued in the last ten years. No additional reserve of this type is required for policies issued more than ten years ago. This ensures sufficient assets to pay claims.

Section 26. AS 21.18.075. Bail Bond Reserve
Page 26. line 3 to page 26. line 10.

The director may require a reserve for bail bonds or other single premium bonds that are without an expiration date and furnished in judicial proceedings in the amount of 25% of total consideration charged for those bonds outstanding. This ensures sufficient reserves to pay claims and is in place of the unearned premium reserve required by AS 21.18.050.

Section 27. AS 21.18.120. Valuation of Bonds
Page 26. lines 11 to page 27. line 1.

This section, in general, sets out the valuation of bonds that are allowed to be purchased and how they are to be recorded. It is amended to require the bonds be issued by a solvent entity and requires amortization of bond premium or discount.

Section 28. AS 21.18.900. Definitions
Page 27. lines 2 - 25.

A new section has been added to define terms used in AS 21.18.

INVESTMENTS. (Sections 29-50)

The investment of an insurer's assets in appropriate and safe investments is important for continuing solvency. These sections extensively expand on the kind, quality, and amounts of investments allowed to be made by an insurer of its assets. The types of equities and investments have changed significantly in the last twenty years and the amendments bring recognition of these new investments and the rules for an insurer desiring to invest its assets in them.

Section 29. AS 21.21.020(c). Eligible Investments
Page 27. lines 26-29.

Changes simplify the language and delete the grandfathering necessary for the 1966 major redrafting of this chapter but which now, after 22 years, is not required.

Section 30. AS 21.21.030(c). General Qualifications
Page 28. lines 1 - 9.

Editorial changes in this Section accommodate changes made in Section 27.

Section 31. AS 21.21.030(d)-(e). General Qualifications
Page 28, line 10-20.

These modifications close a loophole in the law. Insurers can acquire otherwise ineligible assets by accepting these assets as payment under a contract of reinsurance. The new section requires the prior written approval of the director concerning a reinsurance contract being purchased substantially with ineligible assets. Should such a transaction have occurred without the prior approval of the director, the director is given a range of options for dealing with either the ineligible assets or the contract of reinsurance.

Section 32. AS 21.21.050. Diversification of Investments
Page 28, line 21 to page 31, line 2.

These changes exempt a new clan of securities from the general prohibition of lending based upon the credit of or investing in any one person or category of risk more than five percent of an insurer's assets. The new category is the general obligation of a state of the United States of America not insolvent and whose securities are not then in default. These securities are judged to be a safe and prudent investments with the change allowing larger investments by Alaskan insurers in the securities of the State of Alaska.

An investment limitation designed to add to the safety and soundness of Alaska's domestic insurance industry is increased. Current law requires a dollar figure equal to a domestic insurer's minimum required capital to be invested in specified assets having a minimum of associated risk. The changes modify the minimum dollar amount to the higher of the previously specified minimum capital or one-half of the insurer's reported capital as shown on its most recent statement of financial condition filed with the director. The specified "minimum risk" assets are modified to require bank deposits to be fully insured or collateralized, and real estate mortgage loans are eliminated as a "minimum risk" asset.

Finally, the director is given the authority to consent to an insurer investing more than ten percent of its assets in common stocks which is the same authority granted the director in Subsections (5) and (7) which deal with corporate obligations and miscellaneous assets.

Section 33. AS 21.21.080. State, County, Municipal and School Obligations
Page 31, lines 3-15.

The amendments to this section require that more conservative investment choices be made by insurers in respect to investment in the obligations of the political subdivisions of a state or province. They eliminate, as an eligible investment, the obligations secured by a pledge or assignment of specific revenues of a political subdivision. This parallels the recent tightening done

by the federal government with respect to tax exemption for the interest from industrial revenue bonds. Bonds which are payable only from a specific revenue source may carry the patina of safety associated with the political subdivision by whom they are issued but, in fact, are not required to be paid should the source of revenue fail, as would be the case, with a subdivision's general obligation bond. Revenue bonds of states and provinces and political subdivisions thereof continue as eligible investments under this chapter.

These changes further require that for obligations of states and political subdivisions to be eligible for investment, the associated state or province be:

(1) solvent;

(2) have the power to levy taxes for prompt payment; and

(3) not be in default on its obligations.

Section 34. AS 21.21.130. Inter-American Development Bank
Page 31, lines 16-22.

This change adds the African and Asian Development Banks to the eligible list of development banks into which investments can be placed. Provisions regarding solvency and nondefault status are also added for eligibility. This section is contained in SB 353 by Senator Kelly which is in the House Labor and Commerce Committee.

Section 35. AS 21.21.140(a). Corporate Bond and Debentures
Page 31, line [illegible] to page 32, line 11.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 36. AS 21.21.140(b). Corporate Bond and Debentures
Page 32, lines 12-23.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 37. AS 21.21.140(c). Corporate Bond and Debentures
Page 32, line 24 to page 33, line 6.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 38. AS 21.21.140(d). Corporate Bond and Debentures
Page 33. lines 7-10.

Amendments to this section are to enhance the clarity of the language. The intent of the existing law is not altered.

Section 39. AS 21.21.150. Preferred or Guaranteed Stocks
Page 33. line 11 to page 34. line 3.

The changes to this section tighten up the eligible preferred or guaranteed stock investments by adding a nondefault requirement. Changes for the purpose of clarification are made with respect to the final year measurement of dividends during the immediate preceding two fiscal years.

Section 40. AS 21.21.160. Common Stocks
Page 34. lines 4-19.

This change tightens up the eligible common stock requirement by adding a nondefault requirement.

Section 41. AS 21.21.170(a). Insurance Stocks
Page 34. lines 20-24.

This change tightens up the eligible insurance stock requirement by adding a nondefault requirement.

Section 42. AS 21.21.190. Equipment Trust Certificates
Page 34. line 25 to page 35. line 3.

These changes are editorial only.

Section 43. AS 21.21.245. Pooled Investments
Page 35. lines 4-13.

Prior statute language was written before the advent of mutual funds, investment trusts, unit investment trusts and similar popular investment vehicles. This new section provides a statutory method for allowing and controlling a domestic insurer's use of these investment mechanisms by establishing a category titled "Pooled Investments."

It may be argued that any "pooled investment" that contains eligible securities should also be eligible for investment by insurers. This, however, is an extremely dangerous assumption which is best illustrated by example.

U.S. Government Securities are generally held to be the standard for a safe and sound conservative investment. Most U.S. government mutual funds also allow use of options and interest rate future's contracts which can either be highly speculative or income protecting ledger depending on their use. Thus, depending on the ranking of priorities in the pooled investment's investment objectives, the experience of the fund manager and other intent language in the registration documents, a pooled investment can on the surface appear to be conservative while, in practice, it is managed in a manner which puts the pooled investment at the opposite end of the safety and soundness spectrum, a result which would frustrate the legislative intent of this title.

Insurers should be allowed the use of pooled investment techniques because they lower risk through diversification and provide another source of professional funds management. This section's approach provides that opportunity with a mechanism to avoid the risk of speculation and which "piggybacks" on the work of other regulators. Other changes dealing with how insurers will be measured with reference to adherence to the investment diversification and concentration prohibitions of this chapter and a method for treating currently held pooled investments after adoption of this section are also included.

Section 44. AS 21.21.270(b). Chattel Mortgages
Page 35. lines 14-20.

The change provided in this section pertains to an insurer's chattel mortgages and requires that appraisers hired to value an insurer's interest in a property must be independent of the insurer.

Section 45. AS 21.21.270(c). Chattel Mortgages
Page 35. lines 21-28.

The changes provided in this section pertains to an insurer's chattel mortgages and enhances an insurer's ability to place liens on personal property for the improvement of that insurer's collection efforts even when that lien is a property interest in what otherwise may be an ineligible investment.

Section 46. AS 21.21.280. Real Estate
Page 35. line 29 to page 39. line 16.

The first change in this section dealing with insurer-owned real estate clarifies how the maximum allowable investment will be measured.

Other changes enhance and clarify an insurer's authority to own real estate in excess of that which was previously allowed. Ownership of excess space for rent to others is newly authorized if such space is reasonably anticipated to be

required for future expansion or in order to have a building that will be an economic unit. A provision is also made for insurers, under certain conditions, to hold real estate for the production of income with the prior approval of the director and only up to a maximum limit of five percent of the insurer's assets.

Section 47. AS 21.21.290(b).
Page 39, lines 17-20.

This editorial change merely amends a cross reference to statutes revised elsewhere in this legislation.

Section 48. AS 21.21.310(a). Failure to Dispose of Real Estate, Property or Securities
Page 39, lines 21-26.

This change, made for the purposes of clarification, specifies that assets required to be disposed of may not be allowed as an "admitted" asset for the purpose of determining an insurer's financial solvency.

Section 49. AS 21.21.350. Investment Transactions with Affiliated or Controlling Persons
Page 39, line 27 to page 41, line 6.

This new section provides for prudent rules for insurers to deal with investment transactions with affiliated or controlling persons. Before purchasing or selling an otherwise permissible investment issued by, due from or through the use of a broker who is an affiliated or controlling person or purchasing or selling either to or from same, an insurer must first disclose the facts and circumstances of the relationship fully to its board of directors. Once the insurer's board has the facts, they then are required to specifically authorize the transaction. Investments or loans are required to be at current market transfer prices or at commercially reasonable rates with the board being required to make that determination. Exceptions are provided for the board to rely on independent third party experts and to ignore transactions where the financial interest is nominal.

Section 49. AS 21.21.355. Certain Deposits Not Prohibited
Page 41, lines 7-16.

This addition clarifies that nothing in this chapter prohibits an insurer from making a deposit of its securities for the purposes of protecting the interests of its policyholders, or where it is necessary to secure permission to transact business or as collateral for the securing of any bond for the business of the insurer. These purposes generally are designed to protect the interests of the

insurance consuming public and this change is an attempt to avoid inadvertently frustrating that objective.

Section 49. AS 21.21.360. Options and Futures Contracts
Page 41. line 17 to page 45. line 5.

Over the last decade, the U.S. financial markets have developed organized options and future contract markets. Proper use of these financial instruments when undertaken under a policy of hedging, as approved by an insurer's board of directors and prudently executed, can be an important part of reducing an insurer's overall investment risk. Reduction of investment risk increases the safety and soundness of insurers and, thus, protects Alaska's insurance consuming public. There currently exists no mechanism under Alaska's Insurance Law which provides our domestic insurers with the opportunity to utilize options and future contracts.

This new section specifies that options and future contracts may be entered into by a domestic insurer if done under a policy of hedging an insurer's risk from market fluctuations approved by both the insurer's board of directors and the director.

With regard to valuation and accounting on the insurer's financial statements, this new section closely follows the model rule adopted by the National Association of Insurance Commissioners, Securities Valuation Office. Put options, call options, other stock options, stock purchase warrants and financial future contracts are all treated in some detail. Conservative valuation requirements, specified accounting treatments and consistency requirements are intended to mandate prudence.

Section 50. AS 21.21.600. Definitions
Page 45. line 6 to page 47. line 13.

This definitional section is highly expanded to clarify the technical terms utilized in AS 21.21. When possible, we have specified that certain definitions are to be consistently applied between this and other chapters of this title. An attempt has been made to rely on regulatory structures supervised by the federal government or the National Association of Insurance Commissioners where those regulatory structures have become the standards for the insurance industry and closely parallel the regulatory intent of this title.

SURPLUS LINES INSURANCE. (Section 51)

This section recognizes mutual protection and indemnity associations as nonadmitted insurers that may be classified as eligible surplus lines insurers.

The financial requirements for an insurer to be included on the "white list" of eligible surplus lines insurers have been increased. The capital and surplus requirements are increased as well as the amount of assets required to be trusteed in the United States by alien insurers.

Section 51. AS 21.34.040(c). Eligible Surplus Lines Insurers Required
Page 47, line 14 to page 49, line 12.

The changes in this section generally are for the purpose of strengthening the financial requirements for a nonadmitted insurer to be declared an eligible insurer for the purposes of the lawful underwriting of surplus lines insurance under AS21.34. The policyholder surplus requirement for foreign insurers is increased to $6,000,000 at 12/31/90, $10,000,000 at 12/31/91, $12,500,000 at 12/31.92, and $15,000,000 at 12/31/93. The policyholder surplus requirements for alien insurers is the same as those above for foreign insurers. The amount of trusteed assets required in the United States for an alien stock or mutual insurer has been increased from $1,500,000 to $2,500,000. Additionally, the policyholder surplus requirement for an "insurance exchange" domiciled in another state has been increased from $15,000,000 to $50,000,000.

TRADE PRACTICES AND FRAUDS. (Section 52)

This section provides for civil immunity for a person that provides information to law enforcement officials, the NAIC, the Division of Insurance, or other states' insurance regulators pertaining to fraudulent insurance acts.

Section 52. AS 21.36.430. Immunity for Reports on Fraud
Page 49, lines 13-24.

This new section provides for civil immunity for any person reporting information covering suggested, anticipated, or completed fraudulent acts as long as the reporting does not entail reckless, willful, or intentional misconduct.

TITLE INSURANCE COMPANIES. (Sections 53-57)

The amendments found in these sections are to provide for the same treatment of title insurers as for other types of insurers in financial reporting and examination by the director. (The amendments mirror those found in

Sections 5, and 17-19 of this Act which pertains to insurers other than title insurers.)

Section 53. AS 21.66.080. Annual Statement
Page 49, line 25 to page 50, line 14.

Amendments to this section prescribe that title insurers file the required annual financial statement in the format consistent with that adopted by the NAIC. The director may require that the annual financial statement be filed via electronic media. These amendments place the title insurers on the same financial reporting basis as other types of insurers noted in Section 17 of this Act.

Section 54. AS 21.66.080(b). Annual Statement
Page 50, lines 15-17

This Section requires Title insurers to file their annual financial statements with NAIC. This amendment is the same required of other types of insurers in Section 18 of this Act.

Section 55. AS 21.66.085. Quarterly Statement
Page 50, lines 18-27.

This new subsection allows the director to require that title insurers file quarterly financial statements on the same basis as for other types of insurers noted in Section 19 of this Act.

Section 56. AS 21.66.090(b). Application for Certificate of Authority
Page 50, line 28 to page 51, line 5.

Amendment to this subsection clarifies that title insurers are responsible to pay the examination costs associated with the director's examination of any title plant associated with a title insurer.

Section 57. AS 21.66.130. Expenses of Examination
Page 51, lines 6-9.

The repeal and reenactment of this section provides for the payment of examination expenses associated with the director's examination of any title insurer on the same basis as that used for other types of insurers as revised in Section 5 of this Act.

ORGANIZATION AND CORPORATE PROCEDURES. (Section 58)

This amendment is editorial in nature. It replaces extensive verbiage relating to the description of financial impairment of an Alaska insurer with the term "impaired" which has now been defined by the Act in AS 21.90.900 (Section 81).

Section 58. AS 21.69.530 (a). Impairment of Capital or Assets
Page 51, lines 10-19.

Amendment to this section is editorial in nature. The full description for what impairment of an insurer means is removed and replaced by the term "impaired" which is defined in AS 21.90.900 (see Section 82) but also applies to this chapter.

REHABILITATION AND LIQUIDATION. (Sections 59-80)

Although extensive amendment is proposed, the basic intent of the existing law (AS 21.78) in regard to conducting the affairs of a financially impaired or insolvent insurer is unchanged. The procedures, requirements, and guidelines have been expanded and clarified so that the affairs of a financially troubled insurer can be conducted in an orderly and equitable manner without undue litigation.

Section 59. AS 21.78.020. Commencement of Delinquency Proceedings
Page 51, line 20 to page 53, line 6.

Although substantial amendment to this section has been undertaken, the basic intent remains unchanged. This section is clarified to clearly indicate that the director is the only person that may commence what amounts to a bankruptcy proceeding (rehabilitation or liquidation) for a domestic insurer. Additionally, this section provides that the director be the court appointed receiver and describes the jurisdiction of the court in these proceedings.

Section 60. AS 21.78.030. Injunctions and Orders
Page 53, line 7 to page 54, line 8.

The intent of this amended section remains the same in allowing the director to seek, without bond, orders or injunctions to prevent hypothecation, waste, dissipation or other inappropriate transfer of assets of a bankrupt insurer. Amendment to this section further describes those situations in which these types of court orders may be sought.

Section 61. AS 21.78.040. Grounds for Rehabilitation
Page 54. lines 9-28.

In addition to the 10 grounds on which the director may seek an order of rehabilitation under AS 21.78, four new grounds are added by the amendments to this section. The new grounds are as follows:

1. an insurer fails to remove an officer found, after hearing, to be dishonest or untrustworthy;

2. if the insurer fails to make available records of its transactions for examination;

3. if an insurer has within four years willfully violated its charter or bylaws, any Alaska insurance law, or any valid order from the director; and

4. if an insurer has failed to file any required financial statement or report.

Because the grounds for liquidation found in AS 21.78.050 include, by reference to AS 21.78.040, the same grounds as are available for rehabilitation, the above new grounds are also established for commencing a liquidation proceeding.

Section 62. AS 21.78.040(b). Grounds for Rehabilitation
Page 54. line 29 to page 55. line 19.

In addition to the new grounds described in the last Section, additional grounds are added relating to criminal activities impacting the insurer. These are: on which the director may seek an order of rehabilitation under AS 21.78, four new grounds are added by the amendments to this section. The new grounds are as follows:

1. the occurrence of fraud which endangers the insurer's assets;

2. control of an insurer is by a person found, after hearing, to be untrustworthy; and,

3. if an officer has refused to be examined under oath concerning an examination of the insurer.

Because the grounds for liquidation found in AS 21.78.050 include, by reference to AS 21.78.040, the same grounds as are available for rehabilitation, the above new grounds are also established for commencing a liquidation proceeding.

Section 63. AS 21.78.090. Order of Rehabilitation
Page 55, line 20 to page 56, line 19.

Amendment to this section adds new subsections pertaining to an order of rehabilitation and its effect. An order of rehabilitation stops any legal proceeding against an insurer for 90 days and puts on hold any statute of limitation time limit for a legal action which an insurer might take for 60 days. This section now makes it clear that any guarantee association may intervene in a rehabilitation proceeding if the association is required to act the result of the entry of an order of rehabilitation. The receiver is required to provide periodic accountings to the court of the condition of the insurer in rehabilitation.

Section 64. AS 21.78.100. Order of Liquidation, Domestic Insurers
Page 56, line 20 to page 58, line 29.

New subsections pertaining to an order of liquidation and its effect are added to the section. Liquidation orders are required to call for specified periodic accountings to the court of the affairs of an insurer being liquidated. Orders of liquidation are required to contain provisions for the termination or continuation in force of all insurance contracts of the insurer according to the guidelines now set forth in this section. This section also contains the effects that an order of liquidation has on legal proceedings similar to those found pertaining to orders of rehabilitation. Also, this section now provides for any guarantee associations to intervene in a liquidation proceeding if the association is required to act as the result of the entry of an order of liquidation.

Section 65. AS 21.78.130. Conduct of Delinquency Proceedings Against Domestic and Alien Insurers.
Page 59, line 1 to page 60, line 17.

The new subsections added to this section augment the powers and authority of the receiver in a rehabilitation or liquidation. The receiver is allowed to pursue on behalf of the insurer all legal remedies from any person due to tortuous acts, breach of contract, or breach of fiduciary obligation.

If the receiver finds that reorganization, consolidation, merger, conversion or other transformation of an impaired or insolvent insurer is appropriate, the receiver is required to develop a plan for the appropriate action and submit the plan to the court for approval, disapproval or modification. A plan of this nature may include a moratorium on nonforfeiture benefits under contracts insured by an impaired or insolvent life insurer.

If an insolvent insurer's estate does not possess sufficient cash or other liquid assets to cover the costs of rehabilitation or liquidation, funds may be advanced by the Division of Insurance for that purpose. However, these funds

are required to be repaid out of the first available money and take priority over all other claims against the estate.

The receiver is granted the authority to conduct examinations in conjunction with a delinquency proceeding with the same ability to subpoena, examine under oath, and review records as the director has in the examination of any insurer. The receiver is also granted the power to move records of the insurer to any location that would facilitate the rehabilitation or liquidation and to provide reasonable access to those records necessary to any guarantee association to carry out its lawful duties.

The receiver may also intervene in similar proceedings in other jurisdictions and act as a receiver or trustee in another jurisdiction if an appointment is offered. The receiver may enter into agreements with a receiver or other insurance regulatory official of another state which relates to a delinquency proceeding affecting an insurer that is or has conducted business in both states.

Section 66. AS 21.78.170(c) Form of Claim
Page 60, lines 18-25.

This section contains the provisions pertaining to claims filed against the estate of an insolvent insurer. Subsection (c) has been amended to require the receiver to notify a claimant if the claim has been denied in part or in whole in writing by first class mail. The claimant must raise any objection with this determination within 60 days of when the notice was mailed or is barred from any objection.

Section 67. AS 21.78.170. Form of Claim
Page 60, line 26 to page 61, line 3.

If the receiver receives an objection, the amendments to subsection (d) provide that the receiver request the court to conduct a hearing on the matter if the receiver does not change the original determination after such objection is made.

Section 68. AS 21.78.170. Form of Claim
Page 61, lines 4-24.

New subsections (e) through (h) have been added to provide further guidelines for claims made against an insurer in liquidation. A claim does not have to be considered or allowed if not all the required supporting documentation is provided or if the prescribed (and court ordered) claim form is not used. The receiver may at any time request that additional information be provided by any claimant and may take testimony under oath to obtain supplementary information. A judgement or an order against an insured or an insurer

entered after the date of a liquidation order or a judgement or an order entered at any time by default or collusion need not be considered as support of evidence of liability or amount of damages in connection with a claim. A claim by any guarantee association against the estate of an insurer in liquidation must be in a form and contain support agreed to by the receiver and the guarantee association.

Section 69. AS 21.78.180(d). Priority of Certain Claims
Page 61, line 25 to page 62, line 10.

This section is amended to clarify certain circumstance involving claimants whose claims against the estate of an insurer in liquidation are secured. Amendment to subsection (d) provides the methodology for arriving at the value of the security and allows for the entire claim to be allowed if the security is surrendered to the receiver.

Section 70. AS 21.78.180(e). Priority of Certain Claims
Page 62, lines 11-25.

A new subsection (e) has been added to allow in certain circumstances for a person other than the secured creditor to file a claim with the estate of an insolvent insurer. That other person must be the person that provided the security via some undertaking and the secured creditor has failed to file and prove a claim. In such a circumstance, that person may file a claim in lieu of the secured creditor. However, the secured creditor will get any distributions from the estate of the insolvent insurer and the other person that made the claim will only be entitled to a portion of the distribution if the distribution and the amount paid on the undertaking exceed the entire amount of the secured creditor's claim. Any such excess must be held in trust by the secured creditor for the benefit of the other person who made the claim.

Section 71. AS 21.78.200(a). "Uniform insurers liquidation act."
Page 62, lines 26-29.

This is an editorial change to amend internal cross references. No substantive change.

Section 72. AS 21.78.250. Fraudulent Transfers Before Petition
Page 63, line 1 to page 64, line 21.

Currently AS 21.78.250 gives a broad outline as to how transfers of property made by or on behalf of an insurer before an order of rehabilitation or liquidation are treated when the transfer was accomplished with the intent to gain a preference or a greater percentage of the insurer's assets in a delinquency proceeding. In essence, the receiver may avoid or reverse these

transactions unless the insurer received fair value for the asset transferred. This broad outline is repealed and replaced with a more detailed description of the acceptable transfers and unacceptable transactions which may be voided. The essential intent of current AS 21.78.250 is retained.

The reenacted AS 21.78.250 pertains to transfers occurring prior to a petition for rehabilitation or liquidation. This new section specifically recognizes transactions involving reinsurance contracts.

Section 73. AS 21.78.251. Fraudulent Transfer After Petition.
Page 64. line 22 to page 66. line 6.

New section AS 21.78.251 pertains to transfers and transactions occurring after a delinquency proceeding has been undertaken but before an order of rehabilitation or liquidation has been entered or before the receiver takes possession of the insurer's property.

Section 73. AS 21.78.252. Voidable Preferences and Liens.
Page 66. line 6 to page 71. line 11.

New section AS 21.78.252 provides the detailed guidelines for the voiding or reversing improper transfers of property. This section maintains the personal liability of any person, (including insurer employees, officers, or shareholders), acting on behalf of an insurer that knowingly participates in giving of a preference who knows or has a reasonable cause to believe that an insurer is or is about to become insolvent.

Section 73. AS 21.78.253. Claims of Holders of Void or Voidable Rights
Page 71. lines 12-29.

New section AS 21.78.253 outlines how claims of person who received a preference are to be treated. In general such claims are to be disallowed and not allowed to participate in any distribution of the insolvent insurers estate. However, a claim by such a creditor will be allowed as an "excused late claim" only if the transfer which provided for the preference is reversed.

Section 74. AS 21.78.260. Priority of Distribution
Page 72. line 1 to page 74. line 5.

The current law governing liquidations does not provide for a statutory priority for distribution of an insolvent insurer's estate. By interpretation, the administrative expenses to liquidate an insurer receive priority treatment. Currently, AS 21.78.260 provides a priority for wages owed employees up to $500. The new version of AS 21.78.260 provides for a specific priority for the distribution of an insolvent insurer's estate. Additionally, a methodology is

defined that calls for all claims in each class to be paid or sufficient funds set aside before any claims in the next lower priority class are paid. The order of distribution is as follows:

1. Class 1. The expenses and costs administration for the rehabilitation or liquidation;

2. Class 2. Wages for employees for up to two months pay but principal officers and directors are not allowed to benefit by this priority;

3. Class 3. All claims for losses incurred under insurance policies including third party liability claims and claims of any guarantee association;

4. Class 4. Claims for unearned premiums under nonaccessible insurance policies, other premiums refunds, and claims of general creditors including claims made by ceding or assessing reinsurers under contracts of reinsurance;

5. Class 5. Claims of federal, state, or local government other than claims made under Class 3;

6. Class 6. Claims filed late or any other claims other than those claims under Class 7 or Class 8;

7. Class 7. Surplus notes, contribution notes, or similar obligations, and premium refunds under assessable insurance policies; and

8. Class 8. Claims of shareholders or other owners in their capacity as shareholders or owners.

Section 75. AS 21.78.270. Setoffs and Counterclaims
Page 74, lines 6-24.

This section clarifies the requirement that mutual debts or credits between the impaired or insolvent insurer and any other person be netted out with a resultant single amount either paid to the insurer or paid by it.

Section 76. AS 21.78.271. Recovery of Premiums Owed
Page 74, line 25 to page 75, line 15.

This new section requires that any person, including licensed agents and brokers, responsible for the payment of premium to an insurer pay to the receiver the amount of premium due for the entire term of the policy at the time of the declaration of insolvency. The amounts are to include commissions. The director may impose a monetary penalty of up to $1,000 for each violation of this section and may also suspend or revoke the agent's or broker's license.

Section 76. AS 21.78.272. Reinsurers Liability
Page 75, lines 16-23.

This new subsection pertains to a reinsurer's obligations to the estate of an insolvent or impaired insurer. Payments under a contract of reinsurance due an insurer in delinquency may not be reduced as a result of the rehabilitation or liquidation proceeding. Unless the reinsurance contract specifically provides for payment to a person other than the impaired or insolvent insurer, a payment to a person other than the impaired or insolvent insurer does not reduce the reinsurer's obligation to that insurer.

Section 77. AS 21.78.280. Special Claims.
Page 75, line 24 to page 76, line 20.

Currently AS 21.78.280 contains provisions pertaining to both contingent and unliquidated claims, and third party liability claims. This one section has now been divided into two separate sections with AS 21.78.280 pertaining to contingent and unliquidated claims and AS 21.78.281 pertaining to third party claims.

AS 21.78.280 provides that a contingent and unliquidated claim will be allowed to participate in a distribution of an insolvent insurer's estate only if, either the claim becomes absolute before the last day allowed for the filing of claims or a surplus of funds remains after all other claims are paid.

Section 78. AS 21.78.281. Special Provisions for Third-Party Claims.
Page 76, line 21 to page 78, line 9.

New section AS 21.78.281 provides the special guidelines for third party claims. It provides for either the third party or the insured of the insurer in liquidation to file a claim against the insolvent insurer's estate. The receiver is required to make recommendations to the court in regard to the allowance of a third party claim based on the receiver's consideration of the probable outcome of the pending action against the insured. If several third party claims against one insured are made which exceeds the policy limits, each claim will be proportionately reduced so that the total paid does not exceed the policy limits. No separate third party claim is allowed if covered by any guarantee association.

Section 79. AS 21.78.290. Notice to Creditors and Others
Page 78, line 10 to page 79, line 9.

This section has been repealed and reenacted to provide for a more detailed outline of how the receiver is to provide notice to potential claimants and other persons affected by the liquidation of an insolvent insurer. Notice is required to be made by several different media.

The notice must be given by the receiver as soon as is possible after the entry of the order of liquidation and must specify the amount of time allowed for the filing of claims. The time allowed for the filing of claims must be at least six months after the date of the liquidation order is entered.

Section 80. AS 21.78.291. Duties of Agents
Page 79, line 10 to page 80, line 10.

This new section requires that each appointed, licensed agent of an insurer in liquidation provide written notice to each policyholder issued coverage through the agent of the liquidation order. This notice must be accomplished within 15 days from the date the agent receives notice under AS 21.78.290. The written notice must include the name and address of the agent, identification of the policy affected, and the nature of how the policy is affected such as termination under AS 21.78.100. The receiver may waive the notice required by this section if other appropriate notice has been given to policyholders.

Section 80. AS 21.78.292. Filing of Claims
Page 80, line 11 to page 81, line 15.

This new section requires that proof of a claim must be filed in the form required by AS 21.78.170. This section also provides for the guidelines under which late filed claims may participate in the distribution of the estate of the insolvent insurer.

Section 80. AS 21.78.293. Receiver's Recommendation to the Court
Page 81, line 16 to page 81, line 5.

This new section requires the receiver to report to the court the nature of each claim made to include the name and address of the claimant and amount of claim recommended. The court may approve, disapprove, or modify the report on the claims made. However, if the court takes no action on a report within 60 days of the date of reporting, the claims will be considered to be allowed in the amount reported. In no event, will a claim under a policy of insurance be allowed in an amount in excess of the applicable policy limits. This report or reports as accepted by the court provide for the detail of the claims which will participate in the orderly distribution of the assets of an insolvent insurer.

Section 80. AS 21.78.294. Distribution of Assets
Page 82, lines 6-13.

This new section requires the receiver to accomplish the final distribution of funds to claimants under the court's supervision. The distribution plan must

recognize the statutory priorities and provide for a reasonable balance of expediency with the protection of unliquidated and undetermined claims including third party claims.

Section 80. AS 21.78.295. Unclaimed and Withheld Money
Page 82, line 14 to page 83, line 6.

This new section provides that any unclaimed funds subject to distribution under a liquidation proceeding remaining when the court is going to end the receivership will inure to the state without going through any further proceedings.

Section 80. AS 21.78.296. Termination of Proceedings
Page 83, lines 7-15.

This new section provides for the receiver to apply to the court for discharge from the rehabilitation or liquidation proceedings when all duties have been performed. The court may grant the discharge and issue any other orders it deems appropriate. It is anticipated that such orders would include an order dissolving the corporate existence of an insolvent and liquidated insurer.

This section allows any other person to apply to the court at any time for an order discharging a delinquency proceeding. However, if the application is denied, the applicant is required to pay the costs incurred by the receiver in resisting the application.

Section 80. AS 21.78.297. Reopening Liquidation
Page 83, lines 16-22.

For good cause including the discovery of additional assets, the director or any other person may petition the court to reopen a previously closed liquidation. If sufficiently justified, the court must reopen the liquidation.

Section 80. AS 21.78.298. Disposition of Records During and After Termination of Liquidation.
Page 83, lines 23-28.

This new section allows the director to recommend to the court and the court to order which records of a liquidated insurer should be retained and which should be destroyed.

OTHER. (Sections 81-89)

Section 81. AS 21.88.050(a). Powers and duties
Page 83. line 29 to page 85. line 14.

This editorial change merely amends a cross reference to statutes revised elsewhere in this legislation.

Section 82. AS 21.90.900. Definitions for Title
Page 85. line 29 to page 86. line 5.

This section is amended to provide definitions for the terms "impaired", "impairment", "insolvent", "insolvency", and "policyholder surplus". These terms are used in several chapters of Title 21.

Section 83. Applicability of Reinsurance Credit
Page 86. lines 6-9.

This section delays the effective application of the changes affecting reinsurance credit allowed a domestic ceding insurer to avoid impact on existing contracts. This makes renegotiation of those contracts unnecessary.

Section 84. Applicability of Capital and Surplus Requirements
Page 86. lines 10-15.

This section delays the impact of the new capital and surplus requirements required in this legislation until January 1, 1992 when this section is repealed by section 86.

Section 85. Repealer
Page 86. lines 16-17.

Sections repealed are:

AS 21.09.080(b). This repeal requires domestic insurers to maintain the currently required capital and surplus amounts.
AS 21.09.080(c). This repeal requires domestic insurers to maintain the currently required capital and surplus amounts.
AS 21.21.020(b). This repeal deletes the grandfathering necessary for the 1966 major redrafting of this chapter but which now, after 22 years, is not required.
AS 21.21.270(d). Moved to definition section AS 21.21.600(6).
AS 21.78.330(1). Definition of "ancillary state" removed.

Section 86. Repeal of Section 84
Page 86. line 18.

This section repeals section 84 which delays the impact of the new capital and surplus requirements required in this legislation.

Section 87. Change of Civil Rule 62(a)
Page 86. lines 19-22.

Section 88. Change of Civil Rule 65(c)
Page 86. lines 23-27.

Section 89. Change of Civil Rule 41
Page 86. line 7 to to page 87. line 3.

Section 90. Change of Civil Rule 19
Page 87. lines 4-6.

Section 91. Effective date of Act
Page 87. line 7.

The Act takes effect immediately.

SB

238

STEVE COWPER
GOVERNOR

238

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 23, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to the powers of the Alaska Power Authority. This bill has two main components:

1. the conversion of the power project fund from a fund supported by the general fund to a revolving loan fund financed primarily by the sale of bonds, and

2. the authorization permitting the agency to sell waste heat directly to retail customers.

With regard to the first of these components, the authority would sell bonds to finance loans from the power project revolving loan fund. The fund would consist of appropriations, repayments of principal to the fund, interest on loans made from the fund, income from investment of money in the fund, and the proceeds of bond sales. The authority would pledge the money repaid to the fund as security for bond debt service, but the balance from appropriated money would be returned to the general fund at the end of each fiscal year.

Although temporary retention of interest and income in the fund raises an issue under the dedicated-fund prohibition of art. IX, sec. 7, of the Alaska Constitution, the Department of Law believes that the constitutionality of that "dedication" of interest and income would be defensible. 1982 Op. Att'y Gen. No. 13 (Nov. 30).

The bill provides a mechanism for the authority to recover money to which the borrower is entitled under the power cost equalization program, or from another state agency, when the borrower is in default on its loan payments to the fund.

The list of eligible borrowers would be expanded from those utilities eligible under AS 44.83.170 to include school districts, regional educational attendance areas, regional housing authorities, and certain business enterprises (defined in sec. 14 of the bill). The list of activities eligible for loans would be expanded to include the acquisition of an existing power project, the acquisition of bulk fuel reserves, or other energy resources, and consumer end-use improvements to reduce the demand for energy.

In addition, the loan fund would no longer be limited to costs associated with a "small-scale power production facility." Instead, AS 44.83.170(b)(1)(B) would refer to "power projects," as including those activities described in the bill. The definition of "small-scale power production facility" would be repealed. Sections 5 and 15 of the bill.

Under existing law, the authority sells energy to utilities, who then pass the energy on to their retail customers. This bill would permit the authority to bypass the utilities and to sell waste heat directly to retail consumers. The waste heat sold by the APA would displace other heat sources, such as diesel fuel and oil, currently being used to heat the retail customers' facilities.

The proposed amendments described above necessitate the following additional changes in existing statutes. In order to enhance marketability of bonds, AS 44.83.187(a) is amended in sec. 12 of the bill so that projects financed by the power project revolving loan fund would not be subject to OMB review, and approval by the legislature, under AS 44.83.177 -- 44.83.185. The statement of the enumerated powers of the authority would be amended by sec. 2 of the bill, to reflect the authority's power to sell waste heat to retail consumers. The requirement that loan repayments be deposited in the general fund would be repealed (in sec. 15) since those payments would be paid into the power project revolving loan fund and used as security for the bond financing.

Additionally, the bill would make several technical corrections. One is that the reference in AS 44.83.187(a)(1) (sec. 12 of the bill) to the renewable resources fund would be eliminated since that fund was repealed in 1984. Section 16, ch. 161, SLA 1984. Another is that the terms "cities" and "boroughs" would be deleted from two lists in AS 44.83.170(b) which also include "municipalities." As defined in AS 29.71.800, the term "municipality" includes cities and boroughs, making the separate references unnecessary. Section 5 of the bill.

I urge your prompt and favorable action on this measure.

Sincerely,

Steve Cowper
Governor

2 of 6

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: S SB 238(Fin)
PUBLISH DATE: 3/21/90

FISCAL NOTE

REQUEST:

Revision Date:
Title: Act relating to Power Project fund
Sponsor: Rules
Requestor: Governor

Agency Affected: AK Power Authority
BRU:

Components:

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

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: [signature] Phone: 465-3575
Division: APA Date: 17 March 90
Approved by Commissioner: Date:
Agency:

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

Changes in CSSB 238 (Fin) have no fiscal impact. This fiscal note is appropriate. 3/21/90 sw
Projections of no fiscal impact would continue through 1996.

SB 238

PROPOSED POWER PROJECT REVOLVING LOAN FUND - SB 238

NEED FOR LEGISLATION

INABILITY TO MEET DEMAND FOR LOANS

- THE ALASKA ENERGY AUTHORITY RECEIVES MANY REQUESTS FOR FINANCING FOR FEASIBLE ENERGY PROJECTS WHICH IT IS UNABLE TO MEET.

- THE AUTHORITY HAS TWO METHODS TO FINANCE PROJECTS -- LOANS FUNDED WITH LEGISLATIVE APPROPRIATIONS AND BOND FUNDED LOANS.

- THERE IS CURRENTLY NO LEGISLATIVE FUNDING AVAILABLE FOR LOANS.

- BOND FUNDING OF PROJECTS WORKS ONLY FOR LARGE PROJECTS WITH STRONG AND FAIRLY PREDICTABLE SOURCES OR REVENUES AND WHICH ARE EASILY UNDERSTOOD BY THE BOND MARKET.

- SMALLER, MORE COMPLICATED PROJECTS ARE NOT FINANCEABLE WITHOUT SOME ADDED SOURCE OF SECURITY.

NEED FOR ADDITIONAL SECURITY

- THE AUTHORITY DOES NOT HAVE THE FINANCIAL STRENGTH THAT WOULD CAUSE THE USE OF ITS GENERAL OBLIGATION TO ADD SECURITY TO ANY BONDS ISSUED. IT HAS NO UNRESTRICTED CASH, AND NO EQUITY THAT IS NOT TIED UP IN FIXED ASSETS.

- WITHOUT A SECONDARY SOURCE OF REPAYMENT THE AUTHORITY WOULD NOT BE ABLE TO SELL BONDS FOR MOST PROJECTS, EVEN IF THESE WERE BACKED BY THE MORAL OBLIGATION OF THE STATE.

- THE AMENDMENTS TO AS 44.83.170 ATTEMPT TO ADD SECURITY TO ANY BONDS ISSUED BY THE AUTHORITY WITHOUT ALLOWING FOR THE ACCUMULATION OF LARGE CASE BALANCES BY THE AUTHORITY.

- THE AUTHORITY WOULD SELL BONDS AND LOAN THE PROCEEDS TO COMMUNITIES AND UTILITIES AROUND THE STATE.

- PAYMENTS ON NEW AND EXISTING POWER PROJECT REVOLVING LOAN FUND (PPRLF) LOANS WOULD BE MADE TO A BOND TRUSTEE, WHO WOULD MAKE INTEREST AND PRINCIPAL PAYMENTS AS NEEDED ON THE BONDS. ADMINISTRATIVE COSTS OF THE FUND WOULD ALSO BE PAID FROM THE TRUST ACCOUNT.

- THERE ARE CURRENTLY APPROXIMATELY $2.4 MILLION IN ANNUAL PRINCIPAL AND INTEREST PAYMENTS COMING IN TO THE AUTHORITY ON POWER PROJECT LOANS. IN THE EVENT OF A DEFAULT BY ANY OF THE BORROWERS ON THEIR PAYMENT TO THE AUTHORITY, THESE FUNDS COULD BE USED TO MAKE UP ANY DIFFERENCE BETWEEN REQUIRED DEBT SERVICES PAYMENTS AND THE AMOUNT COLLECTED BY THE AUTHORITY FROM ITS BORROWERS.

- AT THE END OF EACH FISCAL YEAR, FUNDS HELD BY THE TRUSTEE THAT ARE NOT NEEDED FOR BOND PAYMENTS AND ADMINISTRATION OF THE PROJECT WOULD BE REMITTED AUTOMATICALLY BY THE TRUSTEE TO THE GENERAL FUND.

- THE LEGISLATION STATES THAT THE AUTHORITY MAY INTERCEPT A COMMUNITY'S POWER COST EQUALIZATION PAYMENTS OR ITS REVENUE SHARING IN THE EVENT OF A DEFAULT. THIS LANGUAGE IS SIMILAR TO THAT WHICH IS FOUND IN ALL OF THE MUNICIPAL BOND BANK'S LOAN PROGRAMS.

- THIS LANGUAGE IS TO THE IMPORTANT MARKETABILITY OF THE BONDS AND WILL LOWER INTEREST RATES TO BORROWERS, ACCORDING TO JOHN NUVEEN & CO., THE AUTHORITY'S SENIOR UNDERWRITERS, INCLUDING SUCH LANGUAGE INCREASES A BOND'S RATING BY A FULL HALF STEP, I.E., FROM A- TO A. THIS RESULTS IN SIGNIFICANT SAVINGS FOR THE BORROWERS.

USE OF THE NEW PPRLF

- THE NEW PPRLF WOULD ALLOW COMMUNITIES AROUND THE STATE TO HAVE ACCESS TO THE BOND MARKET FOR POWER PROJECTS THAT WOULD NOT OTHERWISE BE FINANCEABLE IN THAT WAY.

RURAL PROJECTS

- IN THE RURAL AREAS, PROJECTS ARE TOO SMALL TO WARRANT A BOND SALE.

- o Most rural communities are not financially strong enough for their bonds to be marketable.

- o Bank financing is sometimes possible, but a bank will not generally lend money for terms long enough for the projects to remain financially feasible.

- o In rural areas, this project adds an essential source of new capital for development of infrastructure.

- o Rural projects that could benefit from the new PPRLF include:
  - Waste heat projects in communities such as Sand Point, Fort Yukon, and Hoonah
  - A small hydroelectric project in King Cove
  - Black Bear Lake hydroelectric project on Prince of Wales Island.

Projects in Urban Areas

- o There are times that large utilities or cities have small projects that make economic sense but are either too small to go to the bond market or too complicated to explain to it.

- o Banks are a possible avenue for financing, but changes to the tax code passed in 1986 and the short term of bank financing make commercial banks an unpalatable source of funding.

- o PROJECTS IN URBAN AREAS OR PROPOSED BY LARGER UTILITIES THAT COULD BENEFIT FROM THE PPRLF INCLUDE:
  - ELECTRIFICATION OF HOLLIS (SERVED BY ALASKA POWER & TELEPHONE.
  - EXPANSION OF GENERATING FACILITIES IN NOME
  - A GEOTHERMAL PLANT IN UNALASKA.

OTHER ISSUES

- o THE BILL EXPANDS THE PURPOSES FOR WHICH LOANS MAY BE MADE TO INCLUDE:
  - WASTE ENERGY CONSERVATION FACILITIES
  - CONSUMER AND USE IMPROVEMENTS TO REDUCE ENERGY DEMAND
  - ACQUISITION OF POWER PROJECTS (THIS PROVISION WOULD BENEFIT OUZINKIE AND BETHEL WHO ARE INTERESTED IN ACQUIRING EXISTING PLANT FACILITIES).
  - ACQUISITION, CONSTRUCTION, OR REPAIR OF BULK FUEL STORAGE FACILITIES
  - ACQUISITION OF BULK FUEL

- o THE BILL AUTHORIZES ADDITIONAL ELIGIBLE BORROWERS, INCLUDING:
  - SCHOOL DISTRICTS
  - REGIONAL EDUCATIONAL ATTENDANCE AREAS (REAA)
  - REGIONAL HOUSING AUTHORITIES
  - BUSINESS ENTERPRISES

- BUSINESS ENTERPRISE IS INCLUDED TO ALLOW LOANS WHERE A PRIVATE CORPORATION IS INTERESTED IN DEVELOPING A PROJECT OR RESOURCE AND SELLING POWER TO THE COMMUNITY OR UTILITY. ONE EXAMPLE OF THIS TYPE OF PROJECT IS THE GEOTHERMAL PROJECT IN UNALASKA.

- THIS BILL PASSED SENATE LABOR AND COMMERCE LAST YEAR AND WAS CONSIDERED IN SENATE FINANCE LAST MONTH.

- SENATOR DUNCAN PROPOSED AND THE COMMITTEE APPROVED AMENDMENTS WHICH WOULD REQUIRE THAT ANY SCHOOL DISTRICT, REAA, HOUSING AUTHORITY OR BUSINESS ENTERPRISE MUST HAVE THE APPROVAL OF THE LOCAL UTILITY TO BE ELIGIBLE FOR A LOAN TO CONSTRUCT A POWER GENERATION FACILITY IN THE UTILITY'S SERVICE AREA. THESE AMENDMENTS WERE SUPPORTED BY THE ENERGY AUTHORITY, THE ALASKA RURAL ELECTRIC COOPERATIVE ASSOCIATION, AND TLINGIT HAIDA REGIONAL ELECTRIC AUTHORITY.

ALASKA ENERGY AUTHORITY

POWER POOL STATUS REPORT PAGE NUMBER 1

04-03-1990 LOANRLP.R01

NUMBER	CUSTOMER NAME	1ST ADDRESS CIT	AUTHORIZED AM	ANNUAL	NOTE DAT	CURRENT BALA	PAYMENT AMOU	NEXT PAY	AS
81617001	ALASKA ELECTRIC LIGHT & POWER	JUNEAU	$500000.00	.065000	10/15/80	$104000.00	17000.00	04/15/90	PS
81617002	CITY OF KING COVE	KING COVE	$200000.00	.070000	01/01/81	$145887.63	9808.18	07/01/90	PS
81617003	ILIAMNA-NEWHALEN	ILIAMNA	$300000.00	.068000	01/01/87	$324439.48	19788.45	07/01/90	PS
81617004	ALASKA ELECTRIC LIGHT & POWER	JUNEAU	$1000000.00	.065000	01/01/82	$808114.44	55882.50	07/01/90	PS
81617005	ALASKA ELECTRIC LIGHT & POWER	JUNEAU	$200000.00	.070000	07/01/81	$148520.46	9575.00	07/01/90	PS
81617006	BETHEL COGENERATION UTILITY	ANCHORAGE	$1000000.00	.050000	07/01/82	$548507.81	94985.80	07/01/90	PS
81617008	CITY OF SITKA	SITKA	$15000000.00	.040000	01/01/83	$13402370.88	400014.70	07/01/90	PS
81617010	ALASKA ELECTRIC LIGHT & POWER	JUNEAU PAID	$1000000.00	.088500	10/01/83	$872661.21	51470.06	04/01/90	PS
81617011	ALASKA ELECTRIC LIGHT & POWER	JUNEAU PAID	$2000000.00	.092800	10/01/83	$1718598.58	110845.80	04/01/90	PS
81617012	ALASKA ELECTRIC LIGHT & POWER	JUNEAU	$500000.00	.088500	08/01/84	$487787.88	25735.03	07/31/90	PS
81617013	ALASKA ELECTRIC LIGHT & POWER	JUNEAU.	$2000000.00	.088500	08/01/84	$1851180.84	102840.10	08/01/90	PS
81617014	ALASKA ELECTRIC LIGHT & POWER	JUNEAU	$2000000.00	.092800	08/01/84	$1748335.00	110845.80	08/01/90	PS
81617015	COLD BAY (G&K)	SAND POINT	$500000.00	.050000	01/01/86	$408544.83	25508.63	07/01/90	PS
81617016	FAR NORTH UTILITY	FAIRBANKS	$200000.00	.080500	01/01/87	$187515.87	10807.45	07/01/90	PS
81617017	TANANA POWER	TANANA	$130000.00	.085500	07/01/85	$117281.85	7344.17	07/01/90	PS
81617018	G & K INC	COLD BAY	$1263838.00	.088000	01/01/88	$1238888.88	73787.87	07/01/90	PS
81617019	LEVELOCK ELECTRIC	LEVELOCK	$30000.00	.080000	07/01/85	$18037.23	2258.30	07/01/90	PS
81617020	MIDDLE KUSKOKWIM ELECTRIC COOP	CROOKED CREEK	$250000.00	.050000	07/01/88	$200880.00	8193.02	07/01/90	PS
81617022	CITY OF KING COVE	KING COVE	$120000.00	.070300	07/01/86	$108874.56	8040.28	07/01/90	PS
81617023	CITY OF CLARK'S POINT	CLARKS POINT	$177000.00	.075000	07/01/87	$143788.25	7444.80	07/01/90	PS
81617024	G & K INC	COLD BAY	$1000000.00	.081100	02/18/88	$3935844.80	20375.10	07/01/90	PS
81617025	CHITINA ELECTRIC INC	CHITINA	$101500.00	.078500	07/01/88	$85128.92	5047.30	07/01/90	PS
81617026	CORDOVA ELECTRIC COOP.,INC.	CORDOVA	$1850000.00	.050000	08/30/88	$1850000.00	93089.12	07/01/90	PS
81617028	CITY OF GALENA	GALENA	$1350000.00	.077100	08/20/89	$1350000.00	68742.01	01/01/91	PS
81617030	COFFMAN COVE UTILITY	COFFMAN COVE	$70000.00	.088000	07/01/88	$62261.14	4884.13	07/01/90	PS
81617031	CITY OF GALENA	GALENA	$245000.00	.088800	08/20/88	$245000.00	17128.48	01/01/91	PS
81617032	NENANA PORT AUTHORITY	NENANA	$323000.00	.079700	08/12/88	$178808.85	13784.47	07/01/93	PS
81617033	CITY OF LARSEN BAY	LARSEN BAY	$483884.00	.078500	08/05/88	$437878.08	14305.74	01/01/91	PS
81617034	CITY OF QUZINKIE	QUZINKIE,	$50000.00	.073400	07/01/88	$45883.21	2775.14	07/01/90	PS
81617035	MIDDLE KUSKOKWIM ELECTRIC COOP	CROOKED CREEK	$153000.00	.075300	07/01/89	$139888.00	7178.48	07/01/90	PS
81617038	KETTLES LIGHT & POWER	KETTLES	$30500.00	.073300	07/01/88	$27200.93	2178.18	07/01/90	PS
81617037	MCGRATH LIGHT & POWER CO.	MCGRATH	$338000.00	.073300	10/21/88	$317154.14	24378.01	07/01/90	PS
81617039	EAGLE POWER COMPANY	EAGLE	$32000.00	.087100	07/01/88	$29253.95	3818.83	07/01/90	PS
			$34528530.00			$30148778.78	1387080.38		

All current as of 3/31/90

Alaska State Legislature

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Anchorage * District 10

Member
Alaska Legislative Council
Labor & Commerce Committee
Special Committee on Foreign Trade
Finance Sub-Committee for Labor

Representative Virginia Collins

MEMORANDUM

TO: Representative Dave Donley, Chair
House Labor & Commerce Committee

FROM: Representative Virginia Collins

DATE: April 29, 1990

RE: SB 238, "An Act relating to the power project fund, and to the powers of the Alaska Energy Authority to finance and make loans from the power project fund and to sell waste heat; and providing for an effective date"

I respectfully request that you schedule the above-referenced bill for a hearing in the House Labor and Commerce Committee. There are currently requests in the amount of $33 million for loans that cannot be made under the current funding program. The current program has never had a default.

I appreciate your attention to this request. Thank you.

SB

259

HOUSE COMMITTEE REPORT

(7)
Date Referred: April 27, 1990 FURTHER REFERRALS:

Date of Committee Action: 5/3/90

The LABOR & COMMERCE Committee considered: CSSB 259(JUD)(efd am)

CS SB NO. 259 (Jud)(efd am) INSURANCE GUARANTY FUNDS

"An Act relating to insurance guaranty funds and to definitions of "impaired or impairment" and "insolvent or insolvency" in laws relating to insurance; amending Rules 24(a) and 62(a), Alaska Rules of Civil Procedure; and providing for an effective date."

RECOMMENDATIONS:
[ ] be replaced with _____ [ ] the same title [ ] a new title
[ ] have attached amendment(s)
[✓] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the _____ Committee

ADOPTS: _____ letter of intent

ATTACHES NEW FISCAL NOTE(s): (Dept)
[ ] fiscal impact _____
[ ] zero fiscal note _____
[ ] zero with analysis _____

APPROVES PREVIOUS: Senate (Date/Dept)
[ ] fiscal note(s) _____
[✓] zero fiscal note(s) C+ED 4/3/89
[ ] zero fn/analysis _____

SIGNING DO PASS:
Dave Donley Donley
Gruenberg
Boucher
Finkelstein

SIGNING: (Check approp. column)

	Do Not Pass	No Rec	Amend
Collins		X	
Lemann		✓	

Dave Donley
Chairman's Signature

STEVE COWPER
GOVERNOR

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

April 4, 1989

The Honorable Tim Kelly
President of the Senate
Alaska State Legislature
P.O. Box V
Juneau, AK 99811

Dear Mr. President:

Under the authority of art. III, sec. 18, of the Alaska Constitution, I am transmitting a bill relating to insurance guaranty funds. This bill addresses the problem of providing funds for the payment of claims when an insurance company becomes insolvent.

When insurer insolvencies occur, policyholders should be able to have their claims paid through an industry financed guaranty fund. The policy implemented by guaranty funds is that the risk of insolvency should be spread over all other insurers in the system. Although Alaska already has a guaranty fund, its inadequacies have been exposed by recent experience. The commissioner of the Department of Commerce and Economic Development reports that in a recent case as much as $5 million in claims of injured seamen could be deprived of coverage because our present fund does not provide for it. This proposal creates a new marine insurance account within our existing guaranty fund. The proposal alsc allows pre-funding assessments to the present fund so that it may be able to meet demands upon it in the future.

An even more serious inadequacy is our current lack of any guaranty fund at all for life, annuity, and disability insurance coverage. This proposal establishes a new guaranty fund for these kinds of insurance, based on the Life and Health Insurance Guaranty Association Model Act adopted by the National Association of Insurance Commissioners in 1986.

The division of insurance will provide a more detailed description of this proposal to protect the Alaskan insurance consumer.

Sincerely,

Steve Cowper
Governor

STATE OF ALASKA
1989 LEGISLATIVE SESSION

BILL VERSION: CSSB 259 (JUD)
PUBLISH DATE: 4/24/90

FISCAL NOTE

REQUEST:

Revision Date: _____
Title: An Act relating to Insurance Guarantee Funds
Sponsor: Rules
Requester: Governor

Agency Affected: Commerce & Econ. Dev.
BRU: Insurance
Components: Operations

EXPENDITURES / REVENUES: (Thousands of Dollars)

OPERATING	FY 89	FY 90	FY 91	FY 92	FY 93	FY 94
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of dollars)

GENERAL FUND						
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.)

No fiscal impact on the division.

Prepared by: Joan Brown, Administrative Officer
Division: Insurance
Phone: 465-2597
Date: 3-31-89

Approved by Commissioner: Larry Merculieff for
Agency: Department of Commerce & Economic Development
Phone: 465-2500
Date: 4/3/89

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

3712D-1/040389a

Changes in CS SB 259 (JUD) have no fiscal impact. This fiscal note is appropriate. Projections of no fiscal impact would continue through 1996.

J. P. Tangen

My name is [redacted] I am [redacted] Counsel for the American Council of Life Insurance (ACLI). The ACLI is a national trade association representing over 600 legal reserve life insurance companies. These companies write approximately 93% of the life insurance in force in the United States. Three hundred and forty-four of our companies are licensed to do business in Alaska, accounting for 96.4% of the life insurance in force in the state.

We support the enactment of life and health insurance guaranty associations in all states, the District of Columbia, and Puerto Rico. Currently, such associations exist in ~~45~~ 46 of the 52 jurisdictions. The [redacted] SIX jurisdictions without guaranty associations for the life and health insurance industry are Alaska, California, Colorado, the District of Columbia, Louisiana, and New Jersey, [redacted]

We also support Senate Bill 259 in concept. The bill is patterned substantially after the Life & Health Insurance Guaranty Association Model Act adopted by the National Association of Insurance Commissioners (NAIC). We would like to offer [redacted] amendments which we believe will more closely align the bill with [redacted] the legislation enacted in other states. The [redacted] amendments we recommend to the language currently contained in Senate Bill 259 are as follows:

[redacted] Premium Tax Offset

The NAIC Model Act includes, as an optional provision, the following language:

> A member insurer may offset against its [redacted] premium, [redacted] tax liability [redacted] to this state an assessment described in Section ___ to the extent of twenty percent of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its [redacted] premium [redacted] tax liability [redacted] for the year it ceases doing business.

This provision has been adopted in some form by ~~35~~ 37 of the ~~42~~ 46 jurisdictions which have operational life/health guaranty associations. We strongly believe it should be incorporated into the language of Senate Bill 259.

The problem of insurance company insolvency is a social problem, not simply an industry problem. State regulators play an important role in policing the solvency of the industry to prevent loss to consumers. When the system fails, the cost should be spread as broadly as possible, not borne entirely by the insured population of the state. Morecver, it is patently unfair to require solvent, well-managed companies to pay the losses of their poorly-managed competitors. In effect, the financially sound companies pay twice -- once when they lose business to competitors whose products cost less, and again when that competitor's inappropriate pricing levels result in an insolvency for which guaranty association assessments are levied.

Without a premium tax offset, consumers who choose to pay the actuarially sound premium rates charged by the well-managed companies are penalized as their premium levels are increased to reflect their company's cost of paying the losses for an insolvent competitor.

Even with a full premium tax offset, insurers do not recoup their full assessment. They still loose the time value of their money. Insurers lend money up front to pay all claims of insolvent competitors, then recover it, without interest, at the rate of 20% per year over the next five years. Companies estimate that this results in a total recoupment of 70-80% of the monies initially paid to the guaranty association by way of assessment.

For an Act entitled: An Act relating to insurance guaranty funds and to definitions of "impaired or impairment" and "insolvent or insolvency" in laws relating to insurance; amending Rules 24(a) and 62(a), Rules of Civil Procedure; and providing for an effective date.

SECTION 1

Sec. 21.21.250(c) Other Investments; Prohibitions
(Page 1, Lines 12 to 18.)

This Section allows insurers to invest in notes and other evidence of indebtedness of the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) and to have those notes and other evidence of indebtedness considered as admitted assets of the insurer.

SECTION 2

Sec. 21.36.035 Prohibited Advertisements and Representations
(Page 1, Line 19 to Page 2, Line 3.)

This Section makes the use of the protection afforded by this Act to aid a person in the sale of insurance a prohibited unfair trade practice. This would extend to a person with an interest in a policy who uses the presence of the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) to support the value of the policy as collateral in a loan transaction, which action would be prohibited.

The legitimate function of advertising the existence of the Act by the ALDIGA and the Director would be permitted. This would be particularly desirable in notifying policyholders of a company found to be insolvent. It would also be appropriate for insurer trade groups not engaged in sales to provide such information as public service announcements.

Enforcement mechanisms for this section already exist in current statute.

SECTION 3

Sec. 21.79 Alaska Life and Disability Insurance Guaranty Association
(Page 2, Line 4 to Page 24, Line 4.)

This Section creates the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) which will address the problem of providing funds for the payment of claims when an insurance company becomes insolvent. The proposal creates a funding mechanism to guarantee life insurance, disability

insurance and annuity writings of admitted insurers. These kinds of insurance are not presently covered by any form of protection. The proposal is based on a model drafted by the National Association of Insurance Commissioners.

Sec 21.79.010 Purpose
(Page 2, Lines 7-12.)

The basic purpose of ALDIGA is to provide protection for policyholders and claimants from the financial loss resulting from insurer impairment or insolvency.

Sec. 21.79.020 Scope
(Page 2, Line 13 to Page 4, Line 25.)

This section outlines what ALDIGA does and does not cover.

Subsection (a)
(Page 2, Line 13 to Page 3, Line 3.)

This subsection lists persons covered by ALDIGA.

Subsection (b)
(Page 3, Lines 4 to 9.)

This subsection lists the kinds of contracts and policies covered by ALDIGA. Basically it covers life, disability, annuity and supplemental contracts or policies written by insurers which have submitted to regulation in this state.

Subsection (c)
(Page 3, Line 10 to Page 4, Line 19.)

This subsection lists items not covered by ALDIGA.

Subsection (c)(1) excludes coverage for parts of the policy or contract not guaranteed by the insurer. It is directed toward the non-guaranteed portion of variable policies and contracts.

Subsection (c)(2) excludes that part of the risk borne by the insured. It acts to exclude the deductible portion of a policy.

Subsection (c)(3) excludes the reinsurance business of the impaired or insolvent insurer other than reinsurance for which assumption certificates are used.

Subsection (c)(4) limits coverage for the rate of interest on policies or contracts which exceed levels established in the section.

Subsection (c)(5) excludes coverage for life, disability or annuity products offered by self insurers or are self funded.

Subsection (c)(6) excludes coverage for dividends or experience rating credits or allowances for administration of the policy or contract.

Subsection (c)(7) excludes coverage for policies issued by a member insurer while it was nonadmitted in Alaska.

Subsection (d)
(Page 4, Lines 20 to 25.)

This subsection defines the term "published monthly average" used in Subsection (c)(4) which limits the rate of interest used on covered policies and contracts.

Sec. 21.79.025 Liability Limits
(Page 4, Line 26 to Page 5, Line 13.)

This section states the limits of coverage offered by ALDIGA. The limits are

- √ $300,000 on any one life.
- √ $100,000 for cash surrender value.
- √ $100,000 for disability insurance benefits.
- √ $100,000 in the present value of annuity benefits.
- √ $5,000,000 in unallocated annuity contract benefits irrespective of number of contracts held the contract holder.

Sec. 21.79.030 Construction
(Page 5, Lines 14 to 15.)

This section provides for liberal construction.

Sec. 21.79.040 Creation of Association
(Page 5, Line 16 to Page 6, Line 4.)

Subsection (a)
(Page 5, Lines 16 to 28.)

This subsection creates ALDIGA as a nonprofit entity. Membership in ALDIGA is a condition of an insurers authority to transact insurance in this state. To pay for assessment and administration, two accounts are established. One is for disability insurance and the other is for life insurance annuity and unallocated annuity contracts.

Subsection (b)
(Page 5, Line 29 to Page 6, Line 4..)

This subsection places ALDIGA under the supervision of the Director of Insurance. Provision is made for public meetings.

Sec. 21.79.050 Board of Governors
(Page 6, Lines 5 to 19.)

Subsection (a)
(Page 6, Lines 5 to 12.)

This subsection provides for the number and term of the members of the Board of Governors of ALDIGA to be determined in the plan of operation.

Subsection (b)
(Page 6, Lines 13 to 15.)

This subsection provides for approval by the Director of the board members in which he must consider fair representation by member insurers.

Subsection (c)
(Page 6, Lines 16 to 19.)

This subsection provides that board members are not to be compensated except for expenses incurred while performing duties as a member of the board.

Sec. 21.79.060 Powers and Duties of the Association
(Page 6, Line 20 to Page 14, Line 1.)

This Section is the heart of the ALDIGA proposal. It details the duties of the ALDIGA by distinguishing between:

1. those insurers whose "impaired" status is attributable to a finding by the Director prior to an order of liquidation and those whose "insolvent" status is attributable to such an order; and,

2. insolvent domestic insurers and insolvent foreign or alien insurers.

Prior to an order of liquidation, ALDIGA has no liability.

Subsection (a)
(Page 6, Line 20 to Page 7, Line 1.)

This subsection allows the ALDIGA to act to guarantee, assume or reinsure any or all policies of an impaired domestic insurer. ALDIGA would

presumably do so in those situations where early action would prevent a more costly insolvency of later liquidation. Action under this subsection is not limited to resident policyholders.

Subsection (b)
(Page 7, Lines 2 to 14.)

This subsection requires ALDIGA to act even without an order of liquidation in the case of an impaired member insurer (not insolvent) that is not paying claims provided the conditions in Subsection (c) are met. ALDIGA, as a condition of its assistance, may negotiate any requirements or safeguards it deems necessary so long as they are approved by the Director, are accepted by the impaired insurer, and do not impair the contractual obligations to the policyholders, insureds , and beneficiaries.

In the absence of any court order, before any negotiations become final the impaired insurer's acceptance of the terms of ALDIGA is necessary. Through this approach, a mechanism is provided for early action by ALDIGA before the situation further deteriorates. The policyholder, insured, and beneficiaries are protected, claims are paid and coverages continued, for example through rehabilitating the impaired insurers, or reinsuring the policies elsewhere.

Subsection (c)
(Page 7, Line 15 to Page 8, Line 13.)

This subsection establishes conditions precedent to required action by ALDIGA. One of the most important conditions is that there be a statutory provision for the repayment of ALDIGA prior to the return of the company to shareholder or private control. The ALDIGA role here is the payment of benefits and "hardship" cash withdrawals to covered persons. It also establishes that no action has been taken that would effectively render the insurer a non-viable entity.

Subsection (d)
(Page 8, Lines 14 to 26.)

This subsection details the main role of ALDIGA in the event of an insolvency. It provides that if the insurer acquires its insolvent status as a result of a final order of liquidation, rehabilitation or conservation, ALDIGA shall, rather than may, guarantee, assume, reinsure or cause to be guaranteed, assumed, or reinsured, the covered policies of the insolvent insurer and to assure payment of contractual obligations.

Subsection (e)
(Page 8, Line 27 to Page 9, Line 26.)

Subsection (e)(1)
(Page 8, Line 27 to Page 9, Line 12.)

This subsection provides time limits for claims incurred on life and disability insurance policies. The responsibility of ALDIGA varies depending on whether the contract is group or individual.

Subsection (e)(2)
(Page 9, Lines 13 to 15.)

This subsection calls for a diligent effort by ALDIGA to give at least 30 days notice of termination of coverage.

Subsection (e)(3)
(Page 9, Lines 16 to 26.)

This subsection requires ALDIGA to make substitute coverage available to insureds or policyholders who are by law or contractual obligation entitled to continued coverage.

Subsection (f)
(Page 9, Line 27 to Page 10, Line 7.)

This subsection provides that the substitute coverage required in Subsection (e)(3) be offered without new underwriting and with coverage for conditions that existed under the replaced coverage.

Subsection (g)
(Page 10, Lines 8 to 22.)

This subsection provides that the alternative policy offered by ALDIGA shall be subject to the approval of the Director of Insurance. It allows for multiple alternatives that are subject to the same kinds of rate and form standards as other life and disability insurance policies. The primary difference is that ALDIGA cannot reflect changes in the health of the insured after the original policy was last underwritten.

Subsection (h)
(Page 10, Lines 23 to 28.)

This subsection provides that reissue rates that are different from those on the terminated coverage are subject to the approval of the Director of Insurance or by the court.

Subsection (i)
(Page 10, Line 29 to Page 11, Line 4.)

This subsection provides that ALDIGA's obligations to provide coverage under a policy of an impaired or insolvent insurer cease when the coverage is replaced with similar coverage.

Subsection (j)
(Page 11, Lines 4 to 7.)

This subsection ties the coverage providing for guaranteed interest to the limit on interest in Section 21.79.020(c)(4).

Subsection (k)
(Page 11, Lines 9 to 14.)

This subsection provides that non-payment of premiums by 31 days after required by the contract terminates ALDIGA's obligations under the contract other than for claims incurred or cash surrender values due.

Subsection (l)
(Page 11, Lines 15 to 19.)

This subsection provides that premiums due after an order of liquidation belong to and are payable to ALDIGA.

Subsection (m)
(Page 11, Lines 20 to 23.)

This subsection avoids duplication of coverage by providing that the association shall have no liability for any covered policy of a foreign or alien insurer domiciled in a state having similar protection by statute or regulation. If every state adopts the model act, each state association would protect only covered policies of domestic insurers.

Subsection (n)
(Page 11, Line 24 to Page 12, Line 5.)

This subsection provides that under certain circumstances, the court can issue policy or contract liens. in connection with ALDIGA provided guarantees, assumptions or reinsurance agreements. This is a device that has been used in the past in connection with the continuation of the insolvent insurers' coverage. Since by definition, the assets of the insolvent insurer were not adequate to support its contractual obligations, liens were used to reduce its obligations to a level where the assets would be adequate.

Subsection (o)
(Page 12, Lines 6 to 11.)

This subsection permits ALDIGA to seek court imposed temporary stays on the payment of cash values and policy loans. This is intended to avoid a run on the assets of the impaired or insolvent insurer. The language on Lines 10 to 11 which reads "in addition to a contractual provision for deferral of a cash or policy loan value" refers to potential policy provisions which delay access to cash or policy loan value. The injunction ability is in addition to those contractual provisions.

Subsection (p)
(Page 12, Lines 12 to 15.)

This subsection grants the Director of Insurance the authority to assume the duties and powers of ALDIGA if it fails to exercise its authority under the Act within a reasonable period of time.

Subsection (q)
(Page 12, Lines 16 to 19.)

This subsection allows the Director of Insurance to enlist the aid of ALDIGA in matters relating to an impaired or insolvent insurer.

Subsection (r)
(Page 12 Lines 20 to 25.)

This subsection confers standing in court on ALDIGA extending to any matters concerning the duties of ALDIGA. This enables ALDIGA to protect its interests and those of the insureds and policyholders in the handling of an impairment or insolvency proceeding.

Subsection (s)
(Page 12, Line 26 to Page 13, Line 7.)

This subsection provides that a person who receives a benefit from ALDIGA on a covered policy makes an assignment to ALDIGA to the extent of the benefits received. It also establishes subrogation rights for ALDIGA. It provides that ALDIGA's right to assets of the insolvent insurer is the same as any other person entitled to benefits under this Act.

Subsection (t)
(Page 13, Line 8 to Page 14, Line 1.)

This subsection allows ALDIGA to contract, sue or be sued, borrow money, employ persons, negotiate, act as a domestic life or disability insurer, take legal action to avoid payment of improper claims, to join an association of

similar organizations, and perform other acts that are proper or necessary to implement this Act.

Sec. 21.79.070 Assessment
(Page 14, Line 2 to Page 15, Line 11.)

This Section establishes a post-insolvency assessment approach as the funding mechanism for the guaranty function imposed by this legislation. .

Subsection (a)
(Page 14, Lines 2 to 8.)

This subsection establishes the assessment mechanism to fund the purposes of this Act. Late payments accrue a 10% penalty charge.

Subsection (b)
(Page 14, Lines 9 to 17.)

This subsection provides for two kinds of assessment that will be used by ALDIGA to pay claims under the Act as well as certain examinations and the administrative costs of ALDIGA.

Subsection (c)
(Page 14, Lines 18 to 27.)

This subsection describes how the assessment to fund certain examinations and the administrative costs of ALDIGA will be made.

Subsection (d)
(Page 14, Line 28 to Page 15, Line 4.)

This subsection describes how the assessment to fund claims under the Act will be made.

Subsection (e)
(Page 15, Lines 5 to 11.)

This subsection allows ALDIGA to reduce or defer payment of the assessment if such would endanger the ability of the insurer to meet its obligations.

Sec. 21.79.080 Plan of Operation
(Page 15, Line 12 to Page 16, Line 20.)

This section requires the adoption of a plan of operation by ALDIGA to provide for the administration of ALDIGA. This plan would be subject to review and approval by the Director of Insurance. The National Association of Insurance Commissioners has adopted a model plan of operation which is

available in the office of the Division of Insurance. It is anticipated that ALDIGA, upon passage of this Act would substantially adopt the provisions contained in the model plan.

Sec. 21.79.090 Powers and Duties of the Director
(Page 16, Line 21 to Page 17, Line 14.)

Subsection (a)
(Page 16, Lines 21 to 24.)

This subsection requires the Director to provide premium data to ALDIGA on request. This data will be used to confirm that assessments are being properly paid.

Subsection (b)
(Page 16, Line 25 to Page 17, Line 7.)

This subsection allows the Director to take action against an insurer that fails to comply with the Act, such as failure to pay assessments and failure to comply with the ALDIGA Plan of Operation.

Subsection (c)
(Page 17, Lines 8 to 11.)

This subsection provides an appeal mechanism to the Director for actions of ALDIGA.

Subsection (d)
(Page 17, Lines 12 to 14.)

This subsection requires the liquidator, rehabilitator, or conservator (the Director of Insurance) to notify interested parties of the effect of this Act. Other sections in Title 21 tie in with this Act. AS 21.69.530 provides a response to a situation where a deficiency in capital or assets is found. AS 21.78 contains provisions for the director to seek appointment as receiver and speaks to rehabilitations and liquidations.

Sec. 21.79.100 Prevention of Insolvencies
(Page 17, Line 15 to Page 19, Line 17.)

This section basically establishes a dialogue between the Director and ALDIGA, concerning impairment and insolvency issues.

Subsection (a)
(Page 17, Lines 15 to 26.)

This subsection requires the Director to notify other states of action taken against an insurer relating to issues impacted by this Act.

Subsection (b)
(Page 17, Line 27 to Page 18, Line 3.)

This subsection requires the Director to notify ALDIGA of actions taken by other states against an insurer relating to issues impacted by this Act.

Subsection (c)
(Page 18, Lines 4 to 6.)

This subsection requires the Director to notify ALDIGA of companies suspected of being impaired or insolvent during the course of or following an examination.

Subsection (d)
(Page 18, Lines 7 to 12.)

This subsection requires the Director to furnish ALDIGA with early warning data developed by the National Association of Insurance Commissioners used in detecting problem insurers.

Subsection (e)
(Page 18, Lines 13 to 15.)

This subsection allows the Director to seek the advice of ALDIGA concerning companies seeking to do business in Alaska.

Subsection (f)
(Page 18, Lines 16 to 23.)

This subsection requires ALDIGA to report and make recommendations to the Director concerning companies seeking to do business in Alaska, and report to the Director information indicating impairment or insolvency of a member insurer.

Subsection (g)
(Page 18, Line 24 to Page 19, Line 8.)

This subsection allows ALDIGA to request an examination by the Director of an insurer. This exam is paid for by ALDIGA. Examination is the principle tool in determining financial status.

Subsection (h)
(Page 19, Lines 9 to 10.)

This subsection allows ALDIGA to make recommendations to the Director concerning the detection and prevention of insolvencies.

Subsection (i)
(Page 19, Lines 11 to 17.)

This subsection requires ALDIGA to make a report at the conclusion of an insolvency. This report is to discuss the history and cause of the insolvency. This subsection seeks to find common causes which may be used to detect future problems with other insurers.

Sec. 21.79.110 Miscellaneous Provisions
(Page 19, Line 18 to Page 21, Line 26.)

Subsection (a)
(Page 19, Lines 18 to 21.)

This subsection provides that assessments under an assessable policy are not forgiven through the presence of this Act.

Subsection (b)
(Page 19, Line 22 to Page 20, Line 1.)

This subsection requires ALDIGA to maintain records of all its negotiations and actions. ALDIGA should be held publicly accountable for its actions. On the other hand, effective handling of a rehabilitation or liquidation effort requires minimum publicity. Thus, such records will be made public only after the liquidation, rehabilitation or conservation proceeding is terminated, the impairment or insolvency is terminated or there is a prior order by the court.

Subsection (c)
(Page 20, Lines 2 to 17.)

This subsection provides that since ALDIGA has the obligation imposed upon it to continue coverage for policyholders of insolvent insurers, the assets of the insolvent insurer ought to be used, to the extent available, for the purpose of continuing such coverage.

Subsection (d)
(Page 20, Lines 18 to 29.)

This subsection is intended to prevent the shareholders of an impaired insurer from sitting back and doing nothing and then reaping the benefit of funds put up by the ALDIGA. These stockholders should not obtain a more advantageous position than they would have occupied in the absence of this Act. The court is empowered by order to modify and distribute the ownership rights of impaired insurers to establish equity.

Subsection (e)
(Page 21, Lines 1 to 26.)

This subsection is designed to recapture excessive dividend payments to affiliates that exercised control over the insolvent insurer. AS 21.22 deals with much of this issue, however, if dividends are paid under circumstances that the insurer should have reasonably known that such payment could reasonably be expected to affect its ability to perform its contractual obligations to its policyholders, the holding company and affiliates should be required to repay such dividends subject to certain reasonable limitations.

Sec. 21.79.120 Examination of the Association, Annual Report
(Page 21, Line 27 to Page 22, Line 4.)

This section enable the Director of Insurance to examine ALDIGA. It also requires ALDIGA to file an annual report.

Sec. 21.79.130 Tax Exemptions
(Page 22, Lines 5 to 7.)

This section provides that ALDIGA is tax exempt except for real property taxes. ALDIGA is not a profit making organization, rather, it is a guarantee mechanism, thus its tax exempt status.

Sec. 21.79.140 Immunity
(Page 22, Lines 8 to 11.)

This section provides ALDIGA with immunity protection while performing its duties under this Act. Since ALDIGA will be engaged in some very sensitive issues when performing its duties under this Act, this is needed.

Sec. 21.79.150 Stay of Proceeding, Reopening Default Judgements
(Page 22, Lines 12 to 16.)

This section provides for an automatic stay of 60 days in actions involving the liquidation, rehabilitation or conservation of an insolvent insurer, which requires a change in the rules of the court.

Sec. 21.79.900 Definitions
(Page 22, Line 17 to Page 24, Line 2.)

Sec. 21.79.990 Title
(Page 24, Lines 3 to 4.)

Sec 21.79 will be cited as the "Alaska Life and Disability Insurance Guaranty Association Act."

SECTION 4

Sec. 21.80.020 Applicability
(Page 24, Lines 5 to 10.)

This amendment expands the existing Alaska Insurance Guaranty Association (AIGA) to include marine coverage for vessels under 100 feet in length. Presently no marine coverage is provided under AIGA. It also clarifies that coverage is extended only for policies written by an admitted insurer.

SECTION 5

Sec. 21.80.040 Creation of Association
(Page 24, Lines 12 to 26.)

This expansion of the existing Alaska Insurance Guaranty Association (AIGA) to include marine coverage for vessels under 100 feet in length has been placed in the "all other insurance" account.

SECTION 6

Sec. 21.80.050(a)
(Page 24, Line 27 to Page 25, Line 7.)

This amendment provides a mechanism for assuring the AIGA board is always fully staffed.

SECTION 7

Sec. 21.80.060(a)
(Page 25, Line 8 to Page 27, Line 25.)

This amendment clarifies that the obligation of the association commences with an order from the court when the insolvent insurer or the receiver has ceased payment of any or all claims.(Page 25, Lines 12 to 16).

This amendment increases the covered claim amount from $300,000 to $500,000 (Page 25, Line 21).

Assessments may be deferred if it would endanger the member insurers ability to meet its contractual obligations (Page 26, Lines 23 to 24).

It requires that AIGA's servicing facility operate and maintain its principal office in Alaska unless cost savings can be demonstrated without service delays (Page 27, Lines 14 to 18).

SECTION 8

Sec. 21.80.070(a)
(Page 27, Line 26 to Page 28, Line 9.)

This amendment removes language that is no longer necessary. Since the plan does exist and the Director may require revision, it no longer accomplishes anything.

SECTION 9

Sec. 21.80.080(b)
(Page 28, Line 10 to Page 29, Line 3.)

The level of penalty for failure has been increased from a minimum of $100 per month to $250 per month (Page 28, Line 26).

This amendment also allows the Director of Insurance to assume AIGA powers if the court finds that AIGA has failed to act in accordance with statute, or its plan of operation (Page 28, Line 29 to Page 29, Line 3).

SECTION 10

Sec. 21.80.120 Examination of Association
(Page 29, Lines 4 to 9.)

This amendment requires that the annual report by AIGA be certified.

SECTION 11

Sec. 21.80.140 Recognition of Assessments in Rates
(Page 29, Lines 10 to 24.)

This Section allows assessments to be reflected in future charges made for insurance policies. This amendment allows an assessment to be reflected as a separate charge on the policy. It also allows a rating organization to make a provision in the rate structure for recovery of assessments by its member or subscriber insurers. That charge is not taxable.

SECTION 12

Sec. 21.90.900(24)-(25)
(Page 29, Line 25 to Page 30, Line 5.)

This amendment adds definitions for "impaired", "impairment", "insolvent", and "insolvency" to the Title.

SECTION 13

Repealed
(Page 30, Lines 6 to 7.)

AS 21.80.070(d) is repealed. This section relates to allowing the functions of AIGA to be performed out of state.

AS 21.80.170 is repealed. This section relates to termination of AIGA. If AIGA is to be disbanded, it would be appropriate to address that issue at the time it becomes a possibility.

SECTION 14

Rule 62(a) Rules of Civil Procedure
(Page 30, Lines 8 to 11.)

This Section reflects the change made in Sec. 21.79.150 on Page 22, Lines 12 to 16.

SECTION 15

Rule 24(a) Rules of Civil Procedure
(Page 30, Lines 12 to 15.)

This Section reflects the change made in Sec. 21.79.060(r) on Page 12, Lines 20 to 25.

SECTION 16

Initial Organization of Association
(Page 30, Lines 16 to 24.)

This is a temporary statute since its impact is of short duration. To avoid problems in initially selecting the board, this section provides for an organizational meeting to be called by the Director of Insurance. A voting

process is described. If no board members are selected within 60 days the Director may appoint the initial board.

SECTION 17

Effective Date
(Page 30, Line 25.)

This proposal is effective January 1, 1991.

SB259

MEMORANDUM

State of Alaska

TO: Don Koch
Chief of Market Surveillance
Acting Deputy Director
Division of Insurance

DATE: February 16, 1990

FILE NO.:

THRU:

TELEPHONE NO.: (907) 465-2577

SUBJECT: CPA Mutual Ins. Co.
Risk Retention Group

FROM: Ted Lehrbach
Insurance Market Analyst III
Division of Insurance
Department of Commerce and
and Economic Development

Per your instructions I have formulated a response letter to Mr. H. P Head, of the CPA firm of Thomas, Head & Greisen. Mr. Head wrote to me, copying the Commissioner and the Senate and House Labor & Commerce Committees regarding an implied threat by his risk retention group, CPA Mutual Insurance Company Risk Retention Group, to non-renew his policy because they feel that our initial registration fee of $1,000 is too high. Attached is a copy of my response letter to Mr. Head.

As you know, this is one of many ongoing issues involving many state regulatory agencies, the NAIC, and the risk retention interests. The regulatory notice and hearing process was properly followed. The fee is non discriminatory as required by the Federal Liability Risk Retention Act of 1986.

I suspect that Mr. Head may not fully realize the distinctions between his risk retention group "insurer" and that of an admitted insurer, so I attempted to touch upon some of the important distinctions in my letter to him.

Needless to say, it is frustrating to receive a letter such as this when you realize the inherent dangers to the insuring public regarding the use of undercapitalized risk retention groups and/or purchasing group insurers. I am especially concerned about CPA Mutual's implied threat to cancel these two Alaska policyholders because they do not like our fee structure. Most of the risk retention groups who are active in the state have had no problem in complying with our registration requirements and the initial registration fee.

MEMORANDUM
David Walsh
2/16/90

I attach to this memo the following items which may constitute a briefing of the development process for the regulations and the fees.

1. My memo of March 24, 1989 to Director Paul Roller.
2. Ron Zobel's memo to Art Peterson, Dept. of Law, of June 7, 1989.
3. Art Peterson's memo to Director Roller of July 24, 1989.
4. Copy of the original policy statement drafted in Oct. 1988.
5. Copy of Order 89-3 and the regulations.

Confirming our worries about the risk retention solvency issue, is the fact that within this month, two risk retention groups have announced that they will no longer be writing or renewing any policies.

Petromark Risk Retention Group has written to it's policyholders about a problem with their most recent actuarial statement. The letter starts out as follows:

> Dear Policyholder, I have some very bad news to report. In short, the Board was shocked to learn last week from Wyatt and Co., Petromark's actuaries, that the December 31, 1989 financial statement reserves which Wyatt projects are needed to pay for outstanding claims are nearly three times the reserves that have been established on a case by case basis by Petromark's claims managers.

Petromark goes on to explain that they will have the issue reviewed, but in the interim, they will be forced to non-renew any policies coming due within the next 60 days and cease writing any new policies.

I have requested the names of any Alaskan policyholders from them but in 5 days and several phone calls have not received an adequate response.

Another risk retention group, Environmental Protection Insurance Co., has discontinued operations due to what was described as "a lack of interest from buyers,..." in an article appearing in the January 15th 1990 issue of Business Insurance. I do not believe they have any Alaska policyholders.

Regarding CPA's statement that our fees are "inordinately high" and are "five times higher" than any other state, I would like to submit the attached copy of the most recent issue of The Risk Retention Reporter, an unofficial industry voice for risk retention interests. Of interest is Vermont's decision to charge a $200 registration fee to out of state risk retention groups. In addition to the $200 fee they also charge another $300 once the risk retention group is

accepted by the Vermont DOI. This means Vermont will now implement a total initial registration fee of $500 for the registration and acceptance of a risk retention group. Their total continuation fee charges will now be $400. Add to this the fact that South Carolina's registration fee is $600, it reaffirms the reasonableness of our charges, especially when one considers the burden of Alaska's geographical location.

It appears that many other states are looking hard at registration and continuation fees due to increased time and effort spent by states which must now at least register and monitor not only risk retention groups but purchasing groups as well.

Also in the February 15th issue, reference is made to Georgia's recent decision to require all risk retention groups providing coverage to members in Georgia to comply with their Unauthorized Insurers Act. It appears that they are following our lead as outlined in our policy statement of Oct. 1988, regarding a stricter regulatory stance.

If anyone wishes any further information such as copies of the federal act or copies of the many informative articles collected in my topic files about the issues surrounding risk retention, I will be happy to provide them.

HTL

STATE OF ALASKA

STEVE COWPER, GOVERNOR

DEPARTMENT OF COMMERCE &
ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

P.O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

February 20, 1990

Mr. H.P. Head, President
Certified Public Accountants
Thomas, Head and Greisen
A Professional Corporation
1400 West Benson Blvd., Suite 400
Anchorage, AK 99503-3658

Dear Mr. Head:

RE: CPA Mutual Insurance Company of America
Risk Retention Group

This will acknowledge and thank you for your letter of January 26, 1990, received February 5. I can understand your concern regarding the letter received from your risk retention group, CPA Mutual Insurance Company of America Risk Retention Group, which seems to imply that they may decide to discontinue doing business in Alaska primarily because they object to our registration requirements and fees.

In this letter, I will attempt to address your concerns and will also attempt to clarify several items in CPA's letter which we feel may be misleading. I'm sure that you can appreciate that in any dispute, there are always two sides to any issue. The following is somewhat lengthy but will hopefully respond to your concerns.

In your letter you ask by what authority and procedure the registration fees were established. The fees were established by Order 89-3 adopting regulations 3 AAC 24.101-590. In addition, 3 AAC 31.060(a)14 established the amount of the fees, as implemented by Orders 89-2 and 89-4. I enclose copies for your benefit.

The regulations were developed in late 1988 and copies were sent on January 20, 1989 to all risk retention groups with a notice of a hearing to be held on March 10, 1989. Notices were placed in the major newspapers in Alaska during the week of January 26, 1989 stating that a hearing would be held in Juneau on March 10, 1989. The notice also solicited any written testimony from any risk retention group or interested party; the deadline being March 10, 1989. The hearing date was also published in several insurance periodicals within articles covering the proposed regulations.

The hearing was held on March 10, 1989 and three people attended, with no one wishing to give verbal testimony. There were three submissions of written testimony; two objected to the establishment of fees. Our research had indicated that the state does have authority implied in the federal law, and vested in state law, to require risk retention groups to register with and pay appropriate fees on a nondiscriminatory basis.

The regulations were reviewed and revised by our Department of Law and were signed by the director on April 24, 1989 and by the Lt. Governor on July 24, 1989. The effective date was set at August 23, 1989. Order 89-3 was sent to all risk retention groups in October of 1989 and a Notice of Fees Due was sent out referring to the adopted regs on December 8, 1989. We granted a grace period of 30 days beyond the December 31 due date for the payment of the registration fees. In essence, ample notice was given by the division of its intent to establish registration fees and requirements for registration.

The director wished to establish guidelines so that risk retention groups, even though they are subject to certain exemptions from our state laws, could still be monitored and watched closely due to the potential risks involved regarding issues of solvency and disclosure.

The registration and fee regulations came about with a process started in 1988 when the Director of Insurance requested that a policy statement be drafted regarding the applicable state insurance regulatory laws and the regulation of risk retention groups and purchasing groups formed under the 1986 Federal Liability Risk Retention Act. A policy statement was developed and mailed to all risk retention groups who had sent to us a letter of intent.

This included CPA Mutual Insurance Company of America, A Risk Retention Group. The policy statement outlined applicable state laws which would apply to the registration and regulation of risk retention groups operating in Alaska. Under the Federal Liability Risk Retention Act of 1986, risk retention groups were allowed to form by domiciling themselves in one of the 50 states. They were then exempted from most state regulatory laws and, in essence, were allowed to do business across state lines. The states do retain certain regulatory powers, but, unfortunately, the federal law left some regulatory voids between where the federal law provided exemptions versus where state regulatory authority would prevail.

For example, risk retention groups would still be subject to certain portions of each state's laws regarding deceptive, false, or fraudulent practices, but are preempted from some portions of the state unfair trade practices laws that relate to unfair methods of competition or unfair acts or practices. In addition, risk retention

groups were exempted and prevented from participating in any insurance insolvency guaranty association or fund of any state. Because both of these issues were of a great concern to the director, he felt it necessary to try to define the boundaries of our state regulatory insurance laws with respect to the federal act. The issue of solvency is extremely important to any state insurance department as, I am certain as a CPA, you can appreciate. In addition, we recognized that certain problems regarding the solicitation and sale of policies to Alaskan insureds would occur and complaints would arise. Unfortunately, even though the federal law preempts certain of our unfair practices and trade laws, the U.S. Department of Commerce failed to set up any form of complaint department to handle concerns raised by insureds in states outside of the state of domicile of the risk retention groups. The director anticipated, correctly, that complaints would first come to us, and we would attempt to assist our Alaskan insurance consumers to the extent that we were not hampered by the federal law.

In establishing the fee amount, the director looked to our existing fees for a comparison. The division has a nonrefundable fee of $1,000.00 for insurers who seek to obtain a certificate of authority and, thus, become an "admitted insurer" in our state. They submit an application and documents which are reviewed and analyzed by the department. If the application is rejected, the fee is not refunded.

Since the federal act requires that we cannot discriminate against risk retention groups because of minimum capital and surplus requirements, we cannot reject them for not meeting our minimum financial requirements for "admitted" insurers. However, we still have the obligation to review the registration materials submitted by the risk retention groups to ascertain whether or not they meet the requirements of the Risk Retention Act by definition and meet their domiciled state's requirements. This is a similar process to what is done with insurers' applications for certification or admittance, even though our remedies with risk retention groups are limited.

Therefore, it was determined that since we already had a fee standard set for the review of those insurers who apply for a certificate of authority, the director used the same fee to apply to the registration of risk retention groups. In essence, the fee figure of $1,000.00 meets the federal law definition of being "nondiscriminatory" as contained in Sec. 3 (a)4. of the Liability Risk Retention Act of 1986:

> Sec. 3(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 --

(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.

Please be aware that the division has given this matter much thought. We are concerned about the plight of the Alaskan businessman regarding the availability and affordability of insurance. The Risk Retention Act was an attempt by Congress to address this problem. It is a good concept in many ways, but is far from perfect. There have been ongoing issues which are still being debated within the insurance industry and by state regulators. Please recognize that CPA Mutual, as a risk retention group, is apparently unhappy with our regulatory position. This is their right and we have no problem with that. However, please also be aware that our reasons for attempting to apply Alaska insurance laws where they are not preempted by federal law is to try to protect the Alaska insurance consumer as best we can. This is our duty and is not done in a capricious manner as the letter from CPA Mutual seems to imply.

It is interesting to note that their letter describes our fee as being "inordinately high" being "five times higher" than any other state. This is simply misleading. Many states charge registration fees. South Carolina has a registration fee of $600. It concerns me that your risk retention group is implying a threat of cancellation of your policy because they disagree with our fees or feel that it is too high. They also imply that the fee is so high that it is a financial burden to them. I would hope that this is not the case. As an insurer domiciled in Vermont, I would assume that they have enough capital and surplus to meet their operating and claims obligations. To apparently threaten two lone Alaskan policyholders because of a one-time initial fee of $1,000 (by the way, the continuation fees are $200 annually for a risk retention group as opposed to $500 for an admitted insurer) seems to be highly unusual coming from an insurer who may potentially have to pay a policy limit claim of $500,000 or $1,000,000.

We can only assume that CPA Mutual Insurance Company Risk Retention Group gave you the proper disclosure notice as required by the federal act. This disclosure notice is to inform policyholders that the risk retention group is not subject to all of the insurance laws of your state and is not subject to the state insurance insolvency guaranty fund. This means that if your risk retention group does become insolvent, for whatever reason, then both you as a policyholder, and any persons having a claim under the policy, may be left unprotected. This is one of the disclosure issues with which state

insurance departments are concerned. The notice is supposed to be stamped on the policy. We are curious to know if this issue was ever discussed or explained to you when the policy was solicited. I would appreciate hearing from you.

We realize this letter is long; however, we have attempted to deal with the issues with which you are concerned. There are many more sub-issues which cannot be reasonably discussed in a letter. I would be more than happy to discuss the issues further with you by phone, if you desire. My telephone number is (907) 465-2560).

Sincerely,

H. Theodore Lehrbach
Insurance Market Analyst

HTL/jc2101q
022090c
Enclosures
cc: Larry Merculieff, Commissioner
Department of Commerce & Economic Development
David Walsh, Director, Division of Insurance
House Labor & Commerce Committee
Dave Donley
Max Gruenberg, Jr.
Mark Boyer
Virginia Collins
Loren Leman
Senate Labor & Commerce Committee
Dick Eliason
Patrick Rodey
Jan Faiks
Jay Kerttula
Jack Coghill
CPA Mutual

G
FYI

March 1, 1990

The Honorable Max F. Gruenberg, Jr.
House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Gruenberg:

Re: Response to a Letter from Mr. W. P. Head

Enclosed is a memorandum and supporting material compiled in response to the letter received from Mr. Head, written January 19, 1990 and received on February 5, 1990. The memorandum packet includes a copy of the response letter sent from Ted Lehrbach, Insurance Market Analyst, to Mr. Head. The rest of the supporting information will provide a detailed review of the issues and promulgated regulations referred to by Mr. Head.

If there are any questions, you may contact Mr. Lehrbach at 465-2560. He will be happy to answer any questions you might have.

Very truly yours,

David J. Walsh
Director

DJW/bkt1272c
0227Cb
Enclosures

cc: House Labor and Commerce Committee
Representative Dave Donley, Chairman
Representative Mark Boyer
Representative Virginia Collins
Representative Loren Leman

Senate Labor and Commerce Committee
Senator Richard I. "Dick" Eliason, Chairman
Senator Patrick Rodey
Senator Jan Faiks
Senator Jalmar M. Kerttula
Senator John B. "Jack" Coghill

STATE OF ALASKA
DIVISION OF INSURANCE

POLICY STATEMENT
RISK RETENTION GROUPS
PURCHASING GROUPS

The Division of Insurance has received a number of inquiries concerning the regulation of Risk Retention Groups and Purchasing Groups that seek to transact insurance business in the state of Alaska. The Liability Risk Retention Act of 1986 (LRRA 1986) prescribes the extent to which states may license, regulate and tax Risk Retention Groups (RRGs) and Purchasing Groups (PGs). The following is a summary outline of the applicable state statutes and regulations with which these groups must comply. It is advisable that this outline be used as a guide only, and, the specific state statutes mentioned herein should always be referred to. The purpose of this outline is to advise RRGs and PGs as to how the State of Alaska, Division of Insurance, intends to exercise those regulatory and taxing powers reserved to the states under LRRA 1986.

I. RISK RETENTION GROUPS DOMICILED IN THE STATE OF ALASKA

Risk Retention Groups chartered under the laws of the State of Alaska will be organized, regulated and taxed as a domestic liability insurance company. They may be formed under Title 21 of the Alaska Insurance Code. Risk Retention Groups are exempt and excluded from The Alaska Insurance Guarantee Act (AS 21.80), pursuant to section 3 (a)(2) of the LRRA 1986. Therefore all policies issued by a domestic RRG must provide the notice set forth in section 3(a)(1)(I) of the LRRA 1986.

Risk Retention Groups chartered in this state must also comply with section 3(d)(1)(A) and 3(d)(2)(3) of the LRRA 1986.

II. RISK RETENTION GROUPS NOT CHARTERED IN THIS STATE

A. Registration:

The division will require the registration of RRGs on a form prescribed by the director, and payment of a registration fee to cover the costs of processing both the registration forms and the forms required for the designation of the Director of Insurance for service of legal documents and process. Proposed regulations are pending pursuant to AS 21.06.090. The registration form is attached. The proposed fee is $1000.

B. Laws Relating to the Procurement of Coverage for RRG Members:

The division requires that insurance written or placed with an RRG upon a subject or a risk resident, located, or to be performed in Alaska be done through a properly licensed Alaska Surplus Lines Broker. There is no residency requirement to obtain the license. The applicable state law is AS 21.34.

Since the Federal law preempts the states from requiring non-domestic RRGs to maintain minimum surplus or capital, AS 21.34.040(c) does not apply. However, the balance of AS 21.34, including the Surplus Lines Brokers Bond per AS 21.34.140 has not been preempted.

Therefore a properly licensed Alaska Surplus Lines Broker, (either resident or non-resident) may place coverage with a Risk Retention Group without the required surplus and capital required in AS 21.34.040(c).

This will only apply to Risk Retention Groups who have met all of the registration requirements as set forth in the proposed regulations and who meet the requirements of their state of domicile as a chartered and licensed liability insurer

who is also authorized to do business as a liability insurer in any state. It should be noted that any Risk Retention Group that may have formed under the special captive laws of a state must still meet the requirement of being able to do business as a liability insurer in that state in order to meet the required definition of an RRG as defined in section 2 (a)(4)(C)(i) of the LRRA 1986.

C. Examination Statutes:

With the exceptions and limitation as outlined in section 3 (a)(1)(E) of the LRRA 1986, all of the laws of the State of Alaska pertaining to the examination of admitted insurers shall apply to the examination of RRGs whether domiciled in this state or not. Specific laws of interest to RRGs are AS 21.06.080, AS 21.06.120-170.

Any person acting or offering to act as an agent or broker for an RRG not domiciled in Alaska shall be subject to the examination provisions outlined in AS 21.34 and must hold a valid Alaska surplus lines broker's license. However, if a placement is made by a person acting for or offering to act for an RRG, who does not hold a valid Alaska surplus lines broker's license, that person may be subject to fines and penalties including those contained in AS 21.33, AS 21.34 and AS 21.36.

D. Taxes:

The Risk Retention Group is responsible for the reporting and payment of premium taxes pursuant to AS 21.09.200 and AS 21.09.210. Currently that rate is 2.7%. However, where the Risk Retention Group provides documentation to the Division verifying the proper collection, reporting and payment of applicable taxes by a properly licensed Alaska Surplus Lines Broker pursuant to AS 21.34.180, the liability for the payment of that portion of tax is waived.

E. Annual Report:

The filing of an annual report as prescribed by LRRA 1986 should be done according to AS 21.09.200 and/or AS 21.34.040.

III. PURCHASING GROUPS

A. Registration:

The division is currently proposing regulations that will require the registration of Purchasing Groups upon a form prescribed by the director and the payment of a registration fee to cover the costs of processing the registration forms and the forms designating the Director of Insurance for service of legal documents and process. The registration form is attached. The proposed fee is $500.

B. Laws Relating to the Procurement of Insurance Coverage by or for Purchasing Groups on Subjects Resident . Located or to be Performed in Alaska:

The following requirements must be met regarding the procurement of insurance by a Purchasing Group whether it is self purchased by the PG or placed through a licensed agent or broker. If the purchase is made from:

1. An **Admitted** or **Domestic Insurer**; the person acting or offering to act or aiding in the procurement, whether an employee or member or the PG or not, must have a valid Alaska agent's or broker's license. There is no discrimination as to residency of the agent or broker.

2. A **Nonadmitted Insurer;** the purchase can only be from an "eligible" insurer meeting the requirements of AS 21.34.040 and AS 21.34.050. This type of placement can only be made through a properly licensed Alaska surplus lines broker. Again, no discrimination as to the residency of the broker will apply.

The purchase of liability insurance from a noneligible or unauthorized insurer that does not meet the requirements of AS 21.34.040-050 is not legal and is subject to AS 21.33.037 and all applicable penalties including those outlined in AS 21.33.055. Penalties contained in AS 21.36 may also apply.

3. A **Risk Retention Group Domiciled In Alaska**; the purchase must be made as outlined in section I of this outline.

4. A **Risk Retention Group Not Domiciled in Alaska**; the purchase must be done through a properly licensed Alaska surplus lines broker as outlined in section II (B) above.

C. Taxes:

The method of payment of taxes on policies issued on risks located, resident or to be performed in Alaska, by a Purchasing Group, shall be determined by the method of procurement of the coverage. If the coverage was placed with a domestic or admitted insurer, or a domestic RRG, the appropriate taxes shall be paid by the insurer or RRG.

If the method of procurement is through a non-admitted but "eligible" insurer, or an RRG not domiciled in Alaska, the the tax shall be paid by the surplus lines broker placing the business.

FOR FURTHER INFORMATION

Write to State of Alaska, Division Of Insurance, Ted Lehrbach, Market Analyst, PO Box D, Juneau, Alaska, 99811-0800.

MEMORANDUM

State of Alaska

TO: Paul Roller
Director
Division of Insurance

DATE: March 24, 1989

FILE NO.:

THRU: Don Koch
Chief of Market Surveillance

TELEPHONE NO.: (907) 465-2560

SUBJECT: Adoption of Risk Retention Regulations

FROM: Ted Lehrbach
Insurance Market Analyst
Division of Insurance
Department of Commerce and
and Economic Development

I conducted a hearing March 10, 1989 in the Large Conference Room, 9th Floor, State Office Building, Juneau at 9:00 a.m. for the purposes of receiving testimony on the proposed adoption of new regulations 3 AAC 24.010 - 290, and 3 AAC 24.300-590, relating to the registration and payment of fees by risk retention and purchasing groups.

Three people appeared for the hearing, but none wished to provide oral or written testimony.

Four pieces of written testimony were received prior to the deadline of 5:00 p.m. the same day. No other testimony was received after the deadline. The written testimony was received from:

The National Risk Retention Association
The National Association of Wholesaler-Distributors (A Risk Retention Group)
John J. Sarchio of Chadbourne & Parke, representing Chicago Insurance Company
The Housing Authority Risk Retention Group, Inc.

PURPOSE AND NEED FOR THE REGULATIONS

The Federal Liability Risk Retention Act of 1976 allows for the establishment of two types of entities; Risk Retention Groups, and, Purchasing Groups. Risk Retention Groups are created as insurance companies domiciled in one state. Purchasing Groups are set up as any group of individuals or entities with a common liability exposure, to purchase insurance for it's members on a group basis.

The intent of Congress in allowing these types of entities to be established was to increase availability and affordability of liability insurance, especially those lines of insurance which were hit by the "hard" market of 1986.

Congress gave risk retention groups exemptions to all state regulatory laws, except the insurance laws of the domiciliary state and some specific laws that are mentioned in the act, which any state may apply to risk retention groups. On the other hand, purchasing groups were required to comply with all state insurance laws except those laws for which they were specifically exempted as contained in the Federal Act. This means that with respect to non-domiciliary states, purchasing groups are subject to all state insurance laws except where specifically exempted, but risk retention groups are more broadly exempted form state insurance laws, except where the Federal Act specifically provides authority. This is an important distinction which should be kept in mind whenever interpreting the Federal Act and applying Alaska Insurance Statutes to each of the two entities created by the LRRA of 1986.

The Federal Act sets forth a process of informing each state in which groups want to do business. This process requires a letter of intent to be sent to the state listing some basic information. The Federal requirements are greater for risk retention groups than for purchasing groups. The Federal act does require that both entities "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..." It does allow an exemption for any risk retention group or purchasing group which was formed prior to April 1, 1986 under the 1981 Product Liability Risk Retention Act.

The purpose of the proposed regulations is to set specific registration requirements for both risk retention groups and purchasing groups that wish to do business in Alaska. Since we have issued a policy statement which describes how and to what extent Alaska law applies to these entities, it has become clear that we do not receive all the information we need from the Federally required "letters of intent" to properly monitor and regulate the groups according to the Alaska Insurance Laws which apply.

The most significant of the applicable Alaska Laws is AS 21.34, the surplus lines laws. In order for us to adequately protect the insuring public from the overuse or improper use of unauthorized insurers, we need to have the information which is outlined in the proposed regulations. It is also a method by which we can inform each group wishing to do business in Alaska on how AS21.34 applies to them.

The fees are necessary to cover our regulatory costs and are non-discriminatory. The $1.000 registration fee for risk retention groups, for example, is the same charged an admitted insurer entering our state.

SUMMARY OF WRITTEN TESTIMONY

The prevailing argument contained in the written testimony is that Alaska has no authority by the Federal Act to require registration or fees for such. There is strong objection to the amount of the fees, the general feeling being that they are too high or discriminatory.

There is also a reference to the registration requirements as being an "unnecessary and duplicative burden" upon the groups.

The testimony from The National Association of Wholesaler-Distributors addresses the "grandfather" clause in the Federal Act, surmising that those groups that were formed prior to the 1986 amendments to the act are exempt from any registration requirements.

ANALYSIS AND RECCOMENDATION

The Federal Act does not specifically rule out registration or fees by the non-domiciliary states. To the contrary, if one looks at the act as a whole, the only way a group gains the exemptions from state laws is for it to qualify as a bona fide risk retention or purchasing group as defined in the Federal Act. Therefore the non-domiciliary states may need more information than that provided in the initial letter of intent in order to determine if, for example, all of the members of a purchasing group have a common liability exposure.

The potential for abuse of the Federal Act by those who would seek to use the state exemptions to create markets for unauthorized insurers, and the potential harm to the Alaska insuring public, require the need for the proposed regulations. The additional information which the proposed regulations will require to be provided is a small and insignificant burden upon those groups that seriously seek to transact insurance legally in Alaska and will help us to properly monitor those that may only seek to use the Federal Act for their own advantage.

MEMORANDUM
Paul Roller
Risk Retention Regulations

The two recent Federal Court decisions, *Insurance Company of the State of Pennsylvania v. Corcoran, No. 87-7858, 2d. cir.* and *Frontier Insurance Company, nc. et al. vs. William D. Hager, Commissioner of Insurance of the State of Iowa, No. 87-645-E,* clearly reinforce the rights of non-domiciliary states to regulate purchasing groups and their insurers in such a manner as to protect the insuring public.

It should also be noted that many other states have adopted similar registration and fee requirements.

It is my recommendation that we adopt the regulations as proposed, with **one small change:**

3 AAC 24.030 should be changed to show a continuation fee of $200 instead of $500.

This recommendation is suggested as the original figures for Risk Retention Groups are based upon the same fees and continuation fees for admitted insurers. The continuation fee of $500 is the same fee proposed for all admitted insurers in a pending insurance bill before the legislative committees. It includes the combined costs for the filing of Annual statements and rate and form filings by admitted insurers.

Since Risk Retention Groups are only required to submit Annual Statements and are exempt from most of our rate and form filing requirements, the $200 figure is more reasonable than the $500 figure in the original proposal.

ENCLOSURES

Written Testimony
Sign In Sheet of the March 10th Hearing
Policy Statement
Registration Forms
Federal Liability Risk Retention Act of 1986
Articles on the Iowa and New York Court Decisions
Articles regarding the issues

MEMORANDUM

State of Alaska
Department of Law

TO: Art Peterson
Assistant Attorney General
and Regulations Attorney-Juneau

DATE: June 7, 1989

FILE NO: 993-89-0086

TEL. NO: 276-3550

SUBJECT: Regulations regarding risk retention groups and risk purchasing groups
(3 AAC 24.010 -- .290 and
3 AAC 24.300 -- .590)

FROM: Ron Zobel
Assistant Attorney General
Commercial Section-Anchorage

Attached are regulations adopted by the Director of Insurance to require the registration of entities known as risk retention groups and risk purchasing groups. Although the regulations are relatively simple, the need for the regulations and the background of the Federal Liability Risk Retention Act, as amended in 1986, is somewhat complex.

The Congress in 1986 allowed entities known as "risk retention groups" and "risk purchasing groups" to form as an alternative method of insurance in order to meet the "liability crisis." The Liability Risk Retention Act, as amended, 15 U.S.C.A. § 3901 -- 3906 (Supp. 1989) preempted certain aspects of state insurance regulation in order to allow these groups to operate free from competing and inconsistent state regulations. These regulations are an effort to require the regulation of such groups and give the Director of Insurance information that will allow him to regulate them to the extent federal law allows, and also to give him information so that he can verify that they are a group qualifying under the Act. The justification for these regulations is explained in the March 24, 1989, memorandum from Ted Lehrbach to Paul Roller in the file.

The insurance regulators across the country have been somewhat concerned about these risk retention groups, and especially, the risk purchasing groups. Our Director of Insurance, along with other insurance regulators, sees much potential abuse in the use of the "risk purchasing group" device to evade state laws that require minimum solvency and security for policy holders.

As the comments submitted concerning these regulations, especially by the National Risk Retention Association, indicate, there is a dispute as to the extent of state power to regulate these entities. Although there is an argument that the federal act preempts a registration that is for any purpose other than receiving service of legal documents or process, the federal act does not specifically exempt these groups from registration or fees by nondomiciliary states.

The two major cases that have considered the extent of state regulation under the Liability Risk Retention Act have construed the Act rather narrowly and allowed state regulation where there was no

express preemption. Insurance Co. of the State of Pennsylvania v. Corcoran, 850 F.2d 88 (2d Cir. 1988) (Liability Risk Retention Act does not prohibit all state policy form and rate regulation of purchasing groups) and Frontier Insurance Co. v. Hager, Case No. 87-645-E (U.S.D.C. of Iowa, May 1988) (Risk Retention Act does not preempt the state of Iowa from requiring that insurers be admitted in Iowa before selling insurance to Iowa members of purchasing groups).

My review of this matter indicates that the position of the Director that the state retains the power to register these risk retention groups and risk purchasing groups is likely to be sustained by the courts. It is possible that Congress intended to preempt such regulation, but if that is what they intended, they did not express themselves very clearly. Other than this preemption issue, I do not foresee any other substantial legal or constitutional difficulties in these regulations.

I have gone over the other items on the checklist, such as notice, and find it to be in order. I have made small editorial changes in the regulations in order to conform their style with the manual. I have used the U.S.C.A. cite for the Risk Retention Act since it is not in the U.S.C. I hope that was correct. I have added AS 21.03.010 as authority. This is the basic section which subjects those transacting the business of insurance to the insurance code. The term "transact the business of insurance in Alaska, relative to a subject or risk resident, located or performed in Alaska" is a term of art finding its source in section AS 21.03.010. The definition of "transact" is the same as that found in AS 21.90.900. I have left this redundancy in the regulations in order to make it clear that the term as applied to these particular entities has the same meaning as used in the code. I know that we generally do not repeat statutory language, but I thought there may be reason to do so here because of the very dispute as to whether these entities are transacting the business of insurance so as to subject themselves to regulation and the lack of any specific chapter in the code subjecting these entities to specific regulation, as there is with other entities formed to provide insurance.

If you have questions about these regulations, please do not hesitate to call.

RZ:lms

MEMORANDUM

State of Alaska

Department of Law

RECEIVED
JUL 27 1989
Department of Commerce and Economic Development
Division of Insurance

TO: Paul A. Roller, Director
Division of Insurance
Department of Commerce
and Economic Development

DATE: July 24, 1989

FILE NO.: 993-89-0086

TEL. NO.: 465-3600

SUBJECT: Regulations re risk retention groups and purchasing groups (3 AAC 24.010 -- 590)

FROM: Arthur H. Peterson
Assistant Attorney General
and Regulations Attorney

Under AS 44.62.060, we have reviewed your adoption of these regulations, and approve them for filing by the lieutenant governor. A duplicate original of this memorandum is being furnished the lieutenant governor, along with the regulations and related documents.

The January 20, 1989 public notice and your April 24, 1989 adoption order both state that this action is not expected to require an increased appropriation. Therefore, AS 44.62.195 does not require a fiscal note.

As suggested by your staff, we have deleted "risk" from the phrase "risk purchasing group," wherever it appeared in this set of regulations, to conform that term to the way it appears in 15 U.S.C. 3901 -- 3906. It had been included in that term in error. By the duplicate original of this memorandum, I am asking the lieutenant governor's staff to instruct the publisher to make that same correction in 3 AAC 31.060(a)(16) and (17), where that same phrase appears.

We have slightly reworded 3 AAC 24.040 and 3 AAC 24.330 (virtually identical sections) to clarify your intent. In both sections, the lieutenant governor's staff will be inserting the effective date of those regulations in the blanks that we have penned in.

Under the authority of AS 44.62.060(a)(4), in 3 AAC 24.290 and 3 AAC 24.590 we have deleted the definition of "transact," which restates AS 21.90.900, and have replaced it with a reference to that statute. (Please see pp. 27 and 28 of the Drafting Manual for Administrative Regulations [Dept. of Law, 9th ed., July 1985], regarding the restating of statutes.)

In accordance with AS 44.62.125(b)(6), some other, more minor, corrections have been made in these regulations, as shown on the attached copy.

3 AAC 24.030 and 3 AAC 24.320 refer to a "continuation fee" that must accompany a "continuation application." We note that nowhere else in the regulations is a "continuation application" mentioned. We recommend that, as soon as possible, your division begin a regulations project to address this procedural gap. The regulations in that project should cover such items as (1) how long an initial registration is in effect, (2) what must be done to "continue" the registration (i.e., submission of a continuation application along with certain information), and (3) how long the "continuation" is in effect.

AHP/BJJ/pjg

cc w/enc.: Hon. Larry Merculieff, Commissioner
Department of Commerce & Economic Development

Ron Zobel, Assistant Attorney General
Department of Law - Anchorage

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

P.O. BOX D
JUNEAU, ALASKA 99811-0800
PHONE: (907) 465-2515

ORDER 89-3 ADOPTING REGULATIONS OF
THE DIVISION OF INSURANCE

The attached five pages of regulations, dealing with risk retention groups and risk purchasing groups, is hereby adopted and certified to be a correct copy of the regulations that the Division of Insurance adopts under authority vested by AS 21.06.090 and after compliance with the Administrative Procedures Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

This order takes effect on the 30th day after it has been filed by the Lieutenant Governor, as provided in AS 44.62.180.

DATE: April 24, 1989
Juneau, Alaska

Paul Roller
Director of Insurance

FILING CERTIFICATION

I, Stephen McAlpine, Lieutenant Governor for the State of Alaska, certify that on July 24, 1989, at 4:59 p.m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Stephen McAlpine
Lieutenant Governor

Effective: August 23, 1989
Register: 111, October 1989

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(ii) its principal place of business; and

(iii) its directors and principal officers;

(E) the complete name, firm name, physical address and mailing address of all persons acting, or offering to act, as an agent, broker, or surplus lines broker for the risk retention group, and identification of all types of licenses held by each person and firm, including the state in which each license is held;

(F) all classes or lines of insurance the risk retention group intends to offer; and

(G) such other information, including information concerning its membership, that the director requires to establish its qualification as a risk retention group to transact business in Alaska;

(2) a copy of its plan of operation and the feasibility study submitted to its state of domicile, including all revisions;

(3) a complete copy of the financial statement submitted to its state of domicile, certified by an independent public accountant, including a statement of opinion on its reserves for loss and its reserves for loss adjustment expenses prepared by a member of the American Academy of Actuaries or by another qualified specialist in such reserves;

(4) a copy of each examination of the risk retention group, certified by the commissioner or other public officer conducting the examination, except that if no examination has been conducted or if one is pending, a statement to that effect, signed by an officer of the risk retention group, shall be submitted in its place;

(5) upon a form prescribed by the director, a statement appointing the director as its agent for the purpose of receiving service of legal documents or process; and

(6) such other information as the director requires to verify its qualification and continuing qualification as a risk retention group transacting or seeking to transact business in Alaska. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090

CORRECTION

THIS DOCUMENT
HAS BEEN REPHOTOGRAPHED
TO ASSURE LEGIBILITY

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

P.O. BOX D
JUNEAU, ALASKA 99811-0800
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Lieutenant Governor

Effective: August 23, 1989

Register: 112, October 1989

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042189b

08-H11LH

CHAPTER 24.
RISK RETENTION GROUPS AND PURCHASING GROUPS.

Article 1.
RISK RETENTION GROUPS.

3 AAC 24.010. PURPOSE. The purpose of 3 AAC 24.010 - 3 AAC 24.290 is to establish, consistent with 15 U.S.C. 3901 -- 3906, as amended as of October 27, 1989, (Liability Risk Retention Act of 1986), a procedure for the registration of risk retention groups that seek to transact the business of insurance in Alaska, or relative to a subject or risk that is resident, located, or to be performed in Alaska, and to provide for the payment of fees for the administrative cost of the registration process. (Eff. 8/23/89, Reg. 111)

Authority: AS 21.03.010
AS 21.06.090

3 AAC 24.020. FILING OF REGISTRATION FORMS. Before transacting the business of insurance in this state, a risk retention group shall submit to the director

(1) a completed registration form that shall include the following information:

(A) each state in which the risk retention group is chartered or licensed to do business as a liability insurer;

(B) the date of its charter or license;

(C) the state in which it is domiciled;

(D) the complete physical address and mailing address of

(i) its offices in its state of domicile;