

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6332 SENATE JUDICIARY

736



## For the arbitration of future disputes:

The American Arbitration Association recommends the following arbitration clause for insertion in all commercial contracts:

### Standard Arbitration Clause

Any controversy or claim arising out of or relating to this contract, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## For the submission of existing disputes:

We, the undersigned parties, hereby agree to submit to arbitration under the Commercial Arbitration Rules of the American Arbitration Association the following controversy: (cite briefly). We further agree that the above controversy be submitted to (one) (three) arbitrator(s) selected from the panels of arbitrators of the American Arbitration Association. We further agree that we will faithfully observe this agreement and the rules, and that we will abide by and perform any award rendered by the arbitrator(s) and that a judgment of the court having jurisdiction may be entered on the award.

If either party is from a country other than the United States, be sure to request a copy of the Supplementary Procedures for International Commercial Arbitration.

## Table of Contents

1. Agreement of Parties	4
2. Name of Tribunal	4
3. Administrator	4
4. Delegation of Duties	4
5. National Panel of Arbitrators	4
6. Office of Tribunal	4
7. Initiation under an Arbitration Provision in a Contract	4
8. Changes of Claim	5
9. Initiation under a Submission	5
10. Administrative Conference and Preliminary Hearing	6
11. Fixing of Locale	6
12. Qualifications of Arbitrator	6
13. Appointment from Panel	6
14. Direct Appointment by Parties	7
15. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators	7
16. Nationality of Arbitrator in International Arbitration	8
17. Number of Arbitrators	8
18. Notice to Arbitrator of Appointment	8
19. Disclosure and Challenge Procedure	8
20. Vacancies	9
21. Time and Place	9
22. Representation by Counsel	9
23. Stenographic Record	9
24. Interpreters	9
25. Attendance at Hearings	9
26. Adjournments	10
27. Oaths	10
28. Majority Decision	10
29. Order of Proceedings	10
30. Arbitration in the Absence of a Party	11
31. Evidence	11
32. Evidence by Affidavit and Filing of Documents	11
33. Inspection or Investigation	11
34. Conservation of Property	12
35. Closing of Hearings	12
36. Reopening of Hearings	12
37. Waiver of Oral Hearings	12
38. Waiver of Rules	13
39. Extensions of Time	13
40. Communication with Arbitrator and Serving of Notice	13
41. Time of Award	13
42. Form of Award	13
43. Scope of Award	14
44. Award upon Settlement	14
45. Delivery of Award to Parties	14
46. Release of Documents in Judicial Proceedings	14
47. Applications to Court and Exclusion of Liability	14
48. Administrative Fees	15
49. Fees when Oral Hearings Are Waived	15
50. Expenses	15
51. Arbitrator's Fee	15
52. Deposits	16
53. Interpretation and Application of Rules	16
<b>Expedited Procedures</b>	
54. Notice by Telephone	17
55. Appointment and Qualifications of Arbitrator	17
56. Time and Place of Hearing	17
57. The Hearing	17
58. Time of Award	17
Administrative Fee Schedule	18
Adjournment Fees	18
Additional Hearing Fees	19
Refund Schedule	19

# Commercial Arbitration Rules

## 1. Agreement of Parties

The parties shall be deemed to have made these rules a part of their arbitration agreement whenever they have provided for arbitration by the American Arbitration Association or under its rules. These rules and any amendment thereof shall apply in the form obtaining at the time the arbitration is initiated.

## 2. Name of Tribunal

Any tribunal constituted by the parties for the settlement of their dispute under these rules shall be called the Commercial Arbitration Tribunal.

## 3. Administrator

When parties agree to arbitrate under these rules, or when they provide for arbitration by the American Arbitration Association and an arbitration is initiated thereunder, they thereby constitute the AAA the administrator of the arbitration. The authority and obligations of the administrator are prescribed in the agreement of the parties and in these rules.

## 4. Delegation of Duties

The duties of the AAA under these rules may be carried out through tribunal administrators or such other officers or committees as the AAA may direct.

## 5. National Panel of Arbitrators

The AAA shall establish and maintain a National Panel of Commercial Arbitrators and shall appoint arbitrators therefrom as hereinafter provided.

## 6. Office of Tribunal

The general office of a tribunal is the headquarters of the AAA, which may, however, assign the administration of an arbitration to any of its regional offices.

## 7. Initiation under an Arbitration Provision in a Contract

Arbitration under an arbitration provision in a contract may be initiated in the following manner:

(a) The initiating party shall give notice to the other party of its intention to arbitrate (Demand), which notice shall contain a statement setting forth the nature of the dispute, the amount involved, if any, the remedy sought, and

(b) Shall file at any regional office of the AAA three copies of said notice and three copies of the arbitration provisions of the contract, together with the appropriate administrative fee as provided in the Administrative Fee Schedule.

The AAA shall give notice of the filing to the other party. If so desired, the party on whom the Demand for arbitration is made may file an answering statement in duplicate with the AAA within seven days after notice from the AAA, in which event that party shall simultaneously send a copy of the answer to the other party. If a counterclaim is asserted, it shall contain a statement setting forth the nature of the counterclaim, the amount involved, if any, and the remedy sought. If a monetary claim is made in the answer, the appropriate fee provided in the Administrative Fee Schedule shall be forwarded to the AAA with the answer. If no answer is filed within the stated time, it will be assumed that the claim is denied. Failure to file an answer shall not operate to delay the arbitration.

Unless the AAA in its discretion determines otherwise, the Expedited Procedures of the Commercial Arbitration Rules shall be applied in any case where the total claim of any party does not exceed \$15,000, exclusive of interest and arbitration costs. Parties may also agree to the Expedited Procedures in cases involving claims in excess of \$15,000. The Expedited Procedures shall be applied as described in Sections 54 through 58 of these rules.

## 8. Changes of Claim

After filing of the claim, if either party desires to make any new or different claim, such claim shall be made in writing and filed with the AAA, and a copy thereof shall be mailed to the other party, who shall have a period of seven days from the date of such mailing within which to file an answer with the AAA. After the arbitrator is appointed, however, no new or different claim may be submitted except with the arbitrator's consent.

## 9. Initiation under a Submission

Parties to any existing dispute may commence an arbitration under these rules by filing at any regional office two copies of a written agreement to arbitrate under these rules (Submission), signed by the parties. It shall contain a statement of the

matter in dispute, the amount of money involved, if any, and the remedy sought, together with the appropriate administrative fee as provided in the Administrative Fee Schedule.

#### **10. Administrative Conference and Preliminary Hearing**

At the request of the parties or at the discretion of the AAA, an administrative conference with the administrator and the parties will be scheduled in appropriate cases to arrange for an exchange of information and the stipulation of uncontested facts to expedite the arbitration proceedings.

In large or complex cases, at the discretion of the arbitrator(s) or the AAA, a preliminary hearing will be scheduled with the arbitrator(s) and the parties to arrange for the production of relevant documents and other evidence, to identify witnesses to be called, to schedule further hearings, and to consider any other matters that will expedite the arbitration proceedings.

#### **11. Fixing of Locale**

The parties may mutually agree on the locale where the arbitration is to be held. If the locale is not designated within seven days from the date of filing the Demand or Submission, the AAA shall have the power to determine the locale. Its decision shall be final and binding. If any party requests that the hearing be held in a specific locale and the other party files no objection thereto within seven days after notice of the request, the locale shall be the one requested.

#### **12. Qualifications of Arbitrator**

Any arbitrator appointed pursuant to Section 13 or Section 15 shall be neutral, subject to disqualification for the reasons specified in Section 19. If the agreement of the parties names an arbitrator or specifies any other method of appointing an arbitrator, or if the parties specifically so agree in writing, such arbitrator shall not be subject to disqualification for said reasons.

#### **13. Appointment from Panel**

If the parties have not appointed an arbitrator and have not provided any other method of appointment, the arbitrator shall be appointed in the following manner: Immediately after the filing of the Demand or Submission, the AAA

shall submit simultaneously to each party to the dispute an identical list of names of persons chosen from the panel. Each party to the dispute shall have seven days from the mailing date within which to cross off any names objected to, number the remaining names to indicate the order of preference, and return the list to the AAA. If a party does not return the list within the time specified, all persons named therein shall be deemed acceptable. From among the persons who have been approved on both lists, and in accordance with the designated order of mutual preference, the AAA shall invite the acceptance of an arbitrator to serve. If the parties fail to agree on any of the persons named, if acceptable arbitrators are unable to act, or if for any other reason the appointment cannot be made from the submitted lists, the AAA shall have the power to make the appointment from among other members of the panel without the submission of any additional list.

#### **14. Direct Appointment by Parties**

If the agreement of the parties names an arbitrator or specifies a method of appointing an arbitrator, that designation or method shall be followed. The notice of appointment, with the name and address of the arbitrator, shall be filed with the AAA by the appointing party. Upon the request of any such appointing party, the AAA shall submit a list of members of the panel from which the party may, if it so desires, make the appointment.

If the agreement specifies a period of time within which an arbitrator shall be appointed and any party fails to make such appointment within that period, the AAA shall make the appointment.

If no period of time is specified in the agreement, the AAA shall notify the parties to make the appointment and if within seven days thereafter the arbitrator has not been so appointed, the AAA shall make the appointment.

#### **15. Appointment of Neutral Arbitrator by Party-Appointed Arbitrators**

If the parties have appointed their arbitrators, or if either or both of them have been appointed as provided in Section 14, and have authorized such arbitrators to appoint a neutral arbitrator within a specified time and no appointment is made within such time or any agreed extension thereof, the

AAA shall appoint a neutral arbitrator, who shall act as chairperson.

If no period of time is specified for appointment of the neutral arbitrator and the parties do not make the appointment within seven days from the date of the appointment of the last party-appointed arbitrator, the AAA shall appoint the neutral arbitrator who shall act as chairperson.

If the parties have agreed that their arbitrators shall appoint the neutral arbitrator from the panel, the AAA shall furnish to the party-appointed arbitrators, in the manner prescribed in Section 13, a list selected from the panel, and the appointment of the neutral arbitrator shall be made as prescribed in that section.

#### **16. Nationality of Arbitrator in International Arbitration**

If one of the parties is a national or resident of a country other than the United States, the sole arbitrator or the neutral arbitrator shall, upon the request of either party, be appointed from among the nationals of a country other than that of any of the parties.

#### **17. Number of Arbitrators**

If the arbitration agreement does not specify the number of arbitrators, the dispute shall be heard and determined by one arbitrator, unless the AAA, in its discretion, directs that a greater number of arbitrators be appointed.

#### **18. Notice to Arbitrator of Appointment**

Notice of the appointment of the neutral arbitrator, whether appointed by the parties or by the AAA, shall be mailed to the arbitrator by the AAA, together with a copy of these rules, and the signed acceptance of the arbitrator shall be filed prior to the opening of the first hearing.

#### **19. Disclosure and Challenge Procedure**

A person appointed as neutral arbitrator shall disclose to the AAA any circumstance likely to affect impartiality, including any bias or any financial or personal interest in the result of the arbitration or any past or present relationship with the parties or their counsel. Upon receipt of such information from the arbitrator or another source, the AAA shall communicate the information to

the parties, and, if it deems it appropriate to do so, to the arbitrator and others. Thereafter, the AAA shall determine whether the arbitrator should be disqualified and shall inform the parties of its decision, which shall be conclusive.

#### **20. Vacancies**

If any arbitrator should resign, die, withdraw, refuse, be disqualified, or be unable to perform the duties of the office, the AAA may, on proof satisfactory to it, declare the office vacant. Vacancies shall be filled in accordance with the applicable provisions of these rules.

In the event of a vacancy in a panel of neutral arbitrators, the remaining arbitrator or arbitrators may continue with the hearing and determination of the controversy, unless the parties agree otherwise.

#### **21. Time and Place**

The arbitrator shall fix the time and place for each hearing. The AAA shall mail to each party notice thereof at least five days in advance, unless the parties by mutual agreement waive such notice or modify the terms thereof.

#### **22. Representation by Counsel**

Any party may be represented by counsel. A party intending to be so represented shall notify the other party and the AAA of the name and address of counsel at least three days prior to the date set for the hearing at which counsel is first to appear. When an arbitration is initiated by counsel or when an attorney replies for the other party, such notice is deemed to have been given.

#### **23. Stenographic Record**

Any party wishing a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of such arrangements in advance of the hearing. The requesting party or parties shall pay the cost of the record.

#### **24. Interpreters**

Any party wishing an interpreter shall make all arrangements directly with an interpreter and shall assume the costs of the service.

#### **25. Attendance at Hearings**

The arbitrator shall maintain the privacy of the hearings unless the law provides to the contrary.

Any person having a direct interest in the arbitration is entitled to attend hearings. The arbitrator shall otherwise have the power to require the exclusion of any witness, other than a party or other essential person, during the testimony of any other witness. It shall be discretionary with the arbitrator to determine the propriety of the attendance of any other person.

#### **26. Adjournments**

The arbitrator may take an adjournment upon the request of a party or on the arbitrator's own initiative and shall take an adjournment when all of the parties agree thereto.

#### **27. Oaths**

Before proceeding with the first hearing or with the examination of the file, each arbitrator may take an oath of office and, if required by law, shall do so. The arbitrator has discretion to require witnesses to testify under an oath administered by any duly qualified person and, if it is required by law or demanded by either party, shall do so.

#### **28. Majority Decision**

Whenever there is more than one arbitrator, all decisions of the arbitrators must be by at least a majority. The award must also be made by at least a majority unless the concurrence of all is expressly required by the arbitration agreement or by law.

#### **29. Order of Proceedings**

A hearing shall be opened by the filing of the oath of the arbitrator, where required; by the recording of the place, time, and date of the hearing, and the presence of the arbitrator, the parties, and counsel, if any; and by the receipt by the arbitrator of the statement of the claim and answer, if any.

The arbitrator may, at the beginning of the hearing, ask for statements clarifying the issues involved.

The complaining party shall then present its claim, proofs, and witnesses, who shall submit to questions or other examination. The defending party shall then present its defense, proofs, and witnesses, who shall submit to questions or other examination. The arbitrator has the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of any material or relevant proofs.

Exhibits, when offered by either party, may be received in evidence by the arbitrator.

The names and addresses of all witnesses and the exhibits in the order received shall be made a part of the record.

#### **30. Arbitration in the Absence of a Party**

Unless the law provides to the contrary, the arbitration may proceed in the absence of any party who, after due notice, fails to be present or fails to obtain an adjournment. An award shall not be made solely on the default of a party. The arbitrator shall require the party who is present to submit such evidence as the arbitrator may require for the making of an award.

#### **31. Evidence**

The parties may offer such evidence as is relevant and material to the dispute and shall produce such additional evidence as the arbitrator may deem necessary to an understanding and determination of the dispute. An arbitrator authorized by law to subpoena witnesses or documents may do so upon the request of any party or independently.

The arbitrator shall be the judge of the relevance and materiality of the evidence offered, and conformity to legal rules of evidence shall not be necessary. All evidence shall be taken in the presence of all of the arbitrators and all of the parties, except where any of the parties is absent in default or has waived the right to be present.

#### **32. Evidence by Affidavit and Filing of Documents**

The arbitrator shall receive and consider the evidence of witnesses by affidavit, but shall give it only such weight as the arbitrator deems it entitled to after consideration of any objection made to its admission.

All documents not filed with the arbitrator at the hearing but arranged for at the hearing or subsequently by agreement of the parties shall be filed with the AAA for transmission to the arbitrator. All parties shall be afforded an opportunity to examine such documents.

#### **33. Inspection or Investigation**

Whenever the arbitrator deems it necessary to make an inspection or investigation in connection with

the arbitration, the arbitrator shall direct the AAA to advise the parties of that intention. The arbitrator shall set the time and the AAA shall notify the parties thereof. Any party who so desires may be present at such inspection or investigation. In the event that one or both parties are not present at the inspection or investigation, the arbitrator shall make a verbal or written report to the parties and afford them an opportunity to comment.

#### **34. Conservation of Property**

The arbitrator may issue such orders as may be deemed necessary to safeguard the property which is the subject matter of the arbitration without prejudice to the rights of the parties or to the final determination of the dispute.

#### **35. Closing of Hearings**

The arbitrator shall specifically inquire of all parties whether they have any further proofs to offer or witnesses to be heard. Upon receiving negative replies, or if satisfied that the record is complete, the arbitrator shall declare the hearings closed and a minute thereof shall be recorded. If briefs are to be filed, the hearings shall be declared closed as of the final date set by the arbitrator for the receipt of briefs. If documents are to be filed as provided for in Section 32 and the date set for their receipt is later than that set for the receipt of briefs, the later date shall be the date of closing the hearings. The time limit within which the arbitrator is required to make the award shall commence to run, in the absence of other agreements by the parties, upon the closing of the hearings.

#### **36. Reopening of Hearings**

The hearings may be reopened on the arbitrator's own motion, or upon application of a party, at any time before the award is made. If reopening the hearings would prevent the making of the award within the specific time agreed upon by the parties in the contract out of which the controversy has arisen, the matter may not be reopened unless the parties agree upon the extension of such time. When no specific date is fixed in the contract, the arbitrator may reopen the hearings and shall have thirty days from the closing of the reopened hearings within which to make an award.

#### **37. Waiver of Oral Hearings**

The parties may provide, by written agreement, for the waiver of oral hearings. If the parties are

unable to agree as to the procedure, the AAA shall specify a fair and equitable procedure.

#### **38. Waiver of Rules**

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state objection thereto in writing, shall be deemed to have waived the right to object.

#### **39. Extensions of Time**

The parties may modify any period of time by mutual agreement. The AAA may for good cause extend any period of time established by these rules, except the time for making the award. The AAA shall notify the parties of any such extension and its reason therefor.

#### **40. Communication with Arbitrator and Serving of Notice**

(a) There shall be no communication between the parties and a neutral arbitrator other than at oral hearings. Any other oral or written communication from the parties to the arbitrator shall be directed to the AAA for transmittal to the arbitrator.

(b) Each party to an agreement that provides for arbitration under these rules shall be deemed to have consented that any papers, notices, or process necessary or proper for the initiation or continuation of an arbitration under these rules; for any court action in connection therewith; or for the entry of judgment on any award made thereunder may be served on the party by mail addressed to the party or its attorney at the last known address or by personal service, within or without the state wherein the arbitration is to be held (whether the party be within or without the United States of America), provided that a reasonable opportunity to be heard with regard thereto has been granted such to the party.

#### **41. Time of Award**

The award shall be made promptly by the arbitrator and, unless otherwise agreed by the parties or specified by law, no later than thirty days from the date of closing the hearings, or, if oral hearings have been waived, from the date of transmitting the final statements and proofs to the arbitrator.

#### **42. Form of Award**

The award shall be in writing and shall be signed either by the sole arbitrator or by at least

a majority if there be more than one. It shall be executed in the manner required by law.

#### **43. Scope of Award**

The arbitrator may grant any remedy or relief that the arbitrator deems just and equitable and within the scope of the agreement of the parties, including, but not limited to, specific performance of a contract. The arbitrator, in the award, shall assess arbitration fees and expenses in favor of any party and, in the event that any administrative fees or expenses are due the AAA, in favor of the AAA.

#### **44. Award upon Settlement**

If the parties settle their dispute during the course of the arbitration, the arbitrator may, upon their request, set forth the terms of the agreed settlement in an award.

#### **45. Delivery of Award to Parties**

Parties shall accept as legal delivery of the award the placing of the award or a true copy thereof in the mail by the AAA, addressed to a party at its last known address or to its attorney; personal service of the award; or the filing of the award in any other manner that may be prescribed by law.

#### **46. Release of Documents for Judicial Proceedings**

The AAA shall, upon the written request of a party, furnish to that party, at its expense, certified facsimiles of any papers in the AAA's possession that may be required in judicial proceedings relating to the arbitration.

#### **47. Applications to Court and Exclusion of Liability**

(a) No judicial proceeding by a party relating to the subject matter of the arbitration shall be deemed a waiver of the party's right to arbitrate.

(b) Neither the AAA nor any arbitrator in a proceeding under these rules is a necessary party in judicial proceedings relating to the arbitration.

(c) Parties to these rules shall be deemed to have consented that judgment on the arbitration award may be entered in any federal or state court having jurisdiction thereof.

(d) Neither the AAA nor any arbitrator shall be liable to any party for any act or omission in connection with any arbitration conducted under these rules.

#### **48. Administrative Fees**

As a not-for-profit organization, the AAA shall prescribe an Administrative Fee Schedule and a Refund Schedule to compensate it for the cost of providing administrative services. The schedule in effect at the time of filing or the time of refund shall be applicable.

The administrative fees shall be advanced by the initiating party or parties, subject to final apportionment by the arbitrator in the award.

When a matter is withdrawn or settled, the refund shall be made in accordance with the Refund Schedule.

The AAA may, in the event of extreme hardship on the part of any party, defer or reduce the administrative fee.

#### **49. Fees when Oral Hearings Are Waived**

When all oral hearings are waived under Section 37, the Administrative Fee Schedule shall apply.

#### **50. Expenses**

The expenses of witnesses for either side shall be paid by the party producing such witnesses.

The cost of the stenographic record, if any is made, and all transcripts thereof, shall be prorated equally among all parties ordering copies unless they shall otherwise agree, and shall be paid for by the responsible parties directly to the reporting agency.

All other expenses of the arbitration, including required traveling and other expenses of the arbitrator and of AAA representatives and the expenses of any witness or the cost of any proof produced at the direct request of the arbitrator, shall be borne equally by the parties, unless they agree otherwise or unless the arbitrator, in the award, assesses such expenses or any part thereof against any specified party or parties.

#### **51. Arbitrator's Fee**

Members of the National Panel of Commercial Arbitrators who serve as neutral arbitrators do so

In most cases without a fee. In prolonged or special cases, the parties may agree to pay a fee or the AAA may determine that payment of a fee by the parties is appropriate and may establish a reasonable amount, taking into account the extent of service by the arbitrator and other relevant circumstances of the case. When neutral arbitrators are to be paid, the arrangements for compensation shall be made through the AAA and not directly between the parties and the arbitrators.

#### **52. Deposits**

The AAA may require the parties to deposit in advance such sums of money as it deems necessary to defray the expense of the arbitration, including the arbitrator's fee, if any, and shall render an accounting to the parties and return any unexpended balance.

#### **53. Interpretation and Application of Rules**

The arbitrator shall interpret and apply these rules insofar as they relate to the arbitrator's powers and duties. When there is more than one arbitrator and a difference arises among them concerning the meaning or application of any such rule, it shall be decided by a majority vote. If that is unobtainable, either an arbitrator or a party may refer the question to the AAA for final decision. All other rules shall be interpreted and applied by the AAA.

## **EXPEDITED PROCEDURES**

#### **54. Notice by Telephone**

The parties shall accept all notices from the AAA by telephone. Such notices by the AAA shall subsequently be confirmed in writing to the parties. Notwithstanding the failure to confirm in writing any notice or objection hereunder, the proceeding shall nonetheless be valid if notice has, in fact, been given by telephone.

#### **55. Appointment and Qualifications of Arbitrator**

The AAA shall submit simultaneously to each party to the dispute an identical list of five members of the National Panel of Commercial Arbitrators, from which one arbitrator shall be appointed. Each party shall have the right to strike two names from the list on a preemptory basis. The list is returnable to the AAA within ten days from the date of mailing.

If for any reason the appointment cannot be made from the list, the AAA shall have the authority to make the appointment from among other members of the panel without the submission of additional lists. The appointment shall be subject to disqualification for the reasons specified in Section 19. The parties shall be given notice by telephone by the AAA of the appointment of the arbitrator. The parties shall notify the AAA, by telephone, within seven days of any objection to the arbitrator appointed. Any objection by a party to the arbitrator shall be confirmed in writing to the AAA with a copy to the other party(ies).

#### **56. Time and Place of Hearing**

The arbitrator shall fix the date, time, and place of the hearing. The AAA will notify the parties by telephone, seven days in advance of the hearing date. Formal Notice of Hearing will be sent by the AAA to the parties.

#### **57. The Hearing**

Generally, the hearing shall be completed within one day. The arbitrator may, for good cause shown, schedule an additional hearing to be held within five days.

#### **58. Time of Award**

Unless otherwise agreed by the parties, the award shall be rendered not later than five business days from the date of the closing of the hearing.

## ADMINISTRATIVE FEE SCHEDULE

A filing fee of \$300 will be paid at the time a case is filed. The balance of the administrative fee is based on the amount of each claim and counterclaim as disclosed when the claim or counterclaim is filed. This balance is due and payable ninety days after the AAA's commencement of administration, or prior to the date of the first hearing, whichever occurs first. If a case is settled or withdrawn, the Refund Schedule shall apply. When oral hearings are waived under Section 37, the Administrative Fee Schedule shall still apply.

Amount of Claim	Fee
\$1 to \$25,000	3% (\$300 minimum)
\$25,000 to \$50,000	\$750, plus 2% of excess over \$25,000
\$50,000 to \$100,000	\$1,250, plus 1% of excess over \$50,000
\$100,000 to \$200,000	\$1,750, plus ½% of excess over \$100,000
\$200,000 to \$5,000,000	\$2,250, plus ¼% of excess over \$200,000
\$5,000,000 to \$50,000,000	\$14,250, plus ¼% of excess over \$5,000,000

Where the claim or counterclaim exceeds \$50 million, there is no additional administrative fee.

When no amount can be stated at the time of filing, the administrative fee is \$750, subject to adjustment in accordance with the above schedule as soon as an amount can be disclosed.

In those claims and counterclaims which are not for a monetary amount, an appropriate administrative fee will be determined by the AAA.

If there are more than two parties represented in the arbitration, an additional 10% of the administrative fee will be due for each additional represented party.

## ADJOURNMENT FEES

### Sole-Arbitrator Cases

\$50 is payable by a party first causing an adjournment of any scheduled hearing.

\$100 is payable by a party causing its second or subsequent adjournment of any scheduled hearing.

### Three-Arbitrator Cases

\$75 is payable by a party first causing an adjournment of any scheduled hearing.

\$150 is payable by a party causing its second or subsequent adjournment of any scheduled hearing.

## ADDITIONAL HEARING FEES

\$75 is payable by each party for each hearing after the first hearing that is either clerked by the AAA or held in a hearing room provided by the AAA.

## REFUND SCHEDULE

The Refund Schedule is based on the administrative fee due on a claim or counterclaim asserted by a party.

If the AAA is notified that a case has been settled or withdrawn before a list of arbitrators has been sent out, all of the fee in excess of \$300 will be refunded.

If the AAA is notified that a case has been settled or withdrawn before the original due date for the return of the first list, two thirds of the fee in excess of \$300 will be refunded.

If the AAA is notified that a case has been settled or withdrawn during or following an administrative conference or at least two business days before the initial date and time set for the first hearing, one third of the fee in excess of \$300 will be refunded.

There will be no refund after a preliminary hearing or mediation conference has been held; where a claim or counterclaim was filed as an undetermined claim and remained so at the time of settlement or withdrawal; or where a consent award was issued by the arbitrators.

**Sec. 09.40.310. Third party claims.** If the property taken is claimed by any person other than the defendant, and that person makes an affidavit of title to the property or the right to the possession of it, stating the grounds of the title or right, and serves it upon the peace officer taking the property while the property is still in the peace officer's custody, the peace officer may release the property unless the plaintiff, on demand of the officer, indemnifies the peace officer against the third party claim by a written undertaking approved by the clerk of court and executed by sufficient sureties. (§ 24.06 ch 101 SLA 1962)

#### NOTES TO DECISIONS

Stated in *First Nat'l Bank v. Zawodny*, Sup. Ct. Op. No. 1976 (File No. 4188), 602 P.2d 1254 (1979).

### Chapter 43. Arbitration.

#### Article

1. Uniform Arbitration Act (§§ 09.43.010 — 09.43.180)
2. Arbitration of Small Claims (§§ 09.43.190 — 09.43.220)

#### Article 1. Uniform Arbitration Act.

##### Section

10. Arbitration agreements valid; application of article
20. Proceedings to compel or stay arbitration
30. Appointment of arbitrators by court
40. Majority action by arbitrators
50. Hearing
60. Representation by attorney
70. Witnesses, subpoenas, depositions
80. Award
90. Modification of award by arbitrators

##### Section

100. Fees and expenses of arbitration
110. Confirmation of an award
120. Vacating an award
130. Modification or correction of award by court
140. Judgment or decree on award
150. Applications to court
160. Appeals
170. Court, jurisdiction
180. Short title

**Cross references.** — For court rule provision on arbitration and award as an affirmative defense, see Civ. R. 8(c).

#### NOTES TO DECISIONS

**Public policy in Alaska favors arbitration as a means of resolving disputes without court interference.** *Arctic Contractors v. State*, Sup. Ct. Op. No. 1420 (File Nos. 2595, 2657), 564 P.2d 30 (1977), aff'd on other grounds, Sup. Ct. Op. No. 1557, 573 P.2d 1385 (1978).

**And is demonstrated by adoption of this article.** — Alaska's strong public policy in favor of arbitration is demonstrated by the adoption of this article. *Modern Constr., Inc. v. Barce, Inc.*, Sup. Ct. Op. No. 1336 (File No. 3060), 556 P.2d 528 (1976).

**Freedom to contract for arbitration terms.** — In the absence of statutory restrictions, parties are free to contract for

the terms of arbitration they desire. Board of Educ. v. Ewig, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

**Collateral references.** — 5 Am. Jur. 2d, Arbitration and Award, § 1 et seq. 6 C.J.S., Arbitration, § 1 et seq.

Resolving real estate disputes through arbitration, 27 Am. Jur. Trials, pp. 621-678.

Validity of state statutory provisions for arbitration of labor disputes, as against the objection of delegation of legislative power without setting up adequate standards to guide the administrative agency, 9 ALR2d 871.

Quotient arbitration award or appraisal, 20 ALR2d 958.

Matters arbitrable under arbitration provisions of collective labor contract, 24 ALR2d 752.

Equity jurisdiction to determine valuation, where arbitration or appraisal has failed, under long-term lease providing for appraisal of premises and fixing rental value at stated intervals, 26 ALR2d 744.

Arbitrator's viewing or visiting premises or property alone as misconduct justifying vacation of award, 27 ALR2d 1160.

Laches or statute of limitations as bar to arbitration under agreement, 37 ALR2d 1125.

Arbitration provisions of employment contract providing for severance or dismissal pay, 40 ALR2d 1052.

Contract providing that it is governed by or subject to rules or regulations of a particular trade, business, or association as incorporating agreement to arbitrate, 41 ALR2d 872.

Validity and effect of arbitration agreement provision that, upon one party's failure to appoint arbitrator, controversy may be determined by arbitrator appointed by other party, 47 ALR2d 1346.

Arbitrator's consultation with outsider or outsiders as misconduct justifying vacation of award, 47 ALR2d 1362.

Effect of vacancy through resignation, withdrawal, or death of one of multiple arbitrators on authority of remaining arbitrators to render award, 49 ALR2d 900.

Constitutionality of arbitration statutes, 55 ALR2d 432.

Death of party to arbitration agreement before award as revocation or termination of submission, 63 ALR2d 754.

Arbitration of disputes within close corporation, 64 ALR2d 643.

Construction and application of provisions of general arbitration statutes excluding from their operation contracts for labor or personal services, 64 ALR2d 1336.

Disqualification of arbitrator by court or stay of arbitration proceedings prior to award, on ground of interest, bias, prejudice, collusion, or fraud of arbitrators, 65 ALR2d 755.

Power of president of corporation to commence or to carry on arbitration proceedings, 65 ALR2d 1321.

Power of arbitrators to award injunction, 70 ALR2d 1055.

Dissolved corporation's power to participate in arbitration proceedings, 71 ALR2d 1121.

Agreement to arbitrate future controversies as binding on infants, 78 ALR2d 1292.

Covenant in lease to arbitrate, or to submit to appraisal, as running with the leasehold so as to bind assignee, 81 ALR2d 804.

Necessity that arbitrators, in making awards, make specific or detailed findings of fact or conclusions of law, 82 ALR2d 969.

Time for impeaching arbitration award, 85 ALR2d 779.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 91 ALR2d 936.

Appealability of order or decree compelling or refusing to compel arbitration, 94 ALR2d 1071.

Discovery in aid of arbitration proceedings, 98 ALR2d 1247.

Enforcement of contractual arbitration clause as affected by expiration of contract prior to demand for arbitration, 5 ALR3d 1008.

Confirming or setting aside award: appealability of judgment confirming or setting aside arbitration award, 7 ALR3d 608.

Availability and scope of declaratory judgment actions in determining rights of parties, or powers and exercise thereof by arbitrators, under arbitration agreements, 12 ALR3d 854.

Validity and effect, and remedy in respect, of contractual stipulation to submit disputes to arbitration in another jurisdiction, 12 ALR3d 892.

Validity and construction of provision for arbitration of disputes as to alimony or support payments, or child visitation or custody matters, 18 ALR3d 1264.

Municipal corporation's power to submit to arbitration, 20 ALR3d 569.

Validity and enforceability of provision for binding arbitration, and waiver thereof, 24 ALR3d 1325.

Necessity and sufficiency of notice of and hearing in proceedings before appraisers and arbitrators appointed to determine amount of loss, 25 ALR3d 680.

Delay in asserting contractual right to arbitration as precluding enforcement thereof, 25 ALR3d 1171.

Waiver, or estoppel to assert, substantive right or right to arbitrate as question for court or arbitrator, 26 ALR3d 604.

Breach or repudiation of collective labor contract as subject to, or as affecting right to enforce, arbitration provision in contract, 29 ALR3d 688.

Breach or repudiation of contract as affecting right to enforce arbitration clause therein, 32 ALR3d 377.

Participation in arbitration proceedings as waiver of objections to arbitrability, 33 ALR3d 1242.

Power of arbitrator to correct, or power of court to correct or resubmit, nonlabor award because of incompleteness or failure to pass on all matters submitted, 36 ALR3d 939.

Setting aside arbitration award on ground of interest or bias of arbitrators, 56 ALR3d 697.

Construction and effect of contractual or statutory provisions fixing time within which arbitration award must be made, 56 ALR3d 815.

Liability of parties to arbitration for costs, fees, and expenses, 57 ALR3d 633.

Privileged nature of communications

made in course of grievance or arbitration procedure provided for by collective bargaining agreement, 60 ALR3d 1041.

State court's power to consolidate arbitration proceedings, 64 ALR3d 528.

Validity and construction of statutes or ordinances providing for arbitration of labor disputes involving public employees, 68 ALR3d 885.

Demand for or submission to arbitration as affecting enforcement of mechanics' lien, 73 ALR3d 1042.

Filing of mechanics' lien or proceeding for its enforcement as affecting right to arbitration, 73 ALR3d 1066.

Refusal of arbitrators to receive evidence, or to permit briefs or arguments, on particular issues as grounds for relief from award, 75 ALR3d 132.

Admissibility of affidavit or testimony of arbitrator to impeach or explain award, 80 ALR3d 155.

Modern status of rules respecting concurrence of all arbitrators as condition of binding award under private agreement not specifying unanimity, 83 ALR3d 996.

Arbitration of medical malpractice claims, 84 ALR3d 375.

Arbitrator's power to award punitive damages, 83 ALR3d 1037.

Statute of limitations as bar to arbitration under agreement, 94 ALR3d 533.

Conflict of laws as to validity and effect of arbitration provision in contract for purchase or sale of goods, products, or services, 95 ALR3d 1145.

Defendant's participation in action as waiver of right to arbitration of dispute involved therein, 98 ALR3d 767.

Appealability of state court's order or decree compelling or refusing to compel arbitration, 6 ALR4th 652.

Claim of fraud in inducement of contract as subject to compulsory arbitration clause contained in contract, 11 ALR4th 774.

Validity of statute or rule providing for arbitration of fee disputes between attorneys and their clients, 17 ALR4th 993.

**Sec. 09.43.010. Arbitration agreements valid; application of article.** A written agreement to submit an existing controversy to arbitration or a provision in a written contract to submit to arbitration a subsequent controversy between the parties is valid, enforceable and irrevocable, except upon grounds which exist at law or in equity for the revocation of a contract. However, AS 09.43.010 — 09.43.180 do not apply to a labor-management contract unless they are incorporated into the contract by reference or their application is provided for by statute. (§ 1 ch 232 SLA 1968; am § 3 ch 113 SLA 1972)

**Cross references.** — For arbitration agreements under Public Employment Relations Act, see AS 23.40.200(f).

**Legislative history reports.** — For report on ch. 232, SLA 1968 (HB 212 am FCC), see 1968 House Journal, p. 861.

#### NOTES TO DECISIONS

**Section applicable to option to arbitrate.** — An option to arbitrate in a written contract is a provision in a written contract to submit a controversy to arbitration and is thus literally within the meaning of this section which states that such a provision is valid. *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978); *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978); *City of Fairbanks v. Rice*, Sup. Ct. Op. No. 2354 (File No. 4951), 628 P.2d 565 (1981); *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

**Sec. 09.43.020. Proceedings to compel or stay arbitration.** (a) On application of a party showing an agreement described in AS 09.43.010, and the opposing party's refusal to arbitrate, the court shall order the parties to proceed with arbitration, but if the opposing party denies the existence of the agreement to arbitrate, the court shall proceed summarily to the determination of the issue and if the agreement is found to exist shall order arbitration.

(b) On application, the court may stay an arbitration proceeding commenced or threatened on a showing that there is no agreement to arbitrate. The issue, when in substantial and bona fide dispute, shall be immediately and summarily tried and the stay ordered if no agreement is found to exist. If found for the opposing party, the court shall order the parties to proceed to arbitration.

(c) If an issue subject to arbitration under the alleged agreement is involved in an action or proceeding pending in a court having jurisdiction to hear applications under (a) of this section, the application shall be made in that court. Otherwise the application may be made in any court of competent jurisdiction.

(d) An action or proceeding involving an issue subject to arbitration shall be stayed if an order for arbitration or an application for the order has been made under this section or, if the issue is severable, the stay may be with respect to the issue only.

(e) An order for arbitration may not be refused on the ground that the claim in issue lacks merit or because a fault or ground for the claims sought to be arbitrated has not been shown. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

**Arbitrability to be determined prior to rendition of award.** — This section provides for court determination of the issue of arbitrability prior to rendition of

an award and before the parties have subjected themselves to the effort and expense of arguing the merits of the dispute to the panel. *University of Alaska v. Modern*

Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Modern Constr., Inc., Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974)

Possibility of waiver or estoppel where party fails to seek court review of the arbitrators' decision on arbitrability until after rendition of award. — See University of Alaska v.

Applied in Anchorage Daily News, Inc. v. Anchorage Times Publishing Co., Sup. Ct. Op. No. 2393 (File No. 4966), 631 P.2d 500 (1981).

*Successor  
State  
Idem*

**Sec. 09.43.030. Appointment of arbitrators by court.** If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. If no method of appointment is provided, or if the agreed method fails or for any reason cannot be followed, or when before the hearing an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court on application of a party shall appoint one or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.040. Majority action by arbitrators.** The powers of the arbitrators may be exercised by a majority unless otherwise provided by the agreement or by AS 09.43.010 — 09.43.180. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.050. Hearing.** Unless otherwise provided by the agreement,

(1) the arbitrators shall set a time and place for the hearing and cause notification to the parties to be served personally or by registered mail not less than five days before the hearing; appearance at the hearing waives the notice; the arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause or upon their own motion, may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date; the arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a properly notified party to appear;

(2) the parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing;

(3) the hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award; if, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals shall continue with the hearing and determination of the controversy. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.060. Representation by attorney.** A party has the right to be represented by an attorney at a proceeding or hearing under this chapter. A waiver of the right before the proceeding or hearing is ineffective. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.070. Witnesses, subpoenas, depositions.** (a) The arbitrators may cause to be issued subpoenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and have the power to administer oaths. Subpoenas shall be served, and upon application to the court by a party or the arbitrators, enforced in the manner provided by law for the service and enforcement of subpoenas in a civil action.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be the same as for a witness in the superior court. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.080. Award.** (a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered mail, or as provided in the agreement.

(b) An award shall be made within the time fixed by the agreement or, if not so fixed, within the time the court orders on application of a party. The parties may extend the time in writing either before or after the expiration of the time. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of the objection before the delivery of the award to that party. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

The law favors arbitration with a minimum of court interference. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Whenever possible an arbitration award rendered in the form required by this section is presumptively valid and shall be upheld without inquiry into the merit of the dispute. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Subsection (a) sets out the minimum requirements as to the form of an

award. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Written findings and conclusions not required. — The language in subsection (a) does not require the arbitrators to submit written findings of fact or conclusions of law. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Authority to fashion remedies. — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

**Sec. 09.43.090. Modification of award by arbitrators.** On application to the arbitrators by a party or, if an application to the court by

a party is pending under AS 09.43.110 — 09.43.130 on submission to the arbitrators by the court under the conditions the court may order, the arbitrators may modify or correct the award upon the grounds stated in AS 09.43.130(a)(1) and (3), or for the purpose of clarifying the award. An application to the arbitrators by a party shall be made within 20 days after delivery of the award to the applicant. Written notice of the application shall be given promptly to the opposing party, stating that objections to the application must be served within 10 days from the notice. A modified or corrected award is subject to the provisions of AS 09.43.110 — 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Superior court authorized to order clarification. — This section clearly authorizes the superior court to return an award to the arbitrators for clarification. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

**Sec. 09.43.100. Fees and expenses of arbitration.** Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Ordinarily attorney's fees are not awarded where matters are submitted to arbitration. This is consistent with the strong public policy favoring arbitration, which would be seriously undercut if a party could obtain attorney's fees merely by filing a complaint as an initial step in the arbitration process. *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).  
Award of attorney's fees held proper. — See *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1128 (1978).

**Sec. 09.43.110. Confirmation of an award.** Upon application of a party, the court shall confirm an award unless within the time limits imposed by AS 09.43.120 and 09.43.130 grounds are urged for vacating or modifying or correcting the award, in which case the court shall proceed as provided in AS 09.43.120 and 09.43.130. (§ 1 ch 232 SLA 1968)

NOTES TO DECISIONS

Applied in *Willis Flooring, Inc. v. Howard S. Lease Constr. Co. & Assocs.*, Sup. Ct. Op. No. 2598 (File No. 6736), 656 P.2d 1184 (1983).

**Sec. 09.43.120. Vacating an award.** (a) On application of a party, the court shall vacate an award if

- (1) the award was procured by fraud or other undue means;
- (2) there was evident partiality by an arbitrator appointed as a neutral or corruption in any of the arbitrators or misconduct prejudicing the rights of a party;
- (3) the arbitrators exceeded their powers;
- (4) the arbitrators refused to postpone the hearing upon sufficient cause being shown for postponement or refused to hear evidence material to the controversy or otherwise so conducted the hearing, contrary to the provisions of AS 09.43.050, as to prejudice substantially the rights of a party; or
- (5) there was no arbitration agreement and the issue was not adversely determined in proceedings under AS 09.43.020 and the party did not participate in the arbitration hearing without raising the objection.

(b) The fact that the relief is such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(c) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant. However, if the application is predicated upon corruption, fraud or other undue means by either the opposing party or an arbitrator, it shall be made within 90 days after the grounds are known or should have been known.

(d) In vacating the award on grounds other than those stated in (a)(5) of this section the court may order a rehearing before new arbitrators chosen as provided in the agreement, or in the absence of a provision in the agreement, by the court in accordance with AS 09.43.030, or, if the award is vacated on grounds set out in (a)(3) or (4) of this section, the court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with AS 09.43.030. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(e) If the application to vacate is denied and no motion to modify or correct the award is pending, the court shall confirm the award. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

This section and AS 09.43.130 define the superior court's power to review and either vacate or modify an arbitration award. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review,

except on questions of arbitrability. Alaska State Hous. Auth. v. Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

No review for gross errors. — The "fraud or other undue means" standard of this section does not authorize review for gross errors. Alaska State Hous. Auth. v.

Riley Pleas, Inc., Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

There is a substantial difference between procurement of an award by fraud or other undue means and an award in which the arbitrators have allegedly made large mistakes. The former instances connote affirmative wrongdoing by a party to the arbitration and often by an arbitrator; gross error carries no such connotation. Moreover, fraud or undue means in the procurement of an award does not require a review on the merits of the controversy; a review for gross errors is a review on the merits. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

**Proceedings not reviewable for evidentiary sufficiency.** — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

This article evinces a strong public policy in favor of arbitration. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The power of arbitrators are confined to those conferred upon them by the arbitration agreement, subject, of course, to further limitations imposed by the law of the jurisdiction. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

A particular claim may be arbitrable although it is not so designated by "clear and unequivocal" contract language. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Ambiguous contract terms may be construed in favor of arbitrability where such construction is not obviously contrary to the parties' intent, especially where the party contesting arbitrability drafted the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

**Claim not arbitrable.** — Where the parties have clearly agreed to arbitrate only those "disputes arising in connection with this contract" a particular claim is not arbitrable if it is nowhere mentioned in the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

The question of whether the arbitrator exceeded his power in ordering monetary damages can be appealed. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

**Question on review.** — When an award is attacked under this article on the grounds that the arbitrators exceeded their powers through erroneous interpretation of the contract, the reviewing court should determine whether the construction of the contract made by the arbitrators is a reasonably possible one that can seriously be made in the context in which the contract was made. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Stated affirmatively, if all fair and reasonable minds would agree that the construction of the contract made by the arbitrators was not possible under a fair interpretation of the contract, then the court would be bound to vacate or refuse to confirm the award. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

**Arbitrators' interpretation entitled to significant weight.** — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

**Arbitrators generally need not follow applicable law when deciding issues.** — The general rule in both statutory and common-law arbitration is that arbitrators need not follow otherwise applicable law when deciding issues properly before them, unless they are commanded to do so by the terms of the arbitration agreement. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974); *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

**Authority to fashion remedies.** — There is ample authority for the proposition that arbitrators generally have authority to fashion any remedy necessary to the resolution of the dispute. *Board of Educ. v. Ewig*, Sup. Ct. Op. No. 2048 (File No. 4253), 609 P.2d 10 (1980).

Arbitrators held not to have exceeded their powers by awarding compensation based upon the claims of a party's subcontractors, who were not parties to the contract. *University of Alaska v. Modern Constr., Inc.*, Sup. Ct. Op. No. 1048 (File No. 1977), 522 P.2d 1132 (1974).

Right to object to the alleged bias of an arbitrator was waived where the objecting party did not raise the matter at

the arbitration hearing. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Cited in *Kodiak Oilfield Haulers, Inc. v. Local 879, Hotel Union*, Sup. Ct. Op. No. 2471 (File No. 5758), 641 P.2d 11 (1982).

Applied in *Masden v. University of Alaska*, Sup. Ct. Op. No. 2421 (File No. 5291), 633 P.2d 1374 (1981).

### Sec. 09.43.130. Modification or correction of award by court.

(a) On application made within 90 days after delivery of a copy of the award to the applicant, the court shall modify or correct the award if

(1) there was an evident miscalculation of figures or an evident mistake in the description of a person, thing or property referred to in the award;

(2) the arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or

(3) the award is imperfect in a matter of form not affecting the merits of the controversy.

(b) If the application is granted, the court shall modify and correct the award to effect its intent and shall confirm the award as modified and corrected. Otherwise, the court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award. (§ 1 ch 232 SLA 1968)

### NOTES TO DECISIONS

This section and AS 09.43.120 define the superior court's power to review and either vacate or modify an arbitration award. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

An arbitrator's misconstruction of a contract is not open to judicial review, except on questions of arbitrability. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct. Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Proceedings not reviewable for evidentiary sufficiency. — Since arbitration proceedings are not required by statute or by the rules of the American Arbitration Association to be conducted on the record, it is not possible to review them for evidentiary sufficiency. *Alaska State Hous. Auth. v. Riley Pleas, Inc.*, Sup. Ct.

Op. No. 1765 (File No. 3208), 586 P.2d 1244 (1978).

Error calling for modification or correction must be manifestly clear. — Given the presumption that arbitration awards rendered in proper form are valid and the "evident mistake" prerequisite language of subsection (a), it follows that the error which calls for modification or correction of an arbitration award must be manifestly clear. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Arbitrators' interpretation entitled to significant weight. — The arbitrators' interpretation of what is submitted to them is entitled to significant weight. *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

**Sec. 09.43.140. Judgment or decree on award.** Upon the granting of an order confirming, modifying or correcting an award, a judgment or decree shall be entered in conformity with the award and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent to the application, and disbursements may be awarded by the court. (§ 1 ch 232 SLA 1968)

#### NOTES TO DECISIONS

**Award of attorney's fees held proper.** — See *Anchorage Medical & Surgical Clinic v. James*, Sup. Ct. Op. No. 1333 (File No. 2780), 555 P.2d 1320 (1976).

Cited in *Harold's Trucking v. Kelsey*, Sup. Ct. Op. No. 1739 (File No. 3695), 584 P.2d 1125 (1978).

**Sec. 09.43.150. Applications to court.** An application to the court under AS 09.43.010 — 09.43.180 shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action. (§ 1 ch 232 SLA 1968)

**Cross references.** — For court rules on service of motions and service procedures, see Civ. R. 77(a) and Civ. R. 5.

**Sec. 09.43.160. Appeals.** (a) An appeal may be taken from

- (1) an order denying an application to compel arbitration made under AS 09.43.020;
- (2) an order granting an application to stay arbitration made under AS 09.43.020(b);
- (3) an order conforming or denying confirmation of an award;
- (4) an order modifying or correcting an award;
- (5) an order vacating an award without directing a rehearing; or
- (6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.170. Court, jurisdiction.** In AS 09.43.010 — 09.43.180, the term "court" means the superior court of this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the superior court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on an award under the agreement. (§ 1 ch 232 SLA 1968)

**Sec. 09.43.180. Short title.** AS 09.43.010 — 09.43.180 may be cited as the Uniform Arbitration Act. (§ 1 ch 232 SLA 1968; am § 1 ch 94 SLA 1972)

subsequent recording. Whenever the lien is discharged, it is the duty of the recorder, when requested, to record the transcript of an order, entry of satisfaction of judgment, or other proceeding of record whereby it appears that the lien has been discharged. (§ 7.05 ch 101 SLA 1962)

Revisor's notes. — Minor word changes related to the recording of documents were made in this section in 1988 because of the enactment of ch. 161, SLA 1988.

## Chapter 43. Arbitration.

### Article

1. Uniform Arbitration Act (§§ 09.43.160, 09.43.170)

#### NOTES TO DECISIONS

Cited in *City of Valdez v. 18.99 acres*,  
Sup. Ct. Op. No. 2834 (File No. 6940), 688  
P.2d 682 (1984).

### Article 1. Uniform Arbitration Act.

#### Section

160. Appeals

170. Court, jurisdiction

**Sec. 09.43.160. Appeals.** (a) An appeal may be taken from  
(1) an order denying an application to compel arbitration made under AS 09.43.020;

(2) an order granting an application to stay arbitration made under AS 09.43.020(b);

(3) an order confirming or denying confirmation of an award;

(4) an order modifying or correcting an award;

(5) an order vacating an award without directing a rehearing; or

(6) a judgment or decree entered under the provisions of AS 09.43.010 — 09.43.180.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action. (§ 1 ch 232 SLA 1968)

Editor's notes. — This section is set out above to correct a minor error in the main pamphlet.

**Sec. 09.43.170. Court, jurisdiction.** In AS 09.43.010 — 09.43.180, the term "court" means the court with jurisdiction in this state. The making of an agreement described in AS 09.43.010 providing for arbitration in this state confers jurisdiction on the court to enforce the agreement under AS 09.43.010 — 09.43.180 and to enter judgment on

an award under the agreement. (§ 1 ch 232 SLA 1968; am § 4 ch 38 SLA 1987; am § 4 ch 38 SLA 1987)

**Effect of amendments.** — The 1987 amendment substituted "court with jurisdiction in" for "superior court of" in the first sentence and deleted "superior" preceding "court" in the second sentence.

## Chapter 45. Actions Relating to Real Property.

### Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010, 09.45.015)
2. Forcible Entry and Detainer (§ 09.45.090)
4. Nuisances (§ 09.45.235)
5. Partition (§ 09.45.480)
6. Recovery of Possession (§ 09.45.720)
7. Trespass (§§ 09.45.730 — 09.45.735)
9. Miscellaneous Provisions (§§ 09.45.790 — 09.45.795)
10. Earthslide Relief Act (§§ 09.45.840, 09.45.845)

### Article 1. Adverse Claims and Boundary Disputes.

#### Section

10. Action to quiet title
15. Presumption in certain cases

**Sec. 09.45.010. Action to quiet title.** A person in possession of real property, or a tenant of that person, may bring an action against another who claims an adverse estate or interest in the property for the purpose of determining the claim. (§ 6.01 ch 101 SLA 1962)

**Editor's notes.** — This section is set out above to correct a minor error in the main pamphlet.

**Sec. 09.45.015. Presumption in certain cases.** (a) A conveyance of land after April 7, 1958, that, at the time the conveyance was made, adjoined a highway reservation listed in section 1 of Public Land Order 1613 of the Secretary of the Interior (April 7, 1958), is presumed to have conveyed land up to the center-line of the highway subject to any highway reservation created by Public Land Order 601 and any highway easement created by Public Land Order 1613.

(b) The burden of proof in litigation involving land adjoining a highway reservation created by Public Land Order 601 or a highway easement created by Public Land Order 1613 is on the person who claims that the conveyance did not convey an interest in land up to the center-line of the highway. (§ 2 ch 141 SLA 1986)

## Article 2. Arbitration of Small Claims.

Section	Section
190. Arbitration under court rules	210. Practice and procedure
200. Appointment and compensation of arbitrator	220. Judgments and appeals

**Cross references.** — For small claims actions in district courts, see AS 22.15.040; for district court rules providing for practice and procedure in small claims actions, see DCR 8-22.

**Editor's notes.** — To date, the supreme court has not adopted rules under this article.

**Sec. 09.43.190. Arbitration under court rules.** The supreme court may provide by rule for compulsory arbitration of a cause of action filed in a superior or district court, demanding only a money judgment, when it appears that the demand on the cause of action is for \$3,000 or less, exclusive of costs, or when it appears to the trial court as a result of a pretrial conference that the amount which will be recovered on the cause is not likely to exceed \$3,000. (§ 2 ch 94 SLA 1972)

**Sec. 09.43.200. Appointment and compensation of arbitrator.** Arbitration of actions shall be by either a member of the Alaska Bar Association or a magistrate appointed and compensated by the court as provided by its rules. (§ 2 ch 94 SLA 1972)

**Sec. 09.43.210. Practice and procedure.** The practice and procedure for conducting arbitration, the powers of the arbitrators and the assessment of costs shall be prescribed by the court rules. (§ 2 ch 94 SLA 1972)

**Sec. 09.43.220. Judgments and appeals.** Unless an appeal is taken from the award to the court which ordered arbitration as provided by the court rules, the court shall enter and enforce judgment in accordance with the award of the arbitrator. Any party aggrieved by the award may appeal. All appeals shall be determined in the manner permitted by the rules. (§ 2 ch 94 SLA 1972)

## Chapter 45. Actions Relating to Real Property.

### Article

1. Adverse Claims and Boundary Disputes (§§ 09.45.010 — 09.45.050)
2. Forcible Entry and Detainer (§§ 09.45.060 — 09.45.160)
3. Foreclosure of Liens (§§ 09.45.170 — 09.45.220)
4. Nuisances (§§ 09.45.230 — 09.45.250)
5. Partition (§§ 09.45.260 — 09.45.620)
6. Recovery of Possession (§§ 09.45.630 — 09.45.720)
7. Trespass (§ 09.45.730)

Original sponsors: Kelly, Kerttula,  
Szymanski, et al.

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS. FOR SENATE BILL NO. 255 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a special arbitration commission  
7 for claims related to the <sup>Exxon</sup> Valdez oil discharge disas-  
8 ter; and providing for an effective date."

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

10 \* Section 1. <sup>EXXON</sup> VALDEZ DISASTER ARBITRATION COMMISSION. (a) There is  
11 established the <sup>EXXON</sup> Valdez Disaster Arbitration Commission consisting ~~of panels~~  
12 of ~~five~~ <sup>Sup Ct. panel designated by the Chief Justice</sup> members ~~each~~. ~~The governor shall determine how many panels shall~~  
13 ~~be appointed.~~

14 (b) Two members ~~of each panel~~ shall be appointed by the governor, and  
15 two shall be appointed by the Exxon Corporation. The fifth member shall be  
16 selected by a majority vote of the other four members. If the members fail  
17 to select a fifth member within 15 days after the appointment of the fourth  
18 member, the fifth member shall be designated by the American Arbitration  
19 Association.

20 (c) ~~If all parties to an arbitration agree, a panel of fewer than~~  
21 ~~five members may be appointed in a manner approved by the parties consis-~~  
22 ~~tent with (d) of this section.~~

23 (d) ~~A member of a panel must, at the time of appointment, be a member~~  
24 ~~of the National Panel of Commercial Arbitrators of the American Arbitration~~  
25 ~~Association.~~

26 \* Sec. 2. DUTIES OF THE <sup>COMMISSION</sup> ~~PANELS~~. Upon a properly presented request  
27 under sec. 3 of this Act, ~~the panel shall~~ <sup>the commission shall appoint a panel of three or four members to</sup> hold hearings and make awards for  
28 claims arising from the Valdez oil discharge disaster.

29 \* Sec. 3. PRESENTATION OF CLAIMS. (a) A person who has a claim for

1 damages arising from the Valdez oil discharge disaster may apply to the  
2 commission in writing for arbitration of the claim.

3 (b) If ~~a panel to which a claim is assigned~~ <sup>to</sup> determines that the  
4 person from whom damages are sought agrees to arbitration ~~by the panel~~, the  
5 panel shall proceed under sec. 4 of this Act.

6 (c) If ~~a panel to which a claim is assigned~~ <sup>to</sup> determines that the  
7 person from whom damages are sought does not agree to arbitration by the  
8 panel, the panel shall promptly notify the claimant.

9 \* Sec. 4. ARBITRATION PROCEDURES. (a) Arbitration by a panel is  
10 governed by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), except as  
11 provided in this Act.

12 (b) If an award for damages is made to a claimant by a panel in an  
13 amount equal to or greater than the amount of damages initially requested  
14 by the claimant, the award must provide that the arbitrators' expenses and  
15 fees, together with expenses of the claimant, including reasonable attorney  
16 fees, incurred in the conduct of the arbitration, shall be paid by the  
17 person against whom the claim was brought.

18 (c) If a panel makes an award of damages to a claimant that is less  
19 than the amount initially requested by the claimant, the award must provide  
20 that the portion of expenses and fees described in (b) of this section that  
21 shall be paid by the person against whom the claim was brought shall bear  
22 the same relationship to total expenses and fees described in (b) of this  
23 section that the claimant shall pay the the damages awarded bears to the  
24 amount of the damages initially requested.

25 (d) The panel shall provide in an award made under (c) of this sec-  
26 tion that the claimant shall pay the expenses and fees described in (b) of  
27 this section that are not assessed against the person against whom the  
28 claim was brought.

29 (e) The panel may not provide that the claimant pay any expenses or  
CSSB 255(Jud)

1 fees of the person against whom the claim was brought.

2 \* Sec. 5. FUTURE CLAIMS. If a person presents a claim to the commis-  
3 sion under this Act and the commission arbitrates the claim, the person may  
4 not present another claim for damages that arises from the Valdez oil  
5 discharge disaster to the commission or in another forum unless the person  
6 demonstrates that the new claim is based on evidence that could not have  
7 been ascertained with reasonable effort at the time the prior claim was  
8 arbitrated.

9 \* Sec. 6. DEFINITIONS. In this Act

10 (1) "commission" means the Valdez Disaster Arbitration Commis-  
11 sion;

12 (2) "damages" means any personal injury or property damage,  
13 including economic and noneconomic damages, arising out of or resulting  
14 from the Valdez oil discharge disaster, including but not limited to:

15 (A) containment, cleanup, and removal costs;

16 (B) injury to, or destruction of, natural resources or real  
17 or personal property;

18 (C) loss of use of natural resources or real or personal  
19 property;

20 (D) loss of profits or impairment of earning capacity due  
21 to injury or destruction of natural resources or real or personal  
22 property, including loss of subsistence hunting, fishing, and gather-  
23 ing opportunities;

24 (E) loss of tax revenue for a period of one year due to  
25 injury to natural resources or real or personal property;

26 (F) costs required to restock injured land or water, to  
27 replenish a damaged or degraded resource, or to otherwise restore the  
28 environment of the state to its condition before the injury;

29 (3) "panel" means a panel created as part of the Valdez Disaster

1 Arbitration Commission;

2 (4) "EXXON - Valdez oil discharge disaster" means the incident involving  
3 the discharge of crude oil after the grounding of the Exxon Valdez south of  
4 Valdez on March 24, 1989; the discharge of ballast water from another  
5 tanker on the subsequent weekend in order to accommodate the transfer of  
6 crude oil from the Exxon Valdez to the second tanker; and attendant con-  
7 tainment and cleanup actions.

8 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).  
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Original sponsors: Kelly, Kerttula,  
Szymanski, et al.

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 255 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act establishing a special arbitration commission  
7 for claims related to the Valdez oil discharge disas-  
8 ter; and providing for an effective date."

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

10 \* Section 1. VALDEZ DISASTER ARBITRATION COMMISSION. (a) There is  
11 established the Valdez Disaster Arbitration Commission consisting of panels  
12 of five members each. The governor shall determine how many panels shall  
13 be appointed.

14 (b) Two members of each panel shall be appointed by the governor, and  
15 two shall be appointed by the Exxon Corporation. The fifth member shall be  
16 selected by a majority vote of the other four members. If the members fail  
17 to select a fifth member within 15 days after the appointment of the fourth  
18 member, the fifth member shall be designated by the American Arbitration  
19 Association.

20 (c) If all parties to an arbitration agree, a panel of fewer than  
21 five members may be appointed in a manner approved by the parties consis-  
22 tent with (d) of this section.

23 (d) A member of a panel must, at the time of appointment, be a member  
24 of the National Panel of Commercial Arbitrators of the American Arbitration  
25 Association.

26 \* Sec. 2. DUTIES OF THE PANELS. Upon a properly presented request  
27 under sec. 3 of this Act, a panel shall hold hearings and make awards for  
28 claims arising from the Valdez oil discharge disaster.

29 \* Sec. 3. PRESENTATION OF CLAIMS. (a) A person who has a claim for

1 damages arising from the Valdez oil discharge disaster may apply to the  
2 commission in writing for arbitration of the claim.

3 (b) If a panel to which a claim is assigned determines that the  
4 person from whom damages are sought agrees to arbitration by the panel, the  
5 panel shall proceed under sec. 4 of this Act.

6 (c) If a panel to which a claim is assigned determines that the  
7 person from whom damages are sought does not agree to arbitration by the  
8 panel, the panel shall promptly notify the claimant.

9 \* Sec. 4. ARBITRATION PROCEDURES. (a) Arbitration by a panel is  
10 governed by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), except as  
11 provided in this Act.

12 (b) If an award for damages is made to a claimant by a panel in an  
13 amount equal to or greater than the amount of damages initially requested  
14 by the claimant, the award must provide that the arbitrators' expenses and  
15 fees, together with expenses of the claimant, including reasonable attorney  
16 fees, incurred in the conduct of the arbitration, shall be paid by the  
17 person against whom the claim was brought.

18 (c) If a panel makes an award of damages to a claimant that is less  
19 than the amount initially requested by the claimant, the award must provide  
20 that the portion of expenses and fees described in (b) of this section that  
21 shall be paid by the person against whom the claim was brought shall bear  
22 the same relationship to total expenses and fees described in (b) of this  
23 section that the claimant shall pay the the damages awarded bears to the  
24 amount of the damages initially requested.

25 (d) The panel shall provide in an award made under (c) of this sec-  
26 tion that the claimant shall pay the expenses and fees described in (b) of  
27 this section that are not assessed against the person against whom the  
28 claim was brought.

29 (e) The panel may not provide that the claimant pay any expenses or  
CSSB 255(Jud)

1 fees of the person against whom the claim was brought.

2 \* Sec. 5. FUTURE CLAIMS. If a person presents a claim to the commis-  
3 sion under this Act and the commission arbitrates the claim, the person may  
4 not present another claim for damages that arises from the Valdez oil  
5 discharge disaster to the commission or in another forum unless the person  
6 demonstrates that the new claim is based on evidence that could not have  
7 been ascertained with reasonable effort at the time the prior claim was  
8 arbitrated.

9 \* Sec. 6. DEFINITIONS. In this Act

10 (1) "commission" means the Valdez Disaster Arbitration Commis-  
11 sion;

12 (2) "damages" means any personal injury or property damage,  
13 including economic and noneconomic damages, arising out of or resulting  
14 from the Valdez oil discharge disaster, including but not limited to:

15 (A) containment, cleanup, and removal costs;

16 (B) injury to, or destruction of, natural resources or real  
17 or personal property;

18 (C) loss of use of natural resources or real or personal  
19 property;

20 (D) loss of profits or impairment of earning capacity due  
21 to injury or destruction of natural resources or real or personal  
22 property, including loss of subsistence hunting, fishing, and gather-  
23 ing opportunities;

24 (E) loss of tax revenue for a period of one year due to  
25 injury to natural resources or real or personal property;

26 (F) costs required to restock injured land or water, to  
27 replenish a damaged or degraded resource, or to otherwise restore the  
28 environment of the state to its condition before the injury;

29 (3) "panel" means a panel created as part of the Valdez Disaster

1 Arbitration Commission;

2 (4) "Valdez oil discharge disaster" means the incident involving  
3 the discharge of crude oil after the grounding of the Exxon Valdez south of  
4 Valdez on March 24, 1989; the discharge of ballast water from another  
5 tanker on the subsequent weekend in order to accommodate the transfer of  
6 crude oil from the Exxon Valdez to the second tanker; and attendant con-  
7 tainment and cleanup actions.

8 \* Sec. 7. This Act takes effect immediately under AS 01.10.070(c).  
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## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Environmental Conservation  
 Title: An Act Establishing a Special BRU: Environmental Quality  
arbitration commission for claims related  
to the Valdez oil discharge disaster Components: Environmental Quality  
 Sponsor: Kelly, et. al.

**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						
<b>TOTAL OPERATING</b>		-0-	-0-	-0-	-0-	-0-

CAPITAL						
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REVENUE						
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**FUNDING: (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
<b>TOTAL</b>		-0-	-0-	-0-	-0-	-0-

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary)

This act will not have a fiscal impact on the Department.

Prepared by: Dan Easton Phone: 465-2640  
 Division: Environmental Quality Date: April 10, 1989

Approved by Commissioner: AD/66 Date: 4/11/89  
 Agency: Alaska Department of Environmental Conservation

**Distribution (by preparer):**

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

IN THE SENATE

BY THE JUDICIARY COMMITTEE

CS FOR SENATE BILL NO. 255 (Judiciary)

IN THE LEGISLATURE OF THE STATE OF ALASKA

SIXTEENTH LEGISLATURE - FIRST SESSION

A BILL

For an Act entitled: "An Act establishing a special arbitration commission for claims related to the Valdez oil spill and providing for an effective date."

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

Section 1. VALDEZ OIL SPILL ARBITRATION COMMISSION.

(a) There is established the Valdez Oil Spill Arbitration Commission consisting of three (3) panels of three (3) members each.

(b) The members of the Commission shall be appointed by the Governor and Exxon Corporation. The Governor and Exxon Corporation shall select one member of each panel to act as chairperson of the panel and shall select one of the chairpersons of the panels to act as chairperson of the Commission. If the Governor and Exxon Corporation fail to select the members of the Commission or the chairpersons of the panels or the chairperson of the Commission within ninety (90) days after the effective date of this Act, the American Arbitration Association shall make the selections that have not been made within that time.

(c) Should any member of the Commission resign, die, withdraw, be disqualified or fail to perform the duties of the

office, the vacancy shall be filled within forty-five (45) days of the position becoming vacant in the same manner as described in Section 1(b).

(d) Should a single vacancy occur after hearings on a particular claim have begun, but before the panel has issued an award, the two remaining members of the panel may continue hearing the case and may issue the award, unless the parties agree otherwise.

(e) In circumstances that the Commission deems appropriate, the Commission may temporarily fill vacancies on a panel with members from other panels, so that hearings and the issuance of awards need not be delayed.

(f) The members of the Commission shall serve full time at an annual salary to be determined by the Governor. The Governor may provide for additional annual compensation for the chairpersons of the panels and the chairperson of the Commission.

(g) A member of a panel must, at the time of appointment, be a member of the National Panel of Commercial Arbitrators of the American Arbitration Association.

(h) The Commission's administrative offices shall be located at \_\_\_\_\_. The Commission can establish branch offices at other locations within the State of Alaska as the Commission deems appropriate.

Section 2. DUTIES OF THE PANELS. (a) Upon completion of the presentation of claims procedures in Section 3 of this Act, a panel -- or, in the case of a claim falling within the scope of Section 2(b), a single Commission member -- shall hold

hearings and shall make awards for claims and counterclaims arising from the Valdez oil spill.

(b) Unless the parties agree otherwise, any claim for under fifty thousand dollars (\$50,000), exclusive of interest and costs, shall be heard and determined by a single member of the Commission.

Section 3. PRESENTATION OF CLAIMS. (a) A Claimant who has a claim arising from the Valdez oil spill may serve upon each Respondent against whom the Claimant is asserting a claim a written Request for arbitration and may file four (4) copies of the Request with the Commission.

(b) The Request for arbitration shall contain:

- (i) A request that the claim be referred to arbitration,
- (ii) The names and addresses of the parties,
- (iii) A statement of the facts supporting the claim, and
- (iv) The amount of damages being sought.

(c) If a Respondent is willing to arbitrate the claims set forth in the Request for arbitration, the Respondent shall: (i) Within thirty (30) days of receipt the Request for arbitration, serve on each Claimant a written Response setting forth any defenses and asserting any counterclaims related to the claims in the Request for arbitration and (ii) promptly after serving the Response, file four (4) copies thereof with the Commission.

(d) If a Claimant or Claimants assert claims against more than one Respondent and one or more, but not all, of those Respondents serve and file Responses, the parties who have filed Requests for arbitration and Responses will have 10 days after the filing of the last Response to serve on each other and to file with the Commission a written notice stating whether or not they are willing to proceed with the arbitration in spite of the refusal of some of the parties to participate.

(e) Once the Commission has received the Requests for arbitration and Responses from parties and any notices under Section 3(d), the Commission shall request the parties to pay the appropriate filing fee for the claims and counterclaims asserted as provided for in the administrative fee schedule referred to in Section 4(b).

(f) Once the Commission has received the filing fees, it shall assign the case to a panel, and the panel to which the case is assigned shall proceed under Section 4 of this Act to determine the claims and counterclaims asserted by the parties remaining in the arbitration.

Section 4. ARBITRATION PROCEDURES. (a) Except as prohibited by AS 09.43.010 - 09.43.180 (Uniform Arbitration Act), and except as otherwise provided in this Act, the proceedings under this Act shall be governed by the Commercial Arbitration Rules of the American Arbitration Association, as modified by the Commission pursuant to Section 4(b).

(b) Within ninety (90) days of the selection of the chairman of the Commission and from time to time thereafter, the

Commission shall issue any modifications to the Commercial Rules of the American Arbitration Association it deems appropriate for proceedings before the Commission, except that the Commission shall not have authority to modify the administrative fee schedule set forth in these Rules.

Section 5. AMERICAN ARBITRATION ASSOCIATION TO ACT AS ADMINISTRATIVE AGENCY FOR THE COMMISSION. (a) The American Arbitration Association shall act as the administrative agency for the Commission on terms to be agreed upon among the Governor, Exxon Corporation and the American Arbitration Association.

(b) The American Arbitration Association's duties shall include handling the filing of claims, assigning claims to various panels, providing administrative and clerical staff, acting as intermediary between the parties and the members of the Commission, and performing other administrative tasks that the Commission assigns to it to assist in carrying out the Commission's duties.

(c) The Commission shall have authority to establish administrative rules to facilitate the internal functioning of the Commission.

Section 6. LOCATION OF ARBITRATIONS. Arbitrations may take place at the administrative or branch offices of the Commission or, if requested by the parties and approved by the panel or member of the Commission hearing the case, at other locations within the State of Alaska.

Section 7. MEDIATION OR OTHER ALTERNATE DISPUTE

RESOLUTION. (a) If at any time after the filing of a claim, the parties should request assistance in settling their differences by mediation or some other method of alternate dispute resolution other than arbitration, the Commission, through its administrative agency, shall assist the parties in obtaining qualified mediators or other persons to assist the parties.

(b) No one while serving as a member of the Commission shall act as a mediator or in any other capacity to assist the parties in resolving their differences, except as an arbitrator performing his or her duties under this Act.

(c) The Commission, through its administrative agency may suggest appropriate rates of compensation for the mediators or other non-members of the Commission who assist the parties in resolving their disputes, but payment of any fee is the responsibility of the parties and is not covered by the filing fee paid to the Commission for arbitrating claims.

(d) The Commission may establish and publish a reasonable fee schedule for assisting parties with mediation or other forms of dispute resolution not performed by the members of the Commission.

Section 8. FUTURE CLAIMS. If a Claimant presents a claim to the Commission under this Act and the Commission arbitrates the claim, the Claimant may not present the same or substantially similar claim in another forum. Nothing in this Act shall be construed to prevent a Claimant from presenting more

than one different claim to the Commission or from filing different claims in different forums.

Section 9. DEFINITIONS. In this Act

(1) "Commission" means the Valdez Oil Spill Arbitration Commission, or, in certain contexts, a panel or member of the Commission;

(2) "damages" means any personal injury or property damage, including economic and non-economic damages, arising out of or resulting from the Valdez oil spill that would be recoverable by the Claimant or Respondent under applicable law, if the claim or counterclaim had been brought in a state or federal court within the State of Alaska.

(3) "panel" means a panel created as part of the Valdez Oil Spill Arbitration Commission;

(4) "Valdez oil spill" means the incident involving the discharge of crude oil after the grounding of the Exxon Valdez south of Valdez, Alaska on March 24, 1989; the discharge of ballast water from the \_\_\_\_\_ on the subsequent weekend in order to accommodate the transfer of crude oil from the Exxon Valdez to the \_\_\_\_\_; and attendant containment and cleanup actions.

Section 10. NO NEW CAUSE OF ACTION. Nothing in this Act shall be construed to create a new cause of action or to give standing to bring claims to persons who would not have standing under applicable state and federal law to bring their claims in the state and federal courts within the State of Alaska.

Section 11. EFFECTIVE DATE. This Act takes effect immediately under AS 01.10.070(c).

than one different claim to the Commission or from filing different claims in different forums.

Section 9. DEFINITIONS. In this Act

(1) "Commission" means the Valdez Oil Spill Arbitration Commission, or, in certain contexts, a panel or member of the Commission;

(2) "damages" means any personal injury or property damage, including economic and non-economic damages, arising out of or resulting from the Valdez oil spill that would be recoverable by the Claimant or Respondent under applicable law, if the claim or counterclaim had been brought in a state or federal court within the State of Alaska.

(3) "panel" means a panel created as part of the Valdez Oil Spill Arbitration Commission;

(4) "Valdez oil spill" means the incident involving the discharge of crude oil after the grounding of the Exxon Valdez south of Valdez, Alaska on March 24, 1989; the discharge of ballast water from the \_\_\_\_\_ on the subsequent weekend in order to accommodate the transfer of crude oil from the Exxon Valdez to the \_\_\_\_\_; and attendant containment and cleanup actions.

Section 10. NO NEW CAUSE OF ACTION. Nothing in this Act shall be construed to create a new cause of action or to give standing to bring claims to persons who would not have standing under applicable state and federal law to bring their claims in the state and federal courts within the State of Alaska.

Section 7. MEDIATION OR OTHER ALTERNATE DISPUTE

RESOLUTION. (a) If at any time after the filing of a claim, the parties should request assistance in settling their differences by mediation or some other method of alternate dispute resolution other than arbitration, the Commission, through its administrative agency, shall assist the parties in obtaining qualified mediators or other persons to assist the parties.

(b) No one while serving as a member of the Commission shall act as a mediator or in any other capacity to assist the parties in resolving their differences, except as an arbitrator performing his or her duties under this Act.

(c) The Commission, through its administrative agency may suggest appropriate rates of compensation for the mediators or other non-members of the Commission who assist the parties in resolving their disputes, but payment of any fee is the responsibility of the parties and is not covered by the filing fee paid to the Commission for arbitrating claims.

(d) The Commission may establish and publish a reasonable fee schedule for assisting parties with mediation or other forms of dispute resolution not performed by the members of the Commission.

Section 8. FUTURE CLAIMS. If a Claimant presents a claim to the Commission under this Act and the Commission arbitrates the claim, the Claimant may not present the same or substantially similar claim in another forum. Nothing in this Act shall be construed to prevent a Claimant from presenting more

**S B**

**259**

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.

STATE OF ALASKA  
THE LEGISLATURE

POUCH - STATE CAPITOL  
JUNEAU ALASKA 998  
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

March 15, 1990

SUBJECT: CSSB 259(L&C); go0129sE

TO: Senator Dick Eliason, Chairman  
Senate Labor and Commerce Committee

FROM: Pamela Finley *Pam*  
Assistant Revisor of Statutes

Enclosed is the draft you requested. In addition to changes to conform the draft to the drafting manual, we have made the following changes to the bill as introduced by the governor:

1. In AS 21.79.020(b), "life, disability, annuity, or supplemental" was inserted after "direct group".
2. The last three sentences of AS 21.79.050(a), with some changes, were moved to temporary law (new sec. 17). In the first sentence of AS 21.79.050(a) "representative of" was inserted before "member insurers."
3. In AS 21.79.060(j), the cross reference was changed from AS 21.79.020(c)(3) to AS 21.79.020(c)(4).
4. AS 21.79.060(m) was rewritten.
5. In AS 21.79.060(o) the reference to a "temporary stay" was replaced with a reference to "an injunction". "Stay" is usually used in connection with a court order, judgment, or proceeding. The term "injunction" includes temporary and permanent injunctions. Also, we do not understand the last phrase in this subsection ("in addition to . . . value.") Is this a power in addition to the right to seek an injunction, or is it tied to the right to withdraw funds?
6. In AS 21.79.900, the definitions of "director," "impaired," and "insolvent" were deleted because the definitions in AS 21.90.900 will apply to AS 21.79 without a cross reference.

Senator Dick Eliason  
Page 2  
March 15, 1990

7. In AS 21.80.080(b)(4), I deleted a cross reference to AS 21.80.065 because that section was deleted.

8. The references to "majority vote" in AS 21.79.100(f), (g), and (h) were deleted. Boards act by majority vote unless otherwise provided.

9. A new section 16 was added to note a court rule change.

10. The title was changed to include the added court rule change and the definitions of terms (in bill sec. 13) that apply to matters other than guaranty funds.

If you have any questions, please call me (until March 19) or Mike Ford (after March 18). You may want to consult with the AG's Office about the changes noted above, as well as the meaning of the last phrase of AS 21.79.060(o), mentioned in #5 above.

PF:gc  
G13/124

Enclosure

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

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

*DIVISION OF INSURANCE*

March 12, 1990

Honorable Richard I. Eliason  
Alaska State Senate  
P.O. Box V  
Juneau, AK 99811

Dear Senator Eliason:

Re: SB 259, Insurance Guaranty Funds

Enclosed please find proposed amendments to SB 259, relating to Insurance Guaranty Funds, which are offered for consideration by the Senate Labor and Commerce Committee. These amendments are the result of extensive discussions, both internally and with industry representatives, since this bill was heard in your committee on April 14, 1989.

Substantive changes to the bill include:

- o changing the life and disability guaranty fund to post assessment rather than preassessment;
- o excluding hospital and medical service organizations from the provisions of the life and disability guaranty fund;
- o including marine insurance in the account for "all other" lines of insurance rather than setting it out as a separate account;
- o establishing that a court order is necessary for the director of insurance to assume the powers of the board of directors of an insurer upon failure to meet the requirements of the Insurance Guaranty Association Act; and
- o establishing that a rating organization may make a provision in its filing of rates to recover an assessment made to the fund, and that an assessment charge is not considered to be premium and is not subject to the premium tax.

Honorable Richard I. Eliason

-2-

March 12, 1990

I will be discussing the proposed amendments with industry representatives this week, and would like to request a hearing on the bill on Friday, March 23, if that date would be compatible with your committee schedule. Unfortunately, I have out-of-town commitments earlier that week and also the week after.

Thank you for your consideration. I would be happy to discuss this bill with you or your staff at any time.

Sincerely,

A handwritten signature in cursive script, appearing to read "David Walsh". The signature is written in dark ink and is positioned to the right of the word "Sincerely,".

David Walsh  
Director

DW/lw/mst0067Q  
031290a  
Enclosure

Proposed Amendments to SB 259: Insurance Guaranty Funds

New Section

Page 1, line 10, add a new section and renumber the following sections accordingly.

\* Sec. 1. AS 21.21.250 is amended by adding a new subsection to read:

(c) A domestic insurer may invest in notes or other evidence of indebtedness of the Alaska Life and Disability Insurance Guaranty Association, and the director may consider those notes, and other evidence of indebtedness, that are not in default, as admitted assets of the insurer.

Section 2

Page 14, line 3 to page 15, line 10. Replace Sec. 21.79.070 with:

Sec. 21.79.070. ASSESSMENTS. (a) For the purpose of providing funds necessary to carry out the powers and duties of the association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than 30 days after prior written notice to the member insurers and shall accrue interest at 10% per year from the date payment is due.

(b) There shall be two assessments as follows:

(1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of Sec. 21.79.060. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.

(2) Class B assessments are post assessment charges and shall be made only as necessary to carry out the powers and duties of the association with regard to an impaired or an insolvent insurer.

(c) (1) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A nonpro rata assessment shall not exceed \$200.00 per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or by any other standard deemed by the board as being fair and reasonable under the circumstances.

(2) Class B assessments shall be based on the premiums received on business in this state by each assessed member insurer or for policies or contracts covered by each account in proportion to the premiums received on business in this state by all assessed member insurers during the three calendar years preceding the year in which the insolvency or impairment occurred.

(d) The association may abate or defer, in whole or in part, the assessment of a member insurer if a payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The amount by which an assessment against a member insurer is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in section (c).

Page 21, line 29, between "a" and "financial": insert certified.

Page 23, lines 7 through 8, after "insurer": Delete [OR HOSPITAL OR MEDICAL SERVICE ORGANIZATION].

Page 23, line 9, after "(b)": Insert or subscriber contract providing benefits as provided for in AS 21.87.120(a)(2)-(4) or AS 21.87.130(a)(2) and (3).

Page 23, line 17, after "basis,": Delete [OR].

Page 23, line 18, after "exchange": Delete [.] and insert ; or.

Page 23, after line 19, insert a new subparagraph to read: (F) hospital or medical service organization.

Page 23, line 24, after "amounts": Insert charged for an assessment or any amounts.

#### Section 3:

Page 24, line 14, after "insurance": Insert written by an admitted insurer.

Page 24, line 16, after "insurance": Delete [AS IT APPLIES TO] and insert for.

#### Section 4:

Page 24, line 28, delete the change: "four" is removed and "three" remains.

Page 25, line 3, remove new language: "(3) The marine insurance account." Renumber remaining subsection accordingly.

Page 25, line 4, after "applies": Insert , including coverage on vessels less than 100 feet long as measured at the water line.

#### Section 6:

Page 25, line 16, after "association": Delete [SHALL].

Page 25, line 17, before "obligated": Delete [BE] and insert is.

Page 25, line 19, after "insolvency": Insert by a court of competent jurisdiction where the insolvent insurer or receiver ceases to pay any or all claims pursuant to preparing and adopting a plan of liquidation or having entered into a plan of liquidation approved by the court under AS 21.78.

Page 25, line, 29, before "considered": Delete [BE] and Insert is.

Page 26, line 4, before "allocate": Insert shall.

Page 26, lines 4 through page 27, line 2: Retain language of current statute.

Page 27, line 1, after "part,": Delete [THE] and Insert an.

Page 27, line 2, after "would": Insert "endanger the ability of the member insurer to fulfill its contractual obligations; ["

Page 27, line 10, before "investigate": Insert shall.

Page 27, line 16, before "notify": Insert shall.

Page 27, line 18, before "handle": Insert shall.

Page 27, line 21, after "state": Insert unless the use of a servicing facility located outside the state would result in operating cost savings of at least 10% and no material delay in claim payments.

Page 27, line 24, before "reimburse": Insert shall.

Section 7:

Page 27, line 28 through page 28, line 10: Delete entire section.

Section 9:

Page 29, lines 14 and 15 after "upon": Delete [DECLARATION OF A STATE OF EMERGENCY, FOLLOWING A FAILURE OF] and Insert a finding by the superior court that.

Page 29, line 15, after "directors": Insert has failed.

Section 11:

Page 29, line 27: Delete [SHALL] and Insert may.

Page 29, line 27, after "the": Delete [RATE OF].

Page 29, line 28: Delete [ESTABLISHED IN AS 21.80.060(a)(3)] and insert made under this chapter.

Page 29, line 29: Remove bracket after "insurer."

Page 30, line 1: Remove bracket after "association."

Page 30, line 5, after "policy": Insert A rating organization may make a provision in its filing of rates to recover an assessment under this chapter for its member and subscriber insurers. The assessment charge is not considered to be premium and is not subject to premium tax under AS 21.09.210.

Section 16:

Page 30, lines 25 and 26: Delete Section 16.

Section 17:

Page 30, line 27, after "January 1,": Delete [1990] and Insert 1991.

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION: SB 259  
PUBLISH DATE: 4/4/89

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
Title: An Act relating to Insurance BRU: Insurance  
Guarantee Funds  
Sponsor: Rules Components: Operations  
Requester: Governor

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
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REVENUE	0	0	0	0	0	0
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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 Mercurieff  
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)

STATE OF ALASKA  
1989 LEGISLATIVE SESSION

BILL VERSION CS SB 259 (L&C)  
PUBLISH DATE: 3/27/90

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Econ. Dev.  
Title: An Act relating to Insurance BRU: Insurance  
Guarantee Funds  
Sponsor: Rules Components: Operations  
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EXPENDITURES / REVENUES : (Thousands of Dollars)

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EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of dollars)

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

POSITIONS:

FULLTIME	0	0	0	0	0	0
PARTTIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

No fiscal impact on the division.

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

Approved by Commissioner: Larry Merculieff Phone: 465-2500  
Agency: Department of Commerce & Economic Development 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 (L&C)  
have no fiscal impact. This  
fiscal note is appropriate.  
Projections of no fiscal impact  
would continue through 1996.

Original sponsor(s): Rules/Governor

1 IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 259 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to insurance guaranty funds and to  
7 definitions of "impaired or impairment" and "insol-  
8 vent or insolvency" in laws relating to insurance;  
9 amending Rules 24(a) and 62(a), Alaska Rules of Civil  
10 Procedure; and providing for an effective date."

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

12 \* Section 1. AS 21.21.250 is amended by adding a new subsection to  
13 read:

14 (c) A domestic insurer may invest in notes or other evidence of  
15 indebtedness of the Alaska Life and Disability Insurance Guaranty  
16 Association established under AS 21.79.040, and the director may  
17 consider those notes and other evidence of indebtedness, that are not  
18 in default, as admitted assets of the insurer.

19 \* Sec. 2. AS 21.36 is amended by adding a new section to read:

20 Sec. 21.36.035. PROHIBITED ADVERTISEMENTS AND REPRESENTATIONS.

21 (a) A person may not place before the public an advertisement, an-  
22 nouncement, or statement that uses the existence of the Alaska Life  
23 and Disability Insurance Guaranty Association established under  
24 AS 21.79.040 to sell, solicit, or induce the public to purchase any  
25 form of insurance governed by AS 21.79.

26 (b) A person having a beneficial interest in any form of insur-  
27 ance governed by AS 21.79 may not represent to a lender or another  
28 person that the insurance or form of insurance has value as collateral  
29 for a loan because the insurance is covered by the Alaska Life and

1 Disability Insurance Guaranty Association. This subsection does not  
2 apply to the Alaska Life and Disability Insurance Guaranty Association  
3 itself, or to an entity that does not sell or solicit insurance.

4 \* Sec. 3. AS 21 is amended by adding a new chapter to read:

5 CHAPTER 79. ALASKA LIFE AND DISABILITY INSURANCE  
6 GUARANTY ASSOCIATION ACT.

7 Sec. 21.79.010. PURPOSE. The purpose of this chapter is to  
8 provide a mechanism to pay a covered claim under a life insurance  
9 policy, disability insurance policy, annuity contract, or supplemental  
10 contract; to protect a policyholder; and to avoid financial loss to a  
11 claimant or policyholder because of the impairment or insolvency of a  
12 member insurer issuing the policy or contract.

13 Sec. 21.79.020. SCOPE. (a) This chapter applies to a policy  
14 and contract specified in (b) of this section and to a person who

15 (1) except for a nonresident certificate holder under a  
16 group policy or contract, is the beneficiary, assignee, or payee of a  
17 person described in (2) of this subsection; and

18 (2) is the owner of, or a certificate holder under, the  
19 policy or contract, or, in the case of an unallocated annuity con-  
20 tract, is the contract holder, and who

21 (A) is a resident, or

22 (B) is not a resident, if the following conditions are

23 satisfied:

24 (i) the insurer that issued the policy or con-  
25 tract is domiciled in this state;

26 (ii) the insurer never held a license or certifi-  
27 cate of authority in the state in which the person resides;

28 (iii) the state in which the person resides has an  
29 association similar to the association created by this

1 chapter; and

2 (iv) the person is not eligible for coverage of  
3 the association of the state in which the person resides.

4 (b) This chapter applies to a person specified in (a) of this  
5 section and to a direct, nongroup life, disability, annuity, and  
6 supplemental policy or contract, to a certificate under a direct group  
7 life, disability, annuity, or supplemental policy or contract, and to  
8 an unallocated annuity contract issued by a member insurer, except as  
9 otherwise limited by this chapter.

10 (c) This chapter does not apply to

11 (1) that part of a policy or contract that is not guaran-  
12 teed by the insurer;

13 (2) that part of the risk borne by the policy or contract  
14 holder;

15 (3) a policy or contract of reinsurance, unless an assump-  
16 tion certificate has been issued;

17 (4) that part of a policy or contract on which the rate of  
18 interest

19 (A) averaged over the period of four years before the  
20 date on which the association becomes obligated with respect to  
21 the policy or contract, exceeds a rate of interest determined by  
22 subtracting two percentage points from the published monthly  
23 average for that same four-year period or for a lesser period if  
24 the policy or contract was issued less than four years before the  
25 association became obligated; and

26 (B) on and after the date on which the association  
27 becomes obligated with respect to the policy or contract, exceeds  
28 the rate of interest determined by subtracting three percentage  
29 points from the most recent published monthly average;

1 (5) a plan or program of an employer, association, or  
2 similar entity to provide life, disability, or an annuity benefit to  
3 an employee or member, to the extent that the plan or program is self-  
4 funded or uninsured, including a benefit payable by the employer,  
5 association, or similar entity under

6 (A) a multiple employer welfare arrangement as defined  
7 in 26 U.S.C. 414 (Employee Retirement Income Security Act of  
8 1974);

9 (B) a minimum premium group insurance plan;

10 (C) a stop-loss group insurance plan; or

11 (D) an administrative services only contract;

12 (6) that part of a policy or contract that provides a divi-  
13 dend or experience rating credit, or provides that a fee or allowance  
14 be paid to a person, including the policy or contract holder, in  
15 connection with the service to or administration of the policy or  
16 contract; and

17 (7) a policy or contract issued in this state by a member  
18 insurer at a time when it was not licensed or did not have a certifi-  
19 cate of authority to issue the policy or contract in this state.

20 (d) In this section, "published monthly average" means the  
21 monthly average of corporate bond yields as published by Moody's  
22 Investor Service, Inc., or its successor, or, if Moody's corporate  
23 bond yield average-monthly average corporates is not published, a  
24 substantially similar average established by regulation adopted by the  
25 director.

26 Sec. 21.79.025. LIABILITY LIMITS. The benefits for which the  
27 association may become liable may not exceed the lesser of

28 (1) the contractual obligations for which the insurer is  
29 liable or would have been liable if it were not an impaired or

1 insolvent insurer; or

2 (2) with respect to any one life, regardless of the number  
3 of policies or contracts, and subject to an aggregate of \$300,000,

4 (A) \$300,000 in life insurance death benefits, but not  
5 more than \$100,000 in net cash surrender and net cash withdrawal  
6 values for life insurance;

7 (B) \$100,000 in disability insurance benefits, includ-  
8 ing any net cash withdrawal values;

9 (C) \$100,000 in the present value of annuity benefits,  
10 including net cash surrender and net cash withdrawal values;

11 (3) with respect to any one contract holder, \$5,000,000 in  
12 unallocated annuity contract benefits, irrespective of the number of  
13 contracts held by that contract holder.

14 Sec. 21.79.030. CONSTRUCTION. This chapter shall be liberally  
15 construed to achieve the purposes set out in AS 21.79.010.

16 Sec. 21.79.040. ASSOCIATION ESTABLISHED. (a) There is estab-  
17 lished as a nonprofit legal entity the Alaska Life and Disability  
18 Insurance Guaranty Association. An insurer that issues an insurance  
19 policy described in AS 21.79.020(b) shall be a member of the asso-  
20 ciation as a condition of the insurer's authority to transact insur-  
21 ance in this state. The association shall perform its functions under  
22 a plan of operation established and approved under AS 21.79.080 and  
23 shall exercise its powers through the Board of Governors established  
24 under AS 21.79.050. For purposes of administration and assessment,  
25 the association shall maintain the following accounts:

26 (1) the disability insurance account; and

27 (2) the life insurance, annuity, and unallocated annuity  
28 contract account.

29 (b) The association is under the supervision of the director and

1 is subject to the insurance laws of the state. Except as provided in  
2 AS 21.79.110(b), meetings or records of the association may be open to  
3 the public upon majority vote of the Board of Governors of the asso-  
4 ciation.

5 Sec. 21.79.050. BOARD OF GOVERNORS. (a) The Board of Governors  
6 of the association consists of not less than five nor more than nine  
7 representatives of member insurers. Terms of office for board members  
8 shall be established in the plan of operation submitted under AS 21.-  
9 79.080. Member insurers shall select the board members, subject to  
10 the approval of the director. A vacancy on the board shall be filled  
11 for the unexpired term by a majority vote of the remaining board  
12 members, subject to the approval of the director.

13 (b) Before the director approves the selection of a board member  
14 or appoints a board member, the director shall consider whether all  
15 member insurers are fairly represented on the board.

16 (c) A board member is not entitled to compensation by the asso-  
17 ciation. However, a board member may be reimbursed from the assets of  
18 the association for expenses incurred while performing duties as a  
19 member of the board.

20 Sec. 21.79.060. POWERS AND DUTIES OF THE ASSOCIATION. (a) If a  
21 domestic insurer becomes impaired, the association may, with the  
22 approval of the director,

23 (1) guarantee, assume, reinsure, or provide for the guaran-  
24 tee, assumption, or reinsurance of the policies or contracts of the  
25 impaired insurer;

26 (2) provide money, pledges, notes, guarantees, or other  
27 means that are necessary to act under (1) of this subsection and to  
28 assure payment of the contractual obligations of the impaired insurer  
29 until those obligations are guaranteed, reinsured, or assumed; or

1 (3) loan money to the impaired insurer.

2 (b) If a member insurer is an impaired insurer, and the insurer  
3 is not paying claims in a timely manner, the association may

4 (1) take any of the actions specified in (a) of this sec-  
5 tion, or

6 (2) provide a substitute benefit in lieu of the contractual  
7 obligation of the impaired insurer solely for a

8 (A) disability claim;

9 (B) periodic annuity benefit payment;

10 (C) death benefit;

11 (D) supplemental benefit; and

12 (E) cash withdrawal for a policy or contract owner who  
13 petitions under a claim of emergency or hardship under a standard  
14 proposed by the association and approved by the director.

15 (c) The actions specified in (b) of this section may not be  
16 taken unless

17 (1) the law of the impaired insurer's state of domicile  
18 provides that until all payments of or on account of a contractual  
19 obligation of the impaired insurer by a guaranty association, along  
20 with all expenses and interest on all payments and expenses, have been  
21 repaid to the guaranty association or a repayment plan by the impaired  
22 insurer has been approved by a guaranty association,

23 (A) a delinquency proceeding may not be dismissed;

24 (B) neither the impaired insurer nor its assets may be  
25 returned to the control of its shareholders or private manage-  
26 ment; and

27 (C) solicitation or acceptance of new business or  
28 restoration of a suspended or revoked license may not be permit-  
29 ted; and

1 (2) if the impaired insurer is a

2 (A) domestic insurer, the insurer has been placed  
3 under an order of rehabilitation by a superior court in this  
4 state; or

5 (B) foreign or alien insurer,

6 (i) the insurer has been prohibited from solicit-  
7 ing or accepting new business in this state;

8 (ii) the insurer's certificate of authority has  
9 been suspended or revoked in this state; and

10 (iii) a petition for rehabilitation or liquidation  
11 has been filed in a court of competent jurisdiction in the  
12 insurer's state of domicile by the insurance commissioner of  
13 that state.

14 (d) If a member insurer becomes insolvent, the association  
15 shall, with the approval of the director,

16 (1) guarantee, assume, reinsure, or provide for the guaran-  
17 tee, assumption, or reinsurance of the covered policies of the insol-  
18 vent insurer held by residents;

19 (2) assure payment to residents of the contractual obliga-  
20 tions of the insolvent insurer;

21 (3) provide money, pledges, notes, guarantees, or other  
22 means necessary to discharge the insurer's duties under this subsec-  
23 tion; or

24 (4) with respect only to life and disability insurance  
25 policies, provide benefits and coverages required under (e) of this  
26 section.

27 (e) When proceeding under (b)(2) or (d)(4) of this section, the  
28 association shall, with respect to a life or disability insurance  
29 policy,

1 (1) assure payment of benefits, other than terms of conver-  
2 sion and renewability, for a premium identical to the premium that  
3 would have been payable under a policy of the insolvent insurer for  
4 claims incurred with respect to

5 (A) a group policy, not later than the earlier of the  
6 next renewal date under the policy or contract or 45 days, but in  
7 no event less than 30 days, after the date on which the associa-  
8 tion becomes obligated with respect to the policy;

9 (B) an individual policy, not later than the earlier  
10 of the next renewal date, if any, under the policy or one year,  
11 but in no event less than 30 days, from the date on which the  
12 association becomes obligated with respect to the policy;

13 (2) make a diligent effort to provide a known insurer or a  
14 group policyholder, with respect to a group policy, 30 days notice of  
15 the termination of the benefits provided;

16 (3) with respect to an individual policy, make available to  
17 each known insured, or owner if other than the insured, and with  
18 respect to an individual formerly insured under a group policy who is  
19 not eligible for replacement group coverage, substitute coverage on an  
20 individual basis under the provisions of (f) of this section, if the  
21 insured had a right under law or the terminated policy to convert  
22 coverage to individual coverage, to continue an individual policy in  
23 force until a specified age, or for a specific time during which the  
24 insurer did not have the unilateral right to make changes in any  
25 provision of the policy or had a right only to make changes in premium  
26 by class.

27 (f) With respect to life and disability insurance policies, the  
28 association

29 (1) in providing the substitute coverage under (e)(3) of

1 this section, shall either offer to reissue the terminated coverage or  
2 to issue an alternate policy;

3 (2) shall offer alternative or reissued policies without  
4 requiring evidence of insurability, and may not provide for any wait-  
5 ing period or exclusion that would not have applied under the termi-  
6 nated policy; and

7 (3) may reinsure any alternative or reissued policy.

8 (g) An alternative life or disability policy must,

9 (1) if adopted by the association, be subject to the ap-  
10 proval of the director; the association may adopt alternative policies  
11 of various types for future issuance without regard to a particular  
12 impairment or insolvency;

13 (2) contain at least the minimum statutory provisions  
14 required in this state and provide benefits that may not be unrea-  
15 sonable in relation to the premium charged; the association shall set  
16 the premium under a table of rates that it shall adopt; the premium  
17 must reflect the amount of insurance to be provided and the age and  
18 class of risk of each insured, but may not reflect changes in the  
19 health of the insured after the original policy was last underwritten;

20 (3) if issued by the association, provide coverage of a  
21 type similar to that of the policy issued by the impaired or insolvent  
22 insurer, as determined by the association.

23 (h) If the association elects to reissue terminated coverage at  
24 a premium rate different from that charged under the terminated poli-  
25 cy, the premium shall be set by the association according to the  
26 amount of insurance provided, the age and class of risk, and is sub-  
27 ject to the approval of the director or by a court of competent juris-  
28 diction.

29 (i) The association's obligations with respect to coverage under

1 a policy of an impaired or insolvent insurer or under any reissue or  
2 alternative policy cease on the date the coverage or policy is re-  
3 placed by another similar policy by the policyholder, the insured, or  
4 the association.

5 (j) When proceeding under (b)(2) or (d) of this section with  
6 respect to a policy or contract carrying guaranteed minimum interest  
7 rates, the association shall assure the payment or crediting of a rate  
8 of interest consistent with AS 21.79.020(c)(4).

9 (k) Nonpayment of a premium within 31 days after the date re-  
10 quired under the terms of a guaranteed, assumed, alternative or reis-  
11 sued policy or contract or substitute coverage terminates the obliga-  
12 tions of the association under the policy or coverage except with  
13 respect to the claims incurred or the net cash surrender value that  
14 may be due under the provisions of this chapter.

15 (l) A premium due for coverage after entry of an order of liq-  
16 uidation of an insolvent insurer belongs to and is payable at the  
17 direction of the association, and the association is liable for un-  
18 earned premiums due to a policy or contract owner arising after the  
19 entry of the order.

20 (m) The protection provided by this chapter does not apply if  
21 guaranty protection is provided to residents of this state by the laws  
22 of another state or jurisdiction that is the domicile of the impaired  
23 or insolvent insurer.

24 (n) In carrying out its duties under (b), (c), and (d) of this  
25 section, the association may impose a permanent policy or contract  
26 lien under a guarantee, assumption, or reinsurance agreement, if the  
27 policy or contract lien is approved by a court, and the court finds  
28 that

29 (1) the amount that may be assessed under this chapter is

1 less than the amount needed to assure full and prompt performance of  
2 the insolvent insurer's contractual obligations; or

3 (2) the economic or financial condition that affects member  
4 insurers is sufficiently adverse that the imposition of a policy or  
5 contract lien is in the public interest.

6 (o) Before taking action under (b) - (e) of this section, the  
7 association may request the superior court to impose an injunction  
8 against the payment of a cash value and policy loan, or the exercise  
9 of another right to withdraw funds held in connection with a policy or  
10 contract, in addition to a contractual provision for deferral of a  
11 cash or policy loan value.

12 (p) If the association fails to take action under (b) - (e) of  
13 this section within a reasonable period of time after a member insurer  
14 becomes insolvent, the director shall assume the powers of the asso-  
15 ciation under (b) - (e) of this section.

16 (q) If requested by the director, the association may assist and  
17 advise the director concerning rehabilitation, payment of claims,  
18 continuance of coverage, or the performance of other contractual  
19 obligations of an impaired or insolvent insurer.

20 (r) The association is entitled to appear in a court proceeding  
21 in the state involving an impaired or insolvent insurer. The standing  
22 conferred by this subsection extends to all matters germane to the  
23 powers and duties of the association, including proposals to reinsure  
24 or guarantee a covered policy of the impaired or insolvent insurer and  
25 the determination of a covered policy and a contractual obligation.

26 (s) A person who receives benefits under this chapter is con-  
27 sidered to have assigned the rights under the covered policy to the  
28 association to the extent of the benefits received under this chapter.  
29 The association may require an assignment to the association of those

1 rights by the payees, policy or contract owner, beneficiary, insured,  
2 or annuitant before a person receives the rights or benefits conferred  
3 by this chapter. The association is subrogated to these rights  
4 against the assets of an insolvent insurer. The priority of the  
5 association's subrogation right to the assets of the insolvent insurer  
6 is the same as the priority of the person entitled to benefits under  
7 this chapter.

8 (t) The association may

9 (1) enter into contracts that are necessary or proper to  
10 carry out the provisions of this chapter;

11 (2) sue or be sued, and take legal action necessary or  
12 proper for recovery of an unpaid assessment under AS 21.79.070;

13 (3) borrow money to carry out the purposes of this chapter;

14 (4) employ or retain those persons necessary to handle the  
15 financial transactions of the association and other functions under  
16 this chapter;

17 (5) negotiate and contract with a liquidator, rehabil-  
18 itator, conservator, or ancillary receiver to carry out the powers and  
19 duties of the association;

20 (6) exercise, for the purposes of this chapter and to the  
21 extent approved by the director, the powers of a domestic life or  
22 disability insurer; however, the association may not issue insurance  
23 policies or annuity contracts other than those issued to perform the  
24 contractual obligations of an impaired or insolvent insurer;

25 (7) take legal action to prevent the payment of improper  
26 claims;

27 (8) join an organization of one or more other state asso-  
28 ciations with similar purposes; and

29 (9) perform all other acts necessary or proper to implement

1 this chapter.

2 Sec. 21.79.070. ASSESSMENTS. (a) For the purpose of providing  
3 funds necessary to carry out the powers and duties of the association,  
4 the Board of Governors shall assess the member insurers, separately  
5 for each account, at a time and for an amount that the board finds  
6 necessary. Assessments are due not less than 30 days after prior  
7 written notice to the member insurers and accrue interest at 10 per-  
8 cent a year from the date payment is due.

9 (b) There shall be two assessments as follows:

10 (1) class A assessments shall be made for the purpose of  
11 meeting administrative and legal costs and other expenses and examina-  
12 tions conducted under the authority of AS 21.79.060; class A assess-  
13 ments may be made whether or not related to a particular impaired or  
14 insolvent insurer;

15 (2) class B assessments are post assessment charges and  
16 shall be made only as necessary to carry out the powers and duties of  
17 the association with regard to an impaired or an insolvent insurer.

18 (c) The amount of a class A assessment shall be determined by  
19 the board and may be made on a pro rata or nonpro rata basis. If a  
20 pro rata assessment is made, the board may provide that it be credited  
21 against future class B assessments. A nonpro rata assessment may not  
22 exceed \$250 per member insurer in a calendar year. The amount of a  
23 class B assessment shall be allocated for assessment purposes among  
24 the accounts under an allocation formula that may be based on the  
25 premiums or reserves of the impaired or insolvent insurer or by  
26 another standard determined by the board as being fair and reasonable  
27 under the circumstances.

28 (d) Class B assessments shall be based on the premiums received  
29 on business in this state by each assessed member insurer or for

1 policies or contracts covered by each account in proportion to the  
2 premiums received on business in this state by all assessed member  
3 insurers during the three calendar years preceding the year in which  
4 the insolvency or impairment occurred.

5 (e) The association may abate or defer, in whole or in part, the  
6 assessment of a member insurer if a payment of the assessment would  
7 endanger the ability of the member insurer to fulfill its contractual  
8 obligations. The amount by which an assessment against a member  
9 insurer is abated or deferred may be assessed against the other member  
10 insurers in a manner consistent with the basis for assessments set  
11 forth in (c) of this section.

12 Sec. 21.79.080. PLAN OF OPERATION. (a) The association shall  
13 submit to the director a plan of operation and any amendments to  
14 assure the fair, reasonable, and equitable administration of the  
15 association. The plan of operation and any amendments take effect on  
16 the written approval of the plan by the director.

17 (b) Notwithstanding (a) of this section, if the association  
18 fails to submit a plan of operation acceptable to the director by  
19 July 1, 1991, or if at a later time the association fails to submit  
20 suitable amendments to the plan, the director shall, after notice and  
21 hearing, adopt regulations to implement this chapter. These regula-  
22 tions remain in effect until amended or repealed by the director or  
23 superseded by a plan submitted by the association that is approved by  
24 the director.

25 (c) A member insurer shall comply with the plan of operation.  
26 The plan of operation must

27 (1) establish procedures for handling assets of the asso-  
28 ciation;

29 (2) establish the amount and method of reimbursing members

1 of the board under AS 21.79.050(c);

2 (3) establish regular places and times for meetings of the  
3 board in the state;

4 (4) establish procedures for keeping records of all finan-  
5 cial transactions of the association, its agents, and the board;

6 (5) establish terms of office for members of the board, and  
7 establish procedures for the selection of the members of the board and  
8 for the director's approval of the members selected;

9 (6) establish additional procedures for assessments under  
10 AS 21.79.070; and

11 (7) contain additional provisions necessary or proper for  
12 the association to exercise its powers and duties.

13 (d) The plan of operation may delegate the powers and duties of  
14 the association, other than those under AS 21.79.060(t)(3) and 21.79.-  
15 070, to a corporation or other organization performing functions  
16 similar to those of the association, or its equivalent, in two or more  
17 states. The association shall reimburse the corporation or orga-  
18 nization for a payment made for the association and for performing a  
19 function of the association. A delegation under this subsection takes  
20 effect only with the approval of the board and the director.

21 Sec. 21.79.090. POWERS AND DUTIES OF THE DIRECTOR. (a) Upon  
22 request of the board, the director shall provide the association with  
23 a statement of the premiums in the appropriate states for each member  
24 insurer.

25 (b) The director may

26 (1) after notice and hearing as provided in AS 21.06.180 -  
27 21.06.230, suspend or revoke the certificate of authority to transact  
28 insurance in this state of a member insurer that fails to pay an  
29 assessment when due or fails to comply with the plan of operation;

1 (2) levy a penalty on a member insurer that fails to comply  
2 with the plan of operation; or

3 (3) levy a penalty on a member insurer that fails to pay an  
4 assessment when due; if the unpaid assessment is more than \$2,000, the  
5 penalty may not exceed five percent of the unpaid assessment per month  
6 or be less than \$100 per month; if the unpaid assessment is \$2,000 or  
7 less, the penalty is \$100 per month.

8 (c) An action of the board or the association may be appealed to  
9 the director by a member insurer if the appeal is taken within 30 days  
10 after the date the notice of the action is mailed. Final action or  
11 order of the director may be reviewed by the superior court.

12 (d) The liquidator, rehabilitator, or conservator of an impaired  
13 insurer may notify all interested persons of the effect of this chap-  
14 ter.

15 Sec. 21.79.100. PREVENTION OF INSOLVENCIES. (a) The director  
16 shall notify, by mail, the commissioner, director, or superintendent  
17 of insurance of the other states, territories of the United States,  
18 and the District of Columbia, within 30 days after the date on which  
19 the following actions are taken against a member insurer:

20 (1) revocation of a license;

21 (2) suspension of a license; or

22 (3) a formal order that a member insurer restrict its  
23 premium writing, obtain additional contributions to surplus, withdraw  
24 from the state, reinsure all or any part of its business, or increase  
25 capital, surplus, or any other account for the security of policy-  
26 holders or creditors.

27 (b) The director shall report to the board if an action set out  
28 in (a) of this section is taken or a report is received from a state  
29 insurance regulator that similar action has been taken in another

1 state. The report to the board must contain all significant details  
2 of the action taken or the report received from another insurance  
3 regulator.

4 (c) The director shall report to the board if there is reason-  
5 able cause to believe, during or after an examination of a member  
6 insurer, that the company may be impaired or insolvent.

7 (d) The director shall furnish the board with the NAIC Insurance  
8 Regulatory Information System (IRIS) ratios and a listing of companies  
9 not included in the ratios developed by the NAIC, and the board may  
10 use that information to carry out its duties and responsibilities  
11 under this section. The information shall be kept confidential by the  
12 board until it is made public by the director.

13 (e) The director may seek the board's advice and recommendations  
14 concerning the financial condition of member insurers and insurers who  
15 apply for admission to transact insurance business in the state.

16 (f) The board shall

17 (1) make reports and recommendations to the director relat-  
18 ing to the solvency, liquidation, rehabilitation, or conservation of a  
19 member insurer or the solvency of insurers who apply to transact  
20 insurance business in the state; the director and the board shall keep  
21 the reports and recommendations confidential;

22 (2) notify the director of any information that indicates  
23 that a member insurer may be impaired or insolvent.

24 (g) The board may request the director to examine a member  
25 insurer that the board believes may be an impaired or insolvent in-  
26 surer. Within 30 days after receipt of the request, the director  
27 shall begin the examination. The examination may be conducted as a  
28 NAIC examination or may be conducted by persons the director desig-  
29 nates. The cost of examination shall be paid by the association, and