

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
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1 the examination report shall be treated in the same manner as other  
2 examination reports under AS 21.06. The completed examination report  
3 may not be released to the board before it is released to the public,  
4 but this does not preclude the director from complying with (c) of  
5 this section. The director shall notify the board when the examina-  
6 tion is completed. The request for an examination shall be kept on  
7 file by the director and may not be released to the public before the  
8 release of the examination report to the public.

9 (h) The board may make recommendations to the director for  
10 detecting and preventing insurer insolvencies.

11 (i) The board shall, at the conclusion of an insurer insolvency  
12 in which the association was required to pay covered claims, prepare a  
13 report to the director that sets out information concerning the his-  
14 tory and cause of the insolvency. The board shall cooperate with the  
15 boards of guaranty associations in other states in preparing a report  
16 on the history and causes of insolvency of an insurer, and may adopt  
17 by reference a report prepared by other associations.

18 Sec. 21.79.110. MISCELLANEOUS PROVISIONS. (a) This chapter  
19 does not reduce the liability for unpaid assessments of an insured of  
20 an impaired or insolvent insurer operating under an insurance policy  
21 with assessment liability.

22 (b) The association shall keep records of negotiations and  
23 meetings relating to its activities. Records of negotiations or  
24 meetings may only be made public under AS 21.79.040(b)

25 (1) after the termination of a liquidation, rehabilitation,  
26 or conservation proceeding that involves the impaired or insolvent  
27 insurer;

28 (2) after the insurer is no longer impaired or insolvent;

29 or

1 (3) upon the order of a court of competent jurisdiction.

2 (c) The association is considered to be a creditor of the im-  
3 paired or insolvent insurer to the extent of assets attributable to  
4 covered policies that are reduced by an amount to which the asso-  
5 ciation is entitled under AS 21.79.060(s). Assets of the impaired or  
6 insolvent insurer that are attributable to covered policies shall be  
7 used to continue all covered policies and pay all contractual obliga-  
8 tions of the impaired or insolvent insurer as required by this chap-  
9 ter. Assets attributable to covered policies include those assets  
10 that should have been established as reserves for the covered poli-  
11 cies. These assets are determined by multiplying the total assets of  
12 the impaired or insolvent insurer by a fraction, the numerator of  
13 which is the amount that should have been established as reserves for  
14 the covered policies of the impaired or insolvent insurer, and the  
15 denominator of which is the amount that should have been established  
16 as reserves for all policies of insurance issued in all states by that  
17 insurer.

18 (d) Before the termination of a liquidation, rehabilitation, or  
19 conservation proceeding, the court may consider the contributions of  
20 the respective parties, including the association, the shareholders  
21 and policyholders of the impaired or insolvent insurer, and any other  
22 party with a bona fide interest, in distributing the ownership rights  
23 of the impaired or insolvent insurer. The court shall consider the  
24 welfare of policyholders of the continuing or successor insurers. A  
25 distribution to stockholders of an impaired or insolvent insurer may  
26 not be made until the total amount of valid claims of the association  
27 for money spent in carrying out its powers and duties under AS 21.-  
28 79.060, with respect to the insurer, has been fully recovered by the  
29 association.

1 (e) The receiver appointed under an order for liquidation or  
2 rehabilitation of a domestic insurer may recover the amount distribut-  
3 ed, other than stock dividends paid by the insurer on its capital  
4 stock, to a controlling affiliate, as defined in AS 21.22.200, during  
5 the five years preceding the petition for liquidation or rehabilita-  
6 tion. However, if the insurer shows that, when paid, the distribution  
7 was lawful and reasonable, and that the distribution might adversely  
8 affect the ability of the insurer to fulfill the insurer's contractual  
9 obligations, the receiver may not recover the amount distributed to  
10 the controlling affiliate. The following provisions apply to recovery  
11 of amounts distributed:

12 (1) a controlling affiliate of the insurer at the time the  
13 distribution was paid is liable for a distribution received; a con-  
14 trolling affiliate at the time the distribution was declared is liable  
15 for a distribution that would have been received if the distribution  
16 had been paid at that time; if two or more persons are liable with  
17 respect to the same distribution, they are jointly and severally  
18 liable;

19 (2) if an affiliate liable under (1) of this subsection is  
20 insolvent, all its controlling affiliates at the time the dividend was  
21 paid are jointly and severally liable for any amount that is not  
22 recovered from the insolvent affiliate;

23 (3) the amount needed to pay the contractual obligations of  
24 the insolvent insurer that exceeds the available assets of the insol-  
25 vent insurer is the greatest amount that may be recovered under this  
26 subsection.

27 Sec. 21.79.120. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT.  
28 The association may be examined by the director. The board shall  
29 submit to the director, not later than May 1 of each year, a certified

1 financial report for the preceding calendar year in a form approved by  
2 the director and a report of its activities during the preceding  
3 calendar year. Nothing in AS 21.79.110(b) limits the duty of the  
4 association to report under this section.

5 Sec. 21.79.130. TAX EXEMPTION. The association is exempt from  
6 payment of all fees and taxes levied by the state or its political  
7 subdivisions, other than real property taxes.

8 Sec. 21.79.140. CIVIL IMMUNITY. The association and its agents  
9 and employees, members of the Board of Governors, and the director and  
10 the director's representatives are not civilly liable for action taken  
11 by them to perform duties under this chapter.

12 Sec. 21.79.150. STAY OF PROCEEDING ENFORCING JUDGMENT. Pro-  
13 ceedings that involve the enforcement of a judgment of liquidation,  
14 rehabilitation, or conservation against an impaired or insolvent  
15 insurer may not be taken until at least 60 days after the entry of the  
16 judgment.

17 Sec. 21.79.900. DEFINITIONS. In this chapter,

18 (1) "account" means an account created under AS 21.79.040;

19 (2) "association" means the Alaska Life and Disability  
20 Insurance Guaranty Association;

21 (3) "board" means the Board of Governors of the Alaska Life  
22 and Disability Insurance Guaranty Association;

23 (4) "contractual obligation" means an obligation under a  
24 policy, contract, or certificate under a group policy or contract, or  
25 a portion of one;

26 (5) "covered policy" means a policy or contract described  
27 in AS 21.79.020(a) and (b);

28 (6) "member insurer" means an insurer licensed to transact  
29 insurance in the state that issues a policy described in

1 AS 21.79.020(a) and (b), or a subscriber contract providing benefits  
2 described in AS 21.87.120(a)(2) - (4) or 21.87.130(a)(2) and (3), and  
3 includes an insurer whose license or certificate of authority in this  
4 state may have been suspended, revoked, not renewed, or voluntarily  
5 withdrawn; "member insurer" but does not include

6 (A) a health maintenance organization;

7 (B) a fraternal benefit society;

8 (C) a mandatory state pooling plan;

9 (D) a mutual assessment company or an entity that  
10 operates on an assessment basis;

11 (E) an insurance exchange; or

12 (F) a hospital or medical service organization;

13 (7) "NAIC" means the National Association of Insurance  
14 Commissioners;

15 (8) "premium" means the amount received on a covered policy  
16 or contract less a premium, consideration, and deposit returned, and  
17 less a dividend and experience credit; "premium" does not include an  
18 amount charged for an assessment or an amount received for a policy or  
19 contract or for the portions of a policy or contract for which cover-  
20 age is not provided under AS 21.79.020(b) and (c);

21 (9) "resident" means a person who resides in this state at  
22 the time a member insurer is determined to be an impaired or insolvent  
23 insurer and to which a contractual obligation is owed; a person may be  
24 a resident of only one state, which in the case of a person other than  
25 a natural person shall be the principal place of business;

26 (10) "supplemental contract" means an agreement entered into  
27 for the distribution of policy or contract benefits;

28 (11) "unallocated annuity contract" means an annuity contract  
29 or group annuity certificate that is not issued to and owned by an

1 individual, except to the extent of annuity benefits guaranteed to ar  
2 individual by an insurer under the contract or certificate.

3 Sec. 21.79.990. SHORT TITLE. This chapter may be cited as the  
4 Alaska Life and Disability Insurance Guaranty Association Act.

5 \* Sec. 4. AS 21.80.020 is amended to read:

6 Sec. 21.80.020. APPLICABILITY. This chapter applies to all  
7 kinds of direct insurance written by an admitted insurer [,] except  
8 life, title, surety, disability, credit, mortgage guaranty, and wet  
9 [OCEAN] marine and transportation insurance for vessels 100 feet or  
10 more in length as measured at the water line.

11 \* Sec. 5. AS 21.80.040 is amended to read:

12 Sec. 21.80.040. CREATION OF ASSOCIATION. There is created a  
13 nonprofit incorporated legal entity to be known as the Alaska Insur-  
14 ance Guaranty Association. All insurers defined as member insurers in  
15 AS 21.80.180(6) shall be and remain members of the association as a  
16 condition of their authority to transact insurance in this state. The  
17 association shall perform its functions under a plan of operation  
18 established and approved under AS 21.80.070 and shall exercise its  
19 powers through a board of directors established under AS 21.80.050.  
20 For purposes of administration and assessment, the association shall  
21 be divided into three separate accounts:

22 (1) the workers' compensation insurance account;  
23 (2) the automobile insurance account; and  
24 (3) the account for all other insurance to which this  
25 chapter applies, including coverage on vessels less than 100 feet in  
26 length as measured at the water line.

27 \* Sec. 6. AS 21.80.050(a) is amended to read:

28 (a) The board of directors of the association consists of not  
29 fewer than five nor more than nine persons serving terms as

1 established in the plan of operation. The members of the board shall  
2 be selected by member insurers subject to the approval of the direc-  
3 tor. Vacancies of the board shall be filled for the remaining period  
4 of the term in the same manner as initial appointments. If a member  
5 is not selected to fill a vacancy on the board of directors within 90  
6 days of the vacancy, the director may appoint a member for the remain-  
7 ing period of the term.

8 \* Sec. 7. AS 21.80.060(a) is amended to read:

9 (a) The association [SHALL]

10 (1) is [BE] obligated to the extent of the covered claims  
11 existing before the determination of insolvency and arising within 30  
12 days after the determination of insolvency by a court of competent  
13 jurisdiction if the insolvent insurer or receiver ceases to pay any or  
14 all claims while preparing and adopting a plan of liquidation or  
15 having entered into a plan of liquidation approved by the court under  
16 AS 21.78, or before the policy expiration date if less than 30 days  
17 after the determination, or before the insured replaces the policy or  
18 causes its cancellation[, ] if the insured does so within 30 days of  
19 the determination, but this obligation includes only that amount of  
20 each covered claim that [WHICH] is in excess of \$100 and is less than  
21 \$500,000 [\$300,000], except that the association shall pay the full  
22 amount of any covered claim arising out of a workers' compensation  
23 policy; in no event is the association obligated to a policyholder or  
24 claimant in an amount in excess of the obligation of the insolvent  
25 insurer under the policy from which the claim arises;

26 (2) is [BE] considered the insurer to the extent of its  
27 obligation on the covered claims and to that extent has all rights,  
28 duties, and obligations of the insolvent insurer as if the insurer had  
29 not become insolvent;

1 (3) shall allocate claims paid and expenses incurred among  
2 the three accounts separately, and assess member insurers separately  
3 for each account amounts necessary to pay the obligation of the asso-  
4 ciation under (a)(1) of this section subsequent to an insolvency, the  
5 expenses of handling covered claims subsequent to an insolvency, the  
6 cost of examinations under AS 21.80.110, and other expenses authorized  
7 by this chapter; the assessments of each member insurer must [SHALL]  
8 be in the proportion that the net direct written premiums of the  
9 member insurer for the preceding calendar year on the kinds of insur-  
10 ance in the account bears to the net direct written premiums of all  
11 member insurers for the preceding calendar year on the kinds of insur-  
12 ance in the account; each member insurer shall be notified of the  
13 assessment not later than 30 days before it is due; a member insurer  
14 may not be assessed in any year on any account an amount greater than  
15 two per cent of the member insurer's net direct written premiums for  
16 the preceding calendar year on the kinds of insurance in the account;  
17 if the maximum assessment, together with the other assets of the asso-  
18 ciation in any account, does not provide in any one year in any ac-  
19 count an amount sufficient to make all necessary payments from that  
20 account, the funds available shall be prorated and the unpaid portion  
21 shall be paid as soon thereafter as funds become available; the asso-  
22 ciation may exempt or defer, in whole or in part, an [THE] assessment  
23 of any member insurer, if the assessment would endanger the ability of  
24 the member insurer to fulfill the insurer's contractual obligations or  
25 cause the member insurer's financial statement to reflect amounts of  
26 capital or surplus less than the minimum amounts required for a cer-  
27 tificate of authority by any jurisdiction in which the member insurer  
28 is authorized to transact insurance; each member insurer may set off  
29 against an assessment, authorized payments made on covered claims and

1 expenses incurred in the payment of these claims by the member insurer  
2 if they are chargeable to the account for which the assessment is  
3 made;

4 (4) shall investigate claims brought against the associa-  
5 tion and adjust, compromise, settle, and pay covered claims to the  
6 extent of the association's obligation and deny all other claims and  
7 may review settlements, releases, and judgments to which the insolvent  
8 insurer or its insureds were parties to determine the extent to which  
9 settlements, releases, and judgments may be properly contested;

10 (5) shall notify persons [AS THE DIRECTOR DIRECTS] under  
11 AS 21.80.080(b)(1);

12 (6) shall handle claims through its employees or through  
13 one or more insurers or other persons designated as servicing facili-  
14 ties; a servicing facility shall operate and maintain its principal  
15 office in this state unless the use of a servicing facility located  
16 outside of the state would result in operating cost savings of at  
17 least 10 percent and would not result in material delay in claim  
18 payments; designation of a servicing facility is subject to the ap-  
19 proval of the director, but designation may be declined by a member  
20 insurer;

21 (7) shall reimburse each servicing facility for obligations  
22 of the association paid by the facility and for expenses incurred by  
23 the facility while handling claims on behalf of the association and  
24 shall pay the other expenses of the association authorized by this  
25 chapter.

26 \* Sec. 8. AS 21.80.070(a) is amended to read:

27 (a) The association shall submit to the director a plan of  
28 operation and any amendments necessary or suitable to assure the fair,  
29 reasonable, and equitable administration of the association. The plan

1 of operation and amendments become effective upon approval in writing  
2 by the director. If [THE ASSOCIATION FAILS TO SUBMIT A SUITABLE PLAN  
3 OF OPERATION BY NOVEMBER 4, 1970 OR IF AT ANY SUBSEQUENT TIME] the  
4 association fails to submit suitable amendments to the plan, the  
5 director shall, after notice and hearing, adopt reasonable regulations  
6 necessary or advisable to effectuate the provisions of this chapter.  
7 These regulations shall continue in force until modified by the direc-  
8 tor or superseded by a plan submitted by the association and approved  
9 by the director.

10 \* Sec. 9. AS 21.80.080(b) is amended to read:

11 (b) The director may

12 (1) require that the association notify the insureds of the  
13 insolvent insurer and any other interested parties of the determina-  
14 tion of insolvency and of their rights under this chapter; this noti-  
15 fication shall be by mail at their last known address, when available,  
16 but if sufficient information for notification by mail is not avail-  
17 able, notice by publication in a newspaper of general circulation is  
18 sufficient;

19 (2) suspend or revoke, after notice and hearing, the certi-  
20 ficate of authority to transact insurance in this state of any member  
21 insurer that [WHICH] fails to pay an assessment when due or fails to  
22 comply with the plan of operation; as an alternative, the director may  
23 levy a fine on any member insurer that [WHICH] fails to pay an assess-  
24 ment when due; this fine may not exceed five per cent of the unpaid  
25 assessment per month or portion of a month, except that a [NO] fine  
26 may not be less than \$250 [\$100] a month;

27 (3) revoke the designation of any servicing facility upon a  
28 finding that claims are being handled unsatisfactorily;

29 (4) upon a finding by the superior court that the board of

1 directors has failed to comply with a requirement of this chapter or  
2 the plan of operation, assume the powers of the board of directors  
3 under AS 21.80.060.

4 \* Sec. 10. AS 21.80.120 is amended to read:

5       Sec. 21.80.120. EXAMINATION OF THE ASSOCIATION. The association  
6 is subject to examination and regulation by the director. The board  
7 of directors shall submit, not later than March 30 of each year, a  
8 certified financial report for the preceding calendar year in a form  
9 approved by the director.

10 \* Sec. 11. AS 21.80.140 is amended to read:

11       Sec. 21.80.140. RECOGNITION OF ASSESSMENTS IN RATES. The rates  
12 and premiums charged for insurance policies to which this chapter  
13 applies may [SHALL] include amounts sufficient to offset the assess-  
14 ment made under this chapter and [RECOUP A SUM EQUAL TO THE AMOUNTS]  
15 paid to the association by the member insurer less [ANY] amounts  
16 returned to the member insurer by the association and these rates may  
17 [SHALL; not be considered excessive because they contain an amount  
18 reasonably calculated to offset [RECOUP] assessments paid by the  
19 member insurer. The amount charged on a policy shall be shown sepa-  
20 rate from the premium for coverage on the policy. A rating organi-  
21 zation may make a provision in its rate filing to recover an assess-  
22 ment under this chapter for the organization's member and subscriber  
23 insurers. The assessment charge is not considered a premium and is  
24 not subject to the premium tax imposed under AS 21.09.210.

25 \* Sec. 12. AS 21.90.900 is amended by adding new paragraphs to read:

26       (24) "impaired" or "impairment" means that

27               (A) an insurer's policyholder surplus is greater than  
28 zero but less than that required by AS 21.09.070 for the authori-  
29 ty to transact the kinds of insurance being transacted; or

1 (B) an insurer is being operated in a manner such that  
2 irreparable loss and injury has occurred, or might occur, to the  
3 insurer or to the public;

4 (25) "insolvent" or "insolvency" means that an insurer's  
5 policyholder surplus is less than or equal to zero.

6 \* Sec. 13. AS 21.80.060(b)(6), 21.80.070(d), and 21.80.170 are re-  
7 pealed.

8 \* Sec. 14. AS 21.79.150, enacted in sec. 3 of this Act, has the effect  
9 of changing Rule 62(a), Alaska Rules of Civil Procedure, by providing for  
10 an automatic 60-day stay of action in a liquidation, rehabilitation, or  
11 conservation proceeding.

12 \* Sec. 15. AS 21.79.060(r), enacted in sec. 3 of this Act, has the  
13 effect of amending Rule 24(a), Alaska Rules of Civil Procedure, by giving  
14 the Alaska Life and Disability Insurance Guaranty Association the right to  
15 intervene in certain civil actions.

16 \* Sec. 16. INITIAL ORGANIZATION OF ASSOCIATION. To organize the Alaska  
17 Life and Disability Insurance Guaranty Association established under  
18 AS 21.79.040, as enacted by sec. 3 of this Act, and to select its first  
19 Board of Governors, the director of the division of insurance shall give  
20 notice to all member insurers of the time and place of the organizational  
21 meeting. A member insurer is entitled to one vote in person or by proxy at  
22 the organization meeting. If the members of the board are not selected  
23 within 60 days after the date that notice of the organizational meeting is  
24 given, the director may appoint the members.

25 \* Sec. 17. This Act takes effect January 1, 1991.  
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**DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT  
DIVISION OF INSURANCE**

**Senate Bill 259 - Sectional Analysis**

For an ACT entitled: "An Act relating to insurance guaranty funds; changing Rule 62(a), Rules of Civil Procedure; and providing for an effective date."

**SECTION 1**

**Sec. 21.36.035 Prohibited Advertisements and Representations**  
(Page 1, Lines 11 to 24.)

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 2**

**Sec. 21.79 Alaska Life and Disability Insurance Guaranty Association**  
(Page 1, Line 26 to Page 24, Line 11.)

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 but does depart from that model on some issues.

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**Sec 21.79.010 Purpose**  
(Page 1, Line 28 to Page 2, Line 4.)

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 5 to Page 4, Line 16.)

This section outlines what ALDIGA does and does not cover.

**Subsection (a)**  
(Page 2, Lines 5 to 24.)

This subsection lists persons covered by ALDIGA.

**Subsection (b)**  
(Page 2, Lines 25 to 29.)

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 1 to Page 4, Line 10.)

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.

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

**Subsection (d)**  
(Page 4, Lines 11 to 16.)

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 17 to Page 5, Line 4.)

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 5 to 6.)

This section provides for liberal construction.

**Sec. 21.79.040 Creation of Association**  
(Page 5, Lines 7 to 24.)

**Subsection (a)**  
(Page 5, Lines 7 to 19.)

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, Lines 20 to 24.)

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

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**Sec. 21.79.050 Board of Governors**  
(Page 5, Line 25 to Page 6, Line 16.)

**Subsection (a)**  
(Page 5, Line 25 to Page 6, Line 9.)

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. To avoid problems in initially selecting the board, this subsection 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.

**Subsection (b)**  
(Page 6, Lines 10 to 12.)

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 13 to 16.)

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 17 to Page 14, Line 2.)

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, Lines 17 to 27.)

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.

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**Subsection (b)**

(Page 6, Line 28 to Page 7, Line 12.)

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. (See error notes.)

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 13 to Page 8, Line 11.)

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 12 to 23.)

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.

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**Subsection (e)**

(Page 8, Line 24 to Page 9, Line 25.)

**Subsection (e)(1)**

(Page 8, Line 24 to Page 9, Line 11.)

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 12 to 14.)

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

**Subsection (e)(3)**

(Page 9, Lines 15 to 25.)

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 26 to Page 10, Line 6.)

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 7 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 27.)

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.

**Senate Bill 259**  
**Sectional Analysis**

**Subsection (i)**

(Page 10, Line 28 to Page 11, Line 3.)

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). (See error notes.)

**Subsection (k)**

(Page 11, Lines 8 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 6.)

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.

**Senate Bill 259**  
**Sectional Analysis**

**Subsection (o)**  
(Page 12, Lines 7 to 12.)

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.

**Subsection (p)**  
(Page 12, Lines 13 to 16.)

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 17 to 20.)

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 21 to 27.)

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 28 to Page 13, Line 8.)

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 9 to Page 14, Line 2.)

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.

**Senate Bill 259**  
**Sectional Analysis**

**Sec. 21.79.070 Assessment**  
(Page 14, Line 3 to Page 15, Line 10.)

This Section establishes a pre-insolvency assessment approach as the funding mechanism as opposed to the usual post-insolvency approach. The principle advantages include the ability to respond quickly to situations requiring funds, rather than need to wait until assessments can be made and collected. It is expected that since funds will be on hand, in state, it will also generate some employment in state and an increased activity level in the prevention of insolvencies.

**Subsection (a)**  
(Page 14, Lines 3 to 9.)

This subsection establishes an assessment rate of 2% of premium which is to be remitted to ALDIGA on a quarterly basis to fund the purposes of this Act. Late payments accrue a 10% penalty charge.

**Subsection (b)**  
(Page 14, Lines 10 to 18.)

This subsection provides that the funds assessed 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 19 to 22.)

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. This is unlikely to occur since it is expected that this assessment will routinely be built into the rate. An insurer needing such protection is a prime candidate for insolvency.

**Subsection (d)**  
(Page 14, Lines 23 to 26.)

This subsection allows ALDIGA to provide a method of allocation of funds when the funds are insufficient to meet all obligations.

**Subsection (e)**  
(Page 14, Line 27 to Page 15, Line 1.)

This subsection allows ALDIGA to reduce the assessment when the fund reaches \$50,000,000. This amount should be sufficient to contain that portion of an insolvency affecting Alaska insureds and policyholders.

**Senate Bill 259**  
**Sectional Analysis**

**Subsection (f)**  
(Page 15, Lines 2 to 6.)

This subsection allows ALDIGA to increase coverage as the health of the fund grows and stabilizes.

**Subsection (g)**  
(Page 15, Lines 7 to 10.)

This subsection allows insurers to reflect the assessment in their rates.

**Sec. 21.79.080 Plan of Operation**  
(Page 15, Line 11 to Page 16, Line 19.)

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 20 to Page 17, Line 14.)

**Subsection (a)**  
(Page 16, Lines 20 to 23.)

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 24 to Page 17, Line 6.)

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 7 to 11.)

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

**Senate Bill 259**  
**Sectional Analysis**

**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 19.)

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.

**Senate Bill 259**  
**Sectional Analysis**

**Subsection (f)**

(Page 18, Lines 16 to 21.)

This subsection requires ALDIGA to report and make recommendations to the Director concerning companies seeking to do business in Alaska.

**Subsection (g)**

(Page 18, Lines 22 to 24.)

This subsection requires ALDIGA to report to the Director information indicating impairment or insolvency of a member insurer.

**Subsection (h)**

(Page 18, Line 25 to Page 19, Line 10.)

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 (i)**

(Page 19, Lines 11 to 12.)

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

**Subsection (j)**

(Page 19, Lines 13 to 19.)

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 20 to Page 21, Line 26.)

**Subsection (a)**

(Page 19, Lines 20 to 23.)

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

**Senate Bill 259**  
**Sectional Analysis**

**Subsection (b)**

(Page 19, Line 24 to Page 20, Line 3.)

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 4 to 18.)

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, Line 19 to Page 21, Line 1.)

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 e

**Subsection (e)**

(Page 21, Lines 2 to 26.)

This subsection is designed to recapture ex-ve dividend payments to affiliates that exercised control over the inso insurer. AS 21.22 deals with much of this issue, however, if dividends paid under circumstances that the insurer should have reasonably know that such payment could reasonably be expected to affect its ability perform its contractual obligations to its policyholders, the holding comp and affiliates should be required to repay such dividends subject to certain easonable 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.

**Senate Bill 259**  
**Sectional Analysis**

**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. 21.79.160 Title**  
(Page 22, Lines 17 to 18.)

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

**Sec. 21.79.900 Definitions**  
(Page 19, Line 20 to Page 21, Line 26.)

**SECTION 3**

**Sec. 21.80.020 Applicability**  
(Page 24, Lines 12 to 17.)

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.

**SECTION 4**

**Sec. 21.80.040 Creation of Association**  
(Page 24, Line 18 to Page 25, Line 4.)

This amendment establishes an additional account in AIGA for marine coverage.

**Senate Bill 259**  
**Sectional Analysis**

**SECTION 5**

**Sec. 21.80.050(a)**  
(Page 25, Lines 5 to 14.)

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

**SECTION 6**

**Sec. 21.80.060(a)**  
(Page 25, Line 15 to Page 27, Line 27.)

This amendment increases the covered claim amount from \$300,000 to \$500,000 (Page 25, Line 24).

It establishes the rate of assessment at 4% initially (Page 26, Line 12), reducing to 2% in five years (Page 26, Line 15).

Since the AIGA is being changed to a pre-insolvency plan from a post-assessment plan, inappropriate language is being removed (Page 26, Lines 4 to 8; Page 26 Lines 15 to 24; and Page 26 Line 29 to Page 27 Line 5).

It requires that AIGA's servicing facility operate and maintain its principal office in Alaska.

**SECTION 7**

**Sec. 21.80.060      Limit on Assessment**  
(Page 27, Line 28 to Page 28, Line 10.)

This new Section places an upper limit on the growth of the AIGA fund that cannot exceed total premium volume for the previous year.

**SECTION 8**

**Sec. 21.80.070(a)**  
(Page 28, Line 11 to 23.)

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.

**Senate Bill 259**  
**Sectional Analysis**

**SECTION 9**

**Sec. 21.80.080(b)**

(Page 28, Line 24 to Page 29, Line 17.)

This amendment allows the Director of Insurance to assume AIGA powers if AIGA fails to act in accordance with statute, or its plan of operation and the Director has declared a state of emergency.

**SECTION 10**

**Sec. 21.80.120 Examination of Association**

(Page 29, Lines 19 to 23.)

This amendment requires that the annual report by AIGA be certified. This reflects on the fact that AIGA will be holding funds that it previously held only after an insolvency.

**SECTION 11**

**Sec. 21.80.140 Recognition of Assessments in Rates**

(Page 29, Line 24 to Page 30, Line 5.)

This amendment requires the assessment to be reflected as a separate charge on the policy.

**SECTION 12**

**Sec. 21.80.180(1)**

(Page 30, Lines 6 to 8.)

This amendment changes the definition of account to reflect the added account for marine coverages.

**SECTION 13**

**Sec. 21.90.900(24)-(25)**

(Page 30, Lines 9 to 18.)

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

**Senate Bill 259**  
**Sectional Analysis**

**SECTION 14**

**Repealed**

(Page 30, Lines 19 to 20.)

AS 21.80.060(b)(6) is repealed. This section relates to excess funds in the post insolvency fund accounts.

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 15**

**Rule 62(a), Rules of Civil Procedure**

(Page 30, Lines 21 to 24.)

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

**SECTION 16**

**Sec. 21.87.340**

(Page 30, Lines 25 to 26.)

The addition of this reference in AS 21.87.340 makes Hospital Medical Service Corporations such as Blue Cross subject to the Act.

**SECTION 17**

**Effective Date**

(Page 30, Line 27.)

This proposal is effective January 1, 1990. This should be sufficient lead time to complete the work necessary to implement the bill.

**Senate Bill 259**  
**Sectional Analysis**

**CORRECTIONS**

(Page 6, Line 29.)

Change the word "may" to read "shall"

(Page 9, Line 12.)

Change the word "insurers" to read "insureds"

(Page 11, Line 7.)

Change the reference "AS 21.79.020(c)(3)" to read "AS 21.79.020(c)(4)"

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April 11, 1989

HAND DELIVERED

The Honorable Dick Eliason, Chairman  
Senate Labor and Commerce Committee  
Alaska State Legislature  
P. O. Box D  
Juneau, AK 99822

Re: SB 259 "An Act Relating to Insurance Guaranty  
Funds"

Dear Senator Eliason:

On February 16, 1989, on behalf of the American Council of Life Insurance (ACLI), I commented extensively upon the draft version of SB 259 in a letter to the Director of the Division of Insurance. A copy of that letter is enclosed for your consideration.

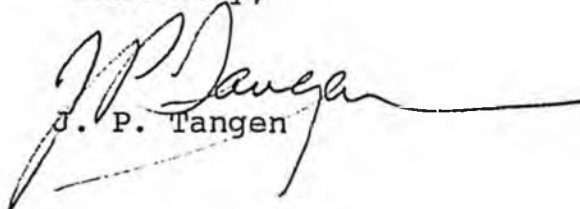
SB 259, as introduced, contains all of the points on which we commented, unchanged.

ACLI is sincerely concerned about a prefunded guaranty fund which does not contain a tax offset and respectfully requests that you address this issue in your deliberations.

I shall be prepared to present these concerns in person at the scheduled hearing Friday, April 14; however, I wanted to afford your committee the opportunity to review these points in advance.

We appreciate your attention to the problems which we associate with this bill.

Sincerely,

  
J. P. Tangen

Enclosure

cc: ACLI

0411acli

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February 16, 1989

Paul Roller, Director  
Division of Insurance  
Department of Commerce  
and Economic Development  
State of Alaska  
P. O. Box D  
Juneau, Alaska 99811

Re: Proposed Life and Disability Insurance Guaranty  
Association

Dear Paul:

The American Council of Life Insurance (ACLI), a national trade association representing 648 life insurance companies (354 of whom presently do business in Alaska), has reviewed the Division's draft bill to establish the Alaska Life and Disability Insurance Guaranty Association. As presently written, we think this proposal poses significant problems for us.

The Division's bill is based upon the latest version of the NAIC Model Act, but simplifies and omits much of the original Model language. We would prefer that the state's bill more closely track the language contained in the NAIC Model.

ACLI's primary opposition to this bill stems from the fact that it provides no premium tax offset for assessments paid by member insurers to the guaranty association. We would much rather see no guaranty fund at all than see a bill with no tax offset.

Life insurance and many health insurance policies differ from property-casualty insurance in that the former are issued for substantially long periods of time with the premiums guaranteed and not subject to change. Property and casualty insurance policies are yearly renewable term policies and any assessment can be readily passed on to policyholders in the form of an increase in premiums. Life insurance policies, on the other hand, are lifetime policies issued at fixed premium rates so assessment against a life insurer cannot be passed on to its policyholders. Thus, life and health insurance companies differ from casualty insurance companies by being unable to recover the

costs of an assessment by adjusting the rates for their outstanding block of business. Accordingly, if a life insurance guaranty fund bill is enacted without a tax offset, rather than equal treatment, a gross inequity is created between life insurers and property and casualty insurers.

In addition to the distinction with respect to premiums, this legislation imposes requirements not contained in the Guaranty Law now applicable to property and casualty insurers. With respect to life and health insolvencies, a Guaranty Association is obligated to not only pay outstanding claims, but also to continue in force the policies of existing policyholders and pay future claims. Moreover, if the insolvent insurer had a substantial block of business for which the premiums proved inadequate to cover benefits and expenses, additional losses will continue to accrue over the lifetime of the business. Thus, the potential liability is substantially greater than in the case of property and casualty insurers, since under the latter the liability of the Guaranty Association is limited to claims incurred before the insolvencies.

While it is true that the premium rate on future life insurance policyholders could be increased, assuming that reasonably accurate estimates could be made as to future insolvencies and consequent assessments, such future policyholders would also have to bear the cost of present insolvencies whereas present policyholders would not. On participating policies, the dividend could be reduced to reflect the increased expense, however, nonparticipating policyholders would not be so affected. In calculating premiums conservative assumptions can only, at best, provide for what is either known or can reasonably be anticipated on the basis of experience. Therefore, the adoption of insolvency guaranty legislation without a premium tax offset exposes the insurers that are underwriting the insolvent insurer's policies, to a potential future liability which is unknown and immeasurable.

One of the difficulties in measuring the potential cost to life insurers is the absence of figures on previous life company insolvencies that are usable to project future losses. The statistical information that is available is not particularly meaningful unless related to the amount which would be assessed in various states in order to carry out the obligation of the respective insolvency guaranty associations. More specifically, an initial loss to policyholders in the case of one insolvency may require no assessment if the business is assumed by an insurer in sound financial condition and full continuity of coverage, or with only a temporary lien or moratorium on policy cash values.

The concept of "policy value" further distinguishes life insurance from other lines of insurance and facilitates the disposition of the business when a life insurer becomes insolvent. In these situations, the assuming insurer acquires not only the remaining assets, if any, but may also require an agency force and the good will attached thereto for having acted to preserve coverage, which in many instances could not have been replaced due to poor health. For these and other reasons, the impairment of a life insurer has traditionally been handled by state insurance departments with no loss to policyholders and beneficiaries other than liens on cash value, even through the depression years 1930-1939. Lastly, and most importantly, the public interest would be served by allowing otherwise uninsurable individuals to maintain their existing coverage in the event of an insurance company insolvency.

The Life and Health Insurance Guaranty Association Model Act, as adopted by the NAIC, allows as an option a premium tax offset. Thirty-three states have enacted legislation permitting the offset. They did so because they recognized that the problem of insurance company insolvencies is a social problem and not simply an industry problem, the remedial cost of which should be borne by the citizens as a whole. They also realize that it is patently unfair to require the solvent, well-managed life insurance companies to bear the entire financial burden. In the infrequent case of a life insurance company insolvency, the life insurance industry under a guaranty association law usually picks up the entire tab for the loss in the year in which it occurs so that in most cases policyholders are paid immediately. (The exception being when the insolvency is very large and runs up against a statutory cap.) In effect, the life insurance industry is "loaning" the state the money to fulfill its social obligation and the state allows the "lending insurance companies" to be repaid this advance over a five-year period via a premium tax offset.

When an insolvency occurs and solvent companies are assessed as a result, there is logic in the state accepting this responsibility. In the case of property and casualty insurance this burden is passed on to all citizens of the state who are policyholders through increased premium rates. Since life insurers are unable to do this, the burden can only be shared by the state through the form of a premium tax offset. Thus, the burden is not shifted completely to solvent companies and their future policyholders. The responsibility of the state remains an important element of regulation and is primary.

Giving life and health insurance companies the right to offset assessments against future taxes provides a practical and equitable alternative to the right given the property and casualty insurers to increase premiums on their entire block of business. Such an approach recognizes the fundamental difference between the two types of insurance. It would prevent the pyramiding effects that might occur in times of economic stress when repeated assessments could force otherwise sound companies into financial hardship. The actual cost in revenue to a particular state, though difficult to measure, would almost certainly be minimal when measured against total tax revenue from life insurance companies.

The tax offset provision requires the solvent insurers to stand in the shoes of the state, and rather than the state doing so, the solvent insurers advance the necessary funds to carry out the various duties of the guaranty association, for which certificates of assessment are issued. This permits such insurers to offset a limited percentage of this amount assessed against future taxes over a period of not less than five years.

In the event that the ultimate value of certificates exceeds the tax credit received, a distinct possibility based on the history of life company impairments, the state would of course be the recipient of such funds. Even when the life and health insurance guarantee bill contains a full tax offset (100% over 5 years or stated a different way, 20% per year), the net effect is to allow the insurance companies an offset of only 75% of their assessment because the tax offset does not take into consideration the time loss of money. If an insurance company had not been assessed, those funds would have gone into the company surplus account and been available for investments which earn interest. Therefore, with the loss of interest these funds could have earned, an insurance company will recoup only 75% of its assessment even with the full premium tax offset.

We also oppose this bill because it provides for a pre-funded guaranty association; i.e., assessments are to be levied against member insurers prior to the existence of any insolvencies. The NAIC Model Act is a post-assessment act; i.e., no assessments are levied until an insurer has been declared insolvent and the guaranty association has been activated.

There has historically been minority support for pre-assessment funds, both on the property/casualty and life/health sides of the business, among some regulators and even some companies. The theory behind this support, from a regulator's viewpoint, is that the lag time between an insurer insolvency and payment of policyholder claims will be severely diminished if a

Paul Roller, Director  
February 16, 1989  
Page 5

fund already exists. With a post-assessment fund, assessments are due (under the NAIC Model) not less than 30 days after prior written notice from the Association to member insurers and begin to accrue interest on and after the due date until paid. The few companies that support pre-assessment funds contend that pre-funding enables them to plan for their guaranty fund liabilities more easily, since, as in the Alaska proposal, payments would be due at regular intervals and the fund would be maintained at a set amount (\$50,000,000 in the Alaska proposal).

The vast majority of companies oppose pre-funded guaranty associations for two main reasons - (1) the existence of readily-available cash to take care of troubled companies creates a disincentive for regulators, both to maintain and enforce stringent solvency standards for companies, and to rehabilitate a company rather than seek a declaration of insolvency; and (2) the existence of a large pool of money lying idle provides an overwhelming temptation for legislators to appropriate the funds for other purposes when the state is in financial need. New York is the only state that has a prefunded guaranty association and its legislators have dipped into the fund on more than one occasion. As a result, the insurance industry has filed a lawsuit against the state for the purpose of requiring them to replace the money.

We also oppose the inclusion of Blues plans in "our" guaranty fund (see the definition of member insurer). As you know, Blues plans are not subject to the same regulatory standards as commercial health insurers. They are, theoretically, operated on a non-profit basis and pick up through their open enrollment periods, many high-risk individuals. In exchange for this "service," they often pay no premium tax at all, or are taxed at lower rates than commercial carriers, and they are given hospital discounts. Because of these benefits, which enable Blues to offer lower premiums and/or expanded coverage, commercial carriers often become noncompetitive. It is not at all unusual for the Blues in a particular state to have 50-65% of the health insurance market. It is also not at all unusual for Blues plans to suffer severe financial problems. Understandably, commercial carriers do not want to pick up the pieces when a Blues plan, with which they could not compete in the marketplace, goes under.

Finally, we oppose the inclusion of unallocated funding obligations in the draft legislation and the NAIC draft. We believe that it is not necessary to establish statutory protection for investors in this type of investment primarily because such investors are universally sophisticated entities

Paul Roller, Director  
February 16, 1989  
Page 6

such as pension plans. As such, they are well-equipped to make financial judgments about the soundness of the companies in which they are investing.

Certainly, if there does have to be an unallocated annuity account set up as part of the guarantee association, \$5,000,000 is much too high a threshold. We recommend either elimination of this account, or settling it at \$1,000,000.

I hope this information is helpful. Please let me know if you have any questions.

Very truly yours,

J. P. Tangen

JPT:lyn  
2-2-1

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Juneau, Alaska 99801  
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April 13, 1989

The Honorable Dick Eliason  
Chairman  
Senate Labor And Commerce Committee  
Pouch V  
Juneau, Alaska 99811

RE: SB 259 - Insurance Guaranty Funds

Dear Senator Eliason:

The National Association of Independent Insurers, a property and casualty insurer trade association, supports the consumer protection provided by the current Alaska Insurance Guaranty Association Act. Under the act Alaskans have been adequately protected from loss due to admitted insurer insolvency. NAII member companies have contributed funds to the association as needed to cover competing company insolvency.

The NAII is disturbed by certain provisions of SB 259 which call for establishment of an association account for marine insurance and which call for the pre-assessment of insurers in an amount of 4% of written premiums to cover potential insolvency.

Despite the appearance of providing consumer protection, SB 259 actually will result in an automatic premium increase for all covered policyholders as insurers add on the cost of the pre-assessment to each policy. The policyholders pay for the protection provided by the association. In the case of SB 259 the added cost will be incurred whether or not funds are needed to cover insolvency. The high property and casualty coverage fund cap provided by the bill assures that policyholders will be impacted for at least the next 48 years with the added cost.

For purchasers of marine insurance the passage of SB-259 may well be a disaster. In no other jurisdiction in the United States is marine insurance regulated, much less covered by a guaranty act. As a virtually unregulated line of insurance, a very limited marine market has been available in Alaska. In addition to an immediate 4% rate increase forced on marine policyholders the bill may cause admitted insurers to cease writing marine insurance in the state. Insurers of pleasure boats will not be interested in covering losses of insolvent fishing vessel insurers, nor will the

The Honorable Dick Ellason -2-

April 12, 1989

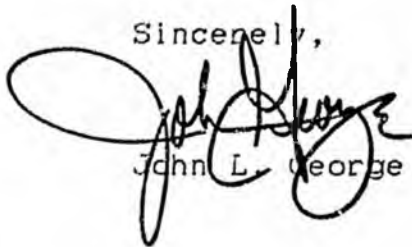
policyholders be pleased with the rate increase to pre-fund the guaranty.

SB 259 does provide substantial increased protection for life and health company insolvency. Similar problems involving pre-funding these funds exist. In addition there are many problems with the bill which are not readily apparent.

The NAII urges the Senate Labor and Commerce Committee to fully explore all of the ramifications of this bill and to not take any action until all of the facts are fully considered.

As the Alaskan representative of NAII, I stand ready to assist the committee in every way possible. Please let me know if I can be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "John L. George". The signature is stylized with a large, looping initial "J" and "G".

John L. George

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April 14, 1989

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ADMITTED IN WASHINGTON, D.C.\*\*  
AND ALASKA

ALL OTHERS ADMITTED  
IN ALASKA

The Honorable Dick Eliason  
Chairman  
Senate Labor & Commerce Committee  
Pouch V  
Juneau, AK 99811

RE: Senate Bill 259 - Insurance Guaranty Fund

Dear Senator Eliason:

The American Insurance Association (AIA), a trade organization representing over 190 property/casualty insurance companies, supports improvements in the State Guaranty Fund to enable it to respond to new challenges. The Division of Insurance regulates for solvency utilizing several tiers of regulation, including rate regulation, investment regulation, accounting and financial reporting requirements, and periodic examination of insurance companies. In the event that an insurer experiences extreme difficulties, a regulator may become involved with or assume control of the management of the company. In the unlikely event that these measures fail to protect against liquidation, the ultimate protection for the consumer is the State Guaranty Fund which operates in all 50 states, Puerto Rico, and the District of Columbia. Whether the reason for an insurer's failure is mismanagement, fraud, or business conditions, the insurance industry has accepted an obligation to protect the general insurance-buying public from the ravages of an insurer liquidation.

Senate Bill 259 proposes the creation of the Alaska Life and Disability Insurance Guaranty Association. The bill also expands the current Alaska Insurance Guaranty Association to include a marine insurance account. The AIA is primarily concerned with the provisions of the bill which change the AIG Fund from a post-assessment plan to a pre-insolvency plan (Section 6, page 25,

April 14, 1989

subparagraph 3). The bill proposes an initial 4% assessment based on premiums. The upper limit of the AIG Fund could be up to approximately \$600 million.

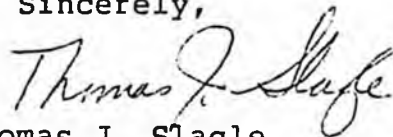
The AIA is opposed to the prefunded plan. The assessments would be passed directly on to the consuming public. New York is the only other state with a pre-assessment plan and it requires a \$150 million minimum assessment. The New York Legislature "borrowed" \$87 million from the pre-assessed guaranty fund. The New York Department of Insurance, in turn, reassessed the insurance carriers for the \$87 million deficit which, in turn, means an assessment back to the policyholder. The raid on the funds in New York and the additional reassessment have resulted in litigation which is still ongoing.

The post-assessment process, in response to an insolvency, has worked in Alaska --- as well as our sister states. The Alaska Insurance Guaranty Association has adequately responded to claims left unpaid as a result of an insolvency covered by the AIGA. In New York, the only state which requires a pre-assessment, the mechanism to protect the fund for insolvencies has not worked.

The American Insurance Association urges the Senate Labor & Commerce Committee to thoroughly consider the ramifications of a pre-assessment of the Guaranty Fund and the subsequent increased cost to the consuming public. We recommend deletion of any prefunding requirements in SB 259.

On behalf of the American Insurance Association, I would be pleased to supply any additional background information, in particular on the consequences of a pre-assessment Guaranty Fund.

Sincerely,



Thomas J. Slagle  
Alaska Counsel

American Insurance Association

cc: Senate Labor & Commerce Committee Members

STEVE COWPER  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

April 4, 1989

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

Dear Mr. President:

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

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper".

Steve Cowper  
Governor

THE FOLLOWING DOCUMENT MAY NOT FILM  
LEGIBLY BECAUSE OF THE POOR QUALITY OF THE  
ORIGINAL

JAMES J. DALY  
2051 SEALEVEL TR. #301  
ETCHIKAN, ALASKA 99901  
907/326-4461

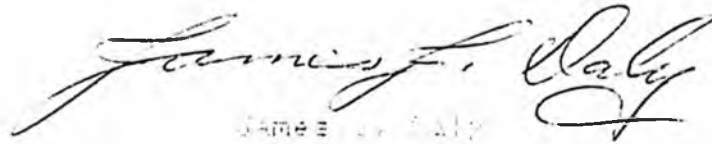
February 1, 1996

Dear Senator Bialek:

I would like to express my support for Senate Bill 259 which is currently in the Senate Labor Committee and the Senate Commerce Committee. This bill will do much to protect our people's health, safety, and well-being. It is a bill that is badly needed, particularly in the light of recent developments in the Executive Life Co.

I hope you will give this bill your full support.

Sincerely,



James J. Daly

cc: Sen. Lloyd Jones  
Sen. Jim Duncan

**S B**

**272**

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y STATE CAPITOL  
JURIAU ALASKA 99811  
907 465 3800

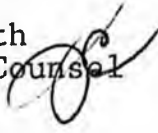
LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 12, 1990

SUBJECT: Draft CSSB 272 (Judiciary)

TO: Senator Jan Faiks, Chair  
Senate Judiciary Committee  
ATTN: Chris Christensen

FROM: Jack Chenoweth  
Legislative Counsel 

The bill draft delivered earlier substantially incorporates the changes suggested by Assistant Attorney General Laurie Otto in her July 27, 1989, letter to Senator Fred Zharoff.

AS 43.52.010(a) has been revised to impose the tax only on quantities of controlled substances the possession of which constitutes a misdemeanor under AS 11.71.040 [suggestion # 1 of Ms. Otto's memo]. In the same section, I've substituted blanks for amounts levied, allowing the committee to re-determine, should it so choose, the amount(s) of the controlled substance tax levy [suggestion # 3].

AS 43.52.030(c), new in this draft, is intended to respond to the suggestion that there be a credit for taxes previously paid to other jurisdictions (suggestion # 5).

AS 43.52.050(c), also new, incorporates the recommended modifications to the distraint procedure (suggestion # 6).

The amendment of AS 43.05.230(a), made by bill section 2, responds to the disclosure of confidential information concern [suggestion # 2].

All of the specific language amendments recommended by Ms. Otto beginning near the bottom of page 4 of her letter have been incorporated.

I have omitted only suggestion # 4 at the middle of page 3 of the letter, for I do not know the committee's thinking on the matter and am not usually asked to prepare committee letters of intent.

JBC:lmb  
L9/121

Original sponsor(s): SEN. ZHAROFF

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 272 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act imposing taxes on controlled substances; and  
7 providing for an effective date."

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

9 \* Section 1. AS 43 is amended by adding a new chapter to read:

10 CHAPTER 52. TAX ON CONTROLLED SUBSTANCES.

11 Sec. 43.52.010. TAX IMPOSED. (a) There is levied an excise tax  
12 in the following amounts on each of the controlled substances set out  
13 below that a person possesses in the state:

14 (1) \$ \_\_\_\_\_ on each gram of a schedule IA controlled sub-  
15 stance;

16 (2) \$ \_\_\_\_\_ on each gram of a schedule IIA controlled  
17 substance;

18 (3) \$ \_\_\_\_\_ on each gram of a schedule IIIA or schedule  
19 IVA controlled substance if the amount of the schedule IIIA or  
20 schedule IVA controlled substance that the person possesses equals or  
21 exceeds

22 (A) the number of tablets, ampules, or syrettes set  
23 out in AS 11.71.040(a)(3)(B); or

24 (B) the aggregate weight set out in AS 11.71.040(a)-  
25 (3)(C);

26 (4) \$ \_\_\_\_\_ on each gram of a schedule VA controlled  
27 substance if the amount of the schedule VA controlled substance that  
28 the person possesses equals or exceeds

29 (A) the number of tablets, ampules, or syrettes set

1 out in AS 11.71.040(a)(3)(D); or

2 (B) the aggregate weight set out in AS 11.71.040(a)-  
3 (3)(E);

4 (5) \$ \_\_\_\_\_ on each gram of a schedule VIA controlled sub-  
5 stance if the amount of the controlled substance that the person  
6 possesses equals or exceeds the aggregate weight set out in AS 11.-  
7 71.040(a)(3)(F).

8 (b) For the purpose of calculating the tax under this section, a  
9 quantity of a controlled substance is measured by the weight of the  
10 substance, whether pure, impure, or dilute, in the person's posses-  
11 sion.

12 Sec. 43.52.020. STAMPS AFFIXED. (a) When a person acquires or  
13 imports into the state a controlled substance on which the tax under  
14 this chapter is due, if a stamp evidencing payment of the tax has not  
15 already been affixed to the container in which the substance is en-  
16 closed, the person shall have the stamp permanently affixed on the  
17 container immediately upon receiving the substance. If the controlled  
18 substance is subdivided into more than one container, a stamp must be  
19 affixed to each container.

20 (b) Each stamp may be used only once.

21 Sec. 43.52.030. PAYMENT OF TAX. (a) The tax imposed by this  
22 chapter is due and payable by the person immediately upon the person's  
23 acquisition of the controlled substance.

24 (b) A person who is liable for the tax imposed by this chapter  
25 shall pay the face value for each stamp.

26 (c) If another state or unit of local government has previously  
27 levied and collected an excise tax on a controlled substance, subject  
28 to the tax imposed by this chapter, the taxpayer must pay the differ-  
29 ence between the tax due under AS 43.52.010 and the tax previously

1 paid. If the tax previously paid to the other state or unit of local  
2 government was equal to or greater than the tax due under AS 43.52.-  
3 010, a tax is not due. If a reduction or exemption is claimed under  
4 this subsection, the burden is on the taxpayer to show that an excise  
5 tax on the controlled substance has been paid to another state or unit  
6 of local government.

7 Sec. 43.52.040. ADMINISTRATION OF CHAPTER. (a) The department  
8 shall

9 (1) administer this chapter;

10 (2) collect, supervise, and enforce the collection of taxes  
11 due under this chapter and enforce the penalties provided in this  
12 title for failure to pay a tax when due; and

13 (3) adopt a uniform system of providing official stamps for  
14 controlled substances upon which a tax is imposed.

15 (b) The department may adopt regulations necessary for the  
16 administration of this chapter.

17 Sec. 43.52.050. ASSESSMENT OF TAX BY COMMISSIONER. (a) An  
18 assessment for a person not possessing valid stamps showing that the  
19 tax has been paid shall be considered a jeopardy assessment or col-  
20 lection. The commissioner shall

21 (1) assess a tax and applicable penalties based on personal  
22 knowledge or information available to the commissioner;

23 (2) mail to the taxpayer at the taxpayer's last known  
24 address, or serve in person, a written notice of the amount of tax and  
25 penalty;

26 (3) demand immediate payment of the tax; and

27 (4) if payment is not immediately made, collect the tax and  
28 penalty by any method prescribed in this title.

29 (b) The tax and penalties assessed by the commissioner in an

1 assessment made under (a) of this section are presumed to be valid and  
2 correctly determined and assessed. The burden is upon the taxpayer to  
3 show their incorrectness or invalidity. A certificate by the commis-  
4 sioner of the amount of tax and penalties determined or assessed is  
5 admissible in evidence and is prima facie evidence of the facts it  
6 contains.

7 (c) Except for AS 43.20.270(b)(2) and (k), the provisions of  
8 AS 43.10.030 and AS 43.20.270 apply to this chapter. However, if the  
9 commissioner has reason to believe that collection of the tax is in  
10 jeopardy, the commissioner may give notice and demand immediate pay-  
11 ment of the tax. If the tax is not promptly paid, the commissioner

12 (1) may proceed to collect by levy under AS 43.20.270(c);

13 (2) may not sell the property seized for collection of the  
14 tax until the time has expired for filing an appeal of the assessment  
15 of the tax under AS 43.05.240;

16 (3) shall return the property seized if the owner provides  
17 a surety bond equal to the appraisal value of the owner's interest in  
18 the property, as determined by the commissioner, or deposits with the  
19 commissioner security in a form and amount as the commissioner may  
20 determine to assure payment of the tax liability.

21 Sec. 43.52.060. TAX PAYMENT REQUIRED FOR POSSESSION. (a) A  
22 person who possesses a controlled substance in an amount the posses-  
23 sion of which would be a felony under AS 11.71 must pay the tax on the  
24 controlled substance imposed under AS 43.52.010 and affix the stamp  
25 issued by the department on the controlled substance.

26 (b) A person lawfully in possession of a controlled substance is  
27 not subject to the tax required under this chapter.

28 Sec. 43.52.070. CRIMINAL PENALTIES. The penalties provided in  
29 AS 43.05.290 apply to the tax levied in this chapter.

1           Sec. 43.52.080. CIVIL PENALTY. A person who is in control of a  
2 controlled substance in violation of this chapter is considered to  
3 have possession of the controlled substance. A person in possession  
4 of a controlled substance in violation of this chapter is personally  
5 liable for the tax, plus a penalty of 100 percent.

6           Sec. 43.52.090. CONFIDENTIAL NATURE OF INFORMATION. (a) The  
7 commissioner and employees of the department may not reveal facts  
8 obtained from a person in the administration of this chapter except in  
9 connection with a proceeding involving taxes due under this chapter  
10 from the person. This subsection does not prohibit the commissioner  
11 from publishing statistics about the tax levied by this chapter that  
12 do not disclose the identity of persons who have purchased the stamps  
13 as evidence of payment of the tax.

14           (b) Information obtained by the department from a person may not  
15 be used against the person in the prosecution of an offense unless the  
16 information

17                 (1) is obtained independently of the person's acquiring the  
18 official stamps; or

19                 (2) consists of testimony given or statements made in a  
20 proceeding involving taxes due from the person under this chapter.

21           (c) A stamp denoting payment of the tax imposed by this chapter  
22 may not be used against the taxpayer in the prosecution of a criminal  
23 proceeding.

24           Sec. 43.52.100. ACCOUNTING FOR RECEIPTS. The commissioner of  
25 administration shall separately account for money collected under this  
26 chapter that the department deposits in the general fund.

27           Sec. 43.52.110. RELATIONSHIP OF CHAPTER TO OTHER LAW. (a) At  
28 the request of the taxpayer, the superior court shall stay the pro-  
29 ceedings in an action to enforce the assessment, levy, and collection

1 of the tax imposed by this chapter until the conclusion of criminal  
2 proceedings related to the controlled substance for which the tax is  
3 imposed.

4 (b) This section does not prohibit the department from immedi-  
5 ately seizing assets or collecting taxes.

6 (c) A court or the department may not grant a taxpayer immunity  
7 for testimony given, or statements made, in connection with a proceed-  
8 ing involving taxes due from the person under this chapter.

9 Sec. 43.52.199. DEFINITIONS. In this chapter

10 (1) "controlled substance" has the meaning given in AS 11.-  
11 71.900;

12 (2) "schedule IA controlled substance" means a controlled  
13 substance included in the schedule in AS 11.71.140;

14 (3) "schedule IIA controlled substance" means a controlled  
15 substance included in the schedule in AS 11.71.150;

16 (4) "schedule IIIA controlled substance" means a controlled  
17 substance included in the schedule in AS 11.71.160;

18 (5) "schedule IVA controlled substance" means a controlled  
19 substance included in the schedule in AS 11.71.170;

20 (6) "schedule VA controlled substance" means a controlled  
21 substance included in the schedule in AS 11.71.180;

22 (7) "schedule VIA controlled substance" means a controlled  
23 substance included in the schedule in AS 11.71.190;

24 (8) "tax" means the tax levied by AS 43.52.010.

25 \* Sec. 2. AS 43.05.230(a) is amended to read:

26 (a) It is unlawful for a current or former officer, employee, or  
27 agent of the state to divulge facts obtained in the administration of  
28 a tax levied by AS 43.52, or the amount of income or the particulars  
29 set out or disclosed in a report or return made under this title,

1       except

2               (1) in connection with official investigations or proceed-  
3 ings of the department, whether judicial or administrative, involving  
4 taxes due under this title;

5               (2) in connection with official investigations or proceed-  
6 ings of the child support enforcement agency, whether judicial or  
7 administrative, involving child support obligations imposed or impos-  
8 able under AS 25 or AS 47;

9               (3) as provided in AS 38.05.036 pertaining to audit func-  
10 tions; and

11              (4) as otherwise provided in this section.

12 \* Sec. 3. This Act takes effect January 1, 1990.  
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# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX KC  
JUNEAU, ALASKA 99811-0310  
PHONE: (907) 465-3428

OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

July 27, 1989

The Honorable Fred F. Zharoff  
Alaska State Senator  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Zharoff:

As we discussed at the end of the session, the Criminal Division has continued to work on a committee substitute for SB 272. Taking the April 25, 1989 Chenoweth work draft as a starting point, we prepared the amendments set out in this letter. Although the amendments substantially improve the bill, and there is authority from other jurisdictions suggesting that taxation of controlled substances is constitutional, we cannot guarantee that this legislation will withstand a court challenge in Alaska.

In additions to the specific amendments offered below, I have a number of observations.

1. In developing the above amendments, I spoke with both a lawyer in the Minnesota Department of Revenue (Therese Koenig-Smith, 612-296-3438), and the person responsible for the drug tax program in Minnesota (Chris Sanft, 612-296-1940). We discussed the reasons why Minnesota chose to limit application of the drug tax law to dealers (defined as persons in possession of more than a specified quantity of drugs). Minnesota made this decision for two reasons: (1) since failing to pay the drug tax is a felony offense, the legislature did not want to turn a misdemeanor (e.g. possession of one gram of marijuana in an automobile) into a felony based solely on the drug tax law, and therefore, made the law applicable to possession of felony quantities of controlled substances; and (2) the cost of pursuing a tax action against a person in possession of one gram of marijuana is high and would not be offset by the tax revenues collected, therefore, the law was made applicable to persons in possession of a sufficient quantity of drugs to make the tax action cost-effective.

We share the concerns of the Minnesota policy makers, and believe a better approach would be to make the law

applicable only to "dealers." The definition of "dealer" in Minnesota is a person in possession of a felony quantity of controlled substances. We encourage you to amend SB 272 to make it applicable only to persons in possession of a felony quantity of controlled substances as set out in AS 11.71.040. In addition, based on the cost of pursuing tax assessments, it may be wise to raise the threshold quantity for imposition of taxes above what is set out in AS 11.71.040.

2. A recent case, State v. Durrant, 769 P.2d 1174 (Kan. 1989) (copy attached), upheld the constitutionality of the Kansas drug tax statute in the face of a challenge based on infringement of the right against self-incrimination. The court in Durrant at pages 1180-81 discussed the necessity for imposing penalties on any person who discloses confidential tax information as a way to protect against the use of self-incriminating statements in criminal prosecutions. Under AS 43.05.230, it is a crime punishable by a \$5000 fine, or by two years in jail, to divulge "the particulars set out or disclosed in a report or return made under this title." However, the drug tax law does not provide for either reports or returns. Therefore, either AS 43.05.230 needs to be amended to cover the situation presented in cases involving drug taxes, or criminal penalties for disclosure of confidential information should be written into AS 43.52.090. Although our recommendation would be to add a section to AS 43.52.090, you should discuss this issue with the Department of Revenue to see which alternative would make administration of the chapter easier.
3. We are concerned about the amount of tax imposed on Schedule IA controlled substances. Since the tax is set at \$100 on each one-tenth of a gram, the tax on a gram of substances such as opium, codeine, and heroin would be \$1000 a gram, or \$28,000 an ounce. This high rate of taxation opens the door to the argument that the tax is punitive, and therefore, criminal in nature and an impermissible exercise of taxing powers. See, e.g., Zwak v. United States, 848 F.2d 1179 (11th Cir. 1988); Sonzinsky v. United States, 300 U.S. 506, 81 L.Ed 772, 57 S.Ct. 554 (1937); and Annot. 81 L.Ed. 776 (1937). If an Alaska court found that the measure was punitive, it might mean, for example, that the protections normally available to criminal defendants, such as court appointed counsel, would be available to persons involved in tax proceedings. It could also mean that the state would be precluded, based on constitutional due process considerations, from both collecting a tax and pursuing

a criminal prosecution. See, e.g. United State v. Halper, \_\_\_ U.S. \_\_\_, 45 Cr.L.Rptr. 3033 (May 15, 1989).

We suggest that the amount of tax imposed on Schedule IA controlled substances be reduced to a more reasonable amount.

4. The statute is silent on the issue of whether a defendant would be entitled to retain sufficient assets to hire a private attorney. I assume this is because you did not intend to provide an exception to the law allowing seizure of all assets necessary to meet the entire tax liability. The United States Supreme Court recently determined, based in part on an analysis of legislative intent, that assets to pay attorney's fees can be forfeited without infringing on a criminal defendant's constitutional right to an attorney. See, United States v. Monsanto, \_\_\_ U.S. \_\_\_, 45 Cr.L.Rptr. 3133 (June 22, 1989) and Caplin & Drysdale v. United States, \_\_\_ U.S. \_\_\_, 45 Cr.L.Rptr. 3143 (June 22, 1989). In order to clarify the intent of the Alaska legislature on this issue, it would be prudent that the bill be accompanied by a statement of legislative intent to allow seizure of assets that could otherwise be used to pay attorney's fees.
5. The law does not make any provision for credit for previously paid taxes, and as a result, may impermissibly allow for double taxation. Minnesota amended its drug tax law this year to avoid this problem with the following language:

If another state or local unit of government has previously assessed an excise tax on the marijuana or controlled substances, the taxpayer must pay the difference between the tax due under [the section of law requiring payment of drug taxes] and the tax previously paid. If the tax previously paid to the other state or local unit of government was equal to or greater than the tax due under [the section of law requiring payment of drug taxes], no tax is due. The burden is on the taxpayer to show that an excise tax on the marijuana or controlled substances has been paid to another state or local unit of government.
6. As written, on page 3, lines 19 - 20, the bill requires that existing distraint procedures be used to collect drug tax assessments. However, we understand that you want authority to immediately seize property, and do not want there to be a ten day delay (or longer if a person

files an appeal). In its present form, the legislation does not provide this authority. For the sake of comparison, a copy of Minnesota's tax procedures is attached for your information, and may provide a helpful model for the legislative drafters. In subdivision 2 of section 270.70, for example, a specific waiver of the ten-day notice period is included.

One point of caution: in drafting jeopardy assessment procedures it is important to provide the level of procedural due process required by the state and federal constitutions. The specific issue is whether a judicial proceeding after the seizure of assets and before their sale, coupled with a full hearing on the merits later, is sufficient to meet the due process hearing requirement. A lengthy discussion of this issue is set out in Sisson v. Triplett, 428 N.W.2d 565, 568-571 (Minn. 1988). In Minnesota, the court approved the immediate seizure of assets because the statute specifically provided an opportunity for a judicial hearing and other relief prior to sale of the property by: (1) allowing property to be returned upon posting a bond; (2) providing for an injunction to prohibit the enforcement of a levy or sale upon a showing of irreparable injury; and (3) creating an action for "equitable relief" for release of the property.

7. We reviewed the bill from the perspective of the Criminal Division. However, we do not have special expertise in the field of taxation. In addition to our review, we strongly suggest that the next work draft of the bill be reviewed by an attorney familiar with Alaska's tax laws.

The specific amendments we suggest to the April 25, 1989 Chenoweth work draft are:

Amendment 1: "Dosage unit" could be interpreted to mean either one tablet, or multiple tablets, of a controlled substance. The amendment clarifies the intent of the legislation.

Page 1, line 21: The term "dosage unit" should either be defined, or replaced with the phrase "tablet, ampule, or syrette."

Page 1, line 28: The term "dosage unit" should either be defined, or replaced with the phrase "tablet, ampule, or syrette."

Page 2, line 1: The term "dosage units" should either be defined, or replaced with the phrase "tablets, ampules, or syrettes."

Page 2, lines 15 - 16: The term "dosage units" should either be defined, or replaced with the phrase "tablets, ampules, or syrettes."

Amendment 2: As currently drafted, the bill requires that the stamp be affixed to the controlled substance, which is a physical impossibility. The amendment corrects this problem.

Page 2, lines 2 - 8: The existing section should be deleted and replaced with the following:

Sec. 43.52.020. STAMPS AFFIXED. (a) When a person acquires or imports into the state a controlled substance on which the tax under this chapter is due, if a stamp evidencing payment of the tax has not already been affixed to the container in which the substance is enclosed, the person shall have the stamp permanently affixed on the container immediately upon receiving the substance.

(b) If the controlled substance is subdivided into more than one container, a stamp must be affixed to each container.

(c) Each stamp may be used only once.

Amendment 3: Since the legislation requires purchase of stamps, and affixing of stamps, and makes no provision for alternative indicia of purchase, the reference does not make sense and should be deleted from the bill.

Page 2, line 13: Delete the phrase "or other indicia of purchase".

Page 2, lines 23-24: Delete the phrase "or other official indicia".

Page 2, line 29 and Page 3, line 1: Delete the phrase "or other official indicia."

Amendment 4: This phrase was taken from the Minnesota statute, does not make sense in Alaska, and should be deleted from the bill.

Page 3, lines 14 - 15: Delete phrase "Statement filed by the commissioner with the court administrator, or any other".

Amendment 5: As written, the tax law would apply to drugs lawfully obtained by prescription, possessed for research approved under federal law, or possessed by doctors, pharmacies and hospitals. The amendment adds an exception for possession of controlled substances under these circumstances, and is modelled on a similar provision in the Minnesota law.

Page 3, lines 21 - 26: The existing section should be deleted and replaced with the following:

Sec. 43.52.060. TAX PAYMENT REQUIRED FOR POSSESSION. (a) A person may not possess a controlled substance subject to the tax imposed by the chapter unless

(1) the tax has been paid on the controlled substance; and

(2) a stamp issued by the department has been affixed to the controlled substance.

(b) A person lawfully in possession of a controlled substance is not subject to the tax required under this chapter.

Amendment 6: There are two criminal penalty provisions in AS 43.05. The amendment clarifies which penalty provision applies to drug tax cases.

Page 3, line 28: The reference to "AS 43.05" should be changed to "AS 43.05.290".

Amendment 7: Although an exception is made in AS 43.52.090(a) for release of information obtained in connection with a proceeding involving drug taxes, a similar exception is not contained in AS 43.52.090(b). If proposed amendment 8 is incorporated into the bill, and the taxpayer is given the option of staying the tax proceedings until conclusion of related criminal cases, there is no reason to prohibit prosecution use of testimony

The Honorable Fred F. Zharoff

July 27, 1989

Page 8

If you have any questions, please feel free to call. If a new work draft is prepared, I would very much appreciate receiving a copy.

Very truly yours,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By: 

\_\_\_\_\_  
Laurie H. Otto  
Assistant Attorney General

Attachment

cc: The Honorable Jan Faiks  
Douglas B. Baily  
Bob Evans  
Royce Weller

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by the commissioner within five years after the date of assessment of the tax. A notice of lien filed in one county may be transcribed to any other county within ten years after the date of its filing, but the transcription shall not extend the period during which the lien is enforceable. A notice of lien may be renewed by the commissioner before the expiration of the ten-year period for an additional ten years. The taxpayer must receive written notice of the renewal.

Subd. 5. (Repealed, 1985 c 101 s 17)

Subd. 6. Enforceability of lien. The lien imposed by this section shall be enforceable by levy as authorized in section 270.70, or by judgment lien foreclosure as authorized in chapter 550.

Subd. 7. Notice of mortgage foreclosure or contract termination. If a lien has been filed by the commissioner of revenue against real property pursuant to this section, and, subsequent to the recording of the lien, a mortgage foreclosure upon the real property is commenced under chapter 580, or a termination of contract of sale of the real property is commenced under section 559.21, notice of the mortgage foreclosure or termination of contract of sale shall be mailed to the commissioner not less than 25 days prior to the foreclosure or termination. Provided, notice need not be given pursuant to this subdivision if the lien of the commissioner has been filed within 30 days or less prior to the foreclosure or termination. The contents of the notice shall be as prescribed in section 7425(c)(1) of the Internal Revenue Code of 1954, as amended through December 31, 1982.

Subd. 8. Filing entitlement. Execution of notices of liens or of other notices affecting state tax liens by the commissioner of revenue or a delegate entitles them to be filed, and no other attestation, certification, or acknowledgment is necessary.

Subd. 9. Lien search fees. Upon request of any person, the filing officer shall issue a certificate showing whether there is on file, on the date and hour stated in the certificate, any notice of lien or certificate or notice affecting any lien filed after June 30, 1979, naming a particular person, and giving the date and hour of filing of each notice or certificate naming the person. The fee for a certificate shall be as provided by section 336 9-407 or 357.1S, subdivision 1, clause (3). Upon request, the filing officer shall furnish a copy of any notice of state lien, or notice or certificate affecting a state lien, for a fee of 50 cents per page.

Subd. 10. Limitation for homestead property. A lien imposed under this section upon property defined as homestead property in chapter 510 may not be enforced against homestead property by levy under section 270.70, or by judgment lien under chapter 550.

History: 1982 c 523 art 2 s 8; 1983 c 180 s 3-6; 1985 c 101 s 6-9; 1985 c 281 s 2; 1986 c 444; 1Sp1986 c 1 art 7 s 11-14

#### 270.70 LEVY AND DISTRAINT.

Subdivision 1. Authority of commissioner. If any tax payable to the commissioner of revenue or to the department of revenue is not paid when due, such tax may be collected by the commissioner of revenue within five years after the date of assessment of the tax, or if the tax judgment has been filed, within the statutory period of enforcement of a valid tax judgment, by a levy upon all property and rights to property of the person liable for the payment or collection of such tax (except that which is exempt from execution pursuant to section 550.37) or property on which there is a lien provided in section 270.69. For this purpose, the term "tax" shall include any penalty, interest and costs properly payable. The term "levy" includes the power of distraint and seizure by any means.

Subd. 2. Notice and demand; jeopardy collection. Before a levy is made, notice and demand for payment of the amount due shall be given to the person liable for the payment or collection of the tax at least ten days prior to the levy. If the commissioner has reason to believe that collection of the tax is in jeopardy, notice and demand for immediate payment of the tax may be made by the commissioner. If the tax is not paid,

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the commissioner may proceed to collect by levy without regard to the ten day period provided herein.

Subd. 3. Manner of execution and sale. In making the execution of the levy and in collecting the taxes due, the commissioner shall have all of the powers provided in chapter 550 and in any other law for purposes of effecting an execution against property in this state. The sale of property levied upon, and the time and manner of redemption therefrom, shall, to the extent not provided in sections 270.701 to 270.709, be governed by chapter 550. The seal of the court, subscribed by the court administrator, as provided in section 550.04, shall not be required. The levy for collection of taxes may be made whether or not the commissioner has commenced a legal action for collection of such taxes.

Subd. 4. Stay of sale. (a) Where a jeopardy assessment or any other assessment has been made by the commissioner, the property seized for collection of the tax shall not be sold until the time has expired for filing an appeal of the assessment with the tax court pursuant to chapter 271. If an appeal has been filed, no sale shall be made unless the taxes remain unpaid for a period of more than 30 days after final determination of the appeal by the tax court or by the appropriate judicial forum.

(b) Notwithstanding clause (a), seized property may be sold if

(i) the taxpayer consents in writing to the sale, or

(ii) the commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping, or that such property cannot be kept without great expense.

Subd. 5. Probate court jurisdiction. Where a levy has been made to collect taxes pursuant to this section and the property seized is properly included in a formal proceeding commenced under sections 524.3-401 to 524.3-505 and maintained under full supervision of the court, such property shall not be sold until the probate proceedings are completed or until the court so orders.

Subd. 6. Bond or security to release seizure. The property seized shall be returned by the commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the commissioner, or deposits with the commissioner security in such form and amount as the commissioner deems necessary to insure payment of the liability, but not more than twice the liability.

Subd. 7. Injunction. Notwithstanding any other provision to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in such property, the district court may grant an injunction to prohibit the enforcement of such levy or to prohibit such sale.

Subd. 8. Surrender of property subject to levy. Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy, upon demand by the commissioner, shall be liable personally to the state of Minnesota in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount of taxes for the collection of which such levy has been made. Any amount recovered under this subdivision shall be credited against the tax liability for the collection of which such levy was made.

Subd. 9. Penalty. In addition to the personal liability imposed by subdivision 8, if any person required to surrender property or rights to property fails or refuses to surrender the property or rights to property without reasonable cause, such person shall be liable for a penalty equal to 25 percent of the amount recoverable under subdivision 8. No part of such penalty shall be credited against the tax liability for the collection of which such levy was made.

Subd. 10. Person defined. The term "person" as used in subdivision 8 includes an officer or employee of a corporation or a member or employee of a partnership who, as such officer, employee or member is under a duty to surrender the property or rights to property or to discharge the obligation. The personal liability imposed by subdivision 8 and the penalty imposed by subdivision 9 may, after demand to honor a levy

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has been made, be assessed by the commissioner within 60 days after service of the levy. An assessing tax order under this subdivision shall be appealable to the tax court without payment of the tax, penalty, or interest in the manner provided by law, but an appeal shall not preclude the commissioner from exercising any collection action the commissioner deems necessary to preserve the interests of the state while the matter is pending.

Subd. 11. **Optional remedy.** Any action taken by the commissioner pursuant to this section shall not constitute an election by the state to pursue a remedy to the exclusion of any other remedy.

Subd. 12. **Equitable relief.** After the commissioner has seized the property of any person, that person may, upon giving 48 hours notice to the commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the taxpayer upon such terms and conditions as the court may deem equitable.

Subd. 13. **Levy and sale by sheriff.** If any tax payable to the commissioner of revenue or to the department of revenue is not paid as provided in subdivision 2, the commissioner may, within five years after the date of assessment of the tax, delegate the authority granted by subdivision 1, by means of issuing a warrant to the sheriff of any county of the state commanding the sheriff, as agent for the commissioner, to levy upon and sell the real and personal property of the person liable for the payment or collection of the tax and to levy upon the rights to property of that person within the county, or to levy upon and seize any property within the county on which there is a lien provided in section 270.69, and to return the warrant to the commissioner and pay to the commissioner the money collected by virtue thereof by a time to be therein specified not less than 60 days from the date of the warrant. The sheriff shall proceed thereunder to levy upon and seize any property of the person and to levy upon the rights to property of the person within the county (except the person's homestead or that property which is exempt from execution pursuant to section 550.37), or to levy upon and seize any property within the county on which there is a lien provided in section 270.69. For purposes of the preceding sentence, the term "tax" shall include any penalty, interest and costs properly payable. The sheriff shall then sell so much of the property levied upon as is required to satisfy the taxes, interest, and penalties, together with the sheriff's costs; but the sales, and the time and manner of redemption therefrom, shall, to the extent not provided in sections 270.701 to 270.709, be governed by chapter 550. The proceeds of the sales, less the sheriff's costs, shall be turned over to the commissioner, who shall then apply the proceeds as provided in section 270.708.

Subd. 14. **Priority of levy.** Notwithstanding section 52.12, a levy by the commissioner made pursuant to the provisions of this section upon a taxpayer's funds on deposit in a financial institution located in this state, shall have priority over any unexercised right of setoff of the financial institution to apply the levied funds toward the balance of an outstanding loan or loans owed by the taxpayer to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy by the commissioner must be substantiated by evidence of the date of the setoff, and shall be verified by the sworn statement of a responsible corporate officer of the financial institution. Furthermore, for purposes of determining the priority of any levy made under this section, the levy shall be treated as if it were an execution made pursuant to chapter 550.

Subd. 15. **Effect of honoring levy.** Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the commissioner, surrenders the property or rights to property (or who pays a liability under subdivision 8) shall be discharged from any obligation or liability to the person liable for the payment or collection of the delinquent tax with respect to the property or rights to property so surrendered or paid.

Subd. 16. **Notice of levy.** Notwithstanding any other provision of law to the contrary, the notice of any levy authorized by this section may be served by mail or by delivery by an employee or agent of the department of revenue.

*History: 1975 c 377 s 6; 1976 c 134 s 78; 1977 c 307 s 29; 1982 c 523 art 2 s 9-16; 1983 c 180 s 7-9; 1985 c 101 s 10,11; 1986 c 444; JSp1986 c 3 art 1 s 82*

**270.701 SALE OF SEIZED PROPERTY.**

Subdivision 1. Notice of seizure. As soon as practicable after seizure of property, notice in writing shall be given by the commissioner of revenue to the owner of the property (or, in the case of personal property, the possessor thereof), and shall be served in like manner as a summons in a civil action in the district court. If the owner cannot be readily located, or has no dwelling or place of business within this state, the notice may be mailed to the last known address. The notice shall specify the sum demanded and shall contain, in the case of personal property, an account of the property seized and, in the case of real property, a description with reasonable certainty of the property seized.

Subd. 2. Notice of sale. The commissioner shall as soon as practicable after the seizure of the property give notice of sale of the property to the owner, in the manner of service prescribed in subdivision 1. In the case of personal property, the notice shall be served at least 10 days prior to the sale. In the case of real property, the notice shall be served at least four weeks prior to the sale. The commissioner shall also cause public notice of each sale to be made. In the case of personal property, notice shall be posted at least 10 days prior to the sale at the post office nearest the place where the seizure is made, and in not less than two other public places. In the case of real property, six weeks' published notice shall be given prior to the sale, in a newspaper published or generally circulated in the county. The notice of sale provided in this subdivision shall specify the property to be sold, and the time, place, manner and conditions of the sale. Whenever levy is made without regard to the ten-day period provided in section 270.70, subdivision 2, public notice of sale of the property seized shall not be made within the ten-day period unless section 270.702 (relating to sale of perishable goods) is applicable.

Subd. 3. Sale of indivisible property. If any property liable to levy is not divisible, so as to enable the commissioner by sale of a part thereof to raise the whole amount of the tax and expenses, the whole of the property shall be sold.

Subd. 4. Time and place of sale. The time of sale shall be after the expiration of the notice periods prescribed in subdivision 2. The place of sale shall be within the county in which the property is seized, except by special order of the commissioner.

Subd. 5. Manner and conditions of sale. (a) Before the sale the commissioner shall determine a minimum price for which the property shall be sold, and if no person offers for the property at the sale the amount of the minimum price, the property shall be declared to be purchased at the minimum price for the state of Minnesota; otherwise the property shall be declared to be sold to the highest bidder. In determining the minimum price, the commissioner shall take into account the expense of making the levy and sale. The announcement of the minimum price determined by the commissioner may be delayed until the receipt of the highest bid.

(b) The sale shall not be conducted in any manner other than:

- (i) by public auction, or
- (ii) by public sale under sealed bids.

(c) In the case of seizure of several items of property, the items may be offered separately, in groups, or in the aggregate, and shall be sold under whichever method produces the highest aggregate amount.

(d) Payment in full shall be required at the time of acceptance of a bid, except that a part of the payment may be deferred by the commissioner for a period not to exceed 30 days.

(e) Other methods (including advertising) in addition to those prescribed in subdivision 2 may be used in giving notice of the sale.

(f) The commissioner may adjourn the sale from time to time for a period not to exceed 30 days.

(g) If payment in full is required at the time of acceptance of a bid and is not then and there paid, the commissioner shall forthwith proceed to again sell the property in the manner provided in this section. If the conditions of the sale permit part of the

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within ten days from the sale cause the certificate of sale to be duly recorded by the county recorder of the county in which the real property is located.

History: 1952 c 523 art 2 s 20

270.705 EFFECT OF CERTIFICATE OF SALE.

Subdivision 1. Personal property. (a) In all cases of sale pursuant to section 270.701 of personal property, the certificate of sale given pursuant to section 270.704 shall be prima facie evidence of the right of the commissioner to make the sale, and conclusive evidence of the regularity of the proceedings in making the sale. The certificate shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold.

(b) If the property consists of stocks, the certificate of sale shall be notice, when received, to any corporation, company, or association of the transfer, and shall be authority to the corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(c) If the subject of sale is securities or other evidences of debt, the certificate of sale shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of the securities or other evidences of debt.

(d) If the property consists of a motor vehicle, the certificate of sale shall be notice, when received, to the registrar of motor vehicles of this state of the transfer, and shall be authority to the registrar to record the transfer on the books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

Subd. 2. Real property. In the case of the sale of real property pursuant to section 270.701, the certificate of sale given pursuant to section 270.704 shall be prima facie evidence of the facts therein stated, and shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the state of Minnesota attached thereto.

Subd. 3. Junior encumbrances. A certificate of sale of personal property or real property given pursuant to section 270.704 shall discharge the property from all liens, encumbrances, and titles over which the lien of the state of Minnesota with respect to which the levy was made had priority.

History: 1952 c 523 art 2 s 21; 1986 c 444

270.706 RECORDS OF SALE.

The commissioner shall, for the department of revenue, keep a record of all sales of property under section 270.701 and of redemptions of real property. The record shall set forth the tax for which the sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making the sale, the amount of expenses, the names of the purchasers, and the date of the certificate of sale. A copy of the record, or any part thereof, certified by the commissioner shall be evidence in any court of the truth of the facts therein stated.

History: 1952 c 523 art 2 s 22

270.707 EXPENSE OF LEVY AND SALE.

The commissioner shall determine the expenses to be allowed in all cases of levy and sale.

History: 1952 c 523 art 2 s 23

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payment to be deferred, and if the part is not paid within the prescribed period, suit may be instituted against the purchaser for the purchase price or that part thereof as has not been paid, together with interest at the rate specified in section 549.09 from the date of the sale; or, in the discretion of the commissioner, the sale may be declared by the commissioner to be null and void for failure to make full payment of the purchase price and the property may again be advertised and sold as provided in this section. In the event of a readvertisement and sale, any new purchaser shall receive the property or rights to property free and clear of any claim or right of the former defaulting purchaser, of any nature whatsoever, and the amount paid upon the bid price by the defaulting purchaser shall be forfeited.

*History: 1982 c 523 art 2 s 17; 1986 c 444*

#### 270.702 SALE OF PERISHABLE GOODS.

If the commissioner determines that any property seized is liable to perish or become greatly reduced in price or value by keeping, or that the property cannot be kept without great expense, the commissioner shall appraise the value of the property, and if the owner of the property can be readily found, the commissioner shall give the owner notice of the determination of the appraised value of the property. The property shall be returned to the owner if, within the time specified in the notice, the owner (a) pays to the commissioner an amount equal to the appraised value, or (b) gives bond in the form, with the sureties, and in the amount as the commissioner prescribes to pay the appraised amount at the time the commissioner determines to be appropriate in the circumstances. If the owner does not pay the amount or furnish the bond in accordance with this section, the commissioner shall as soon as practicable make public sale of the property in accordance with section 270.701.

*History: 1982 c 523 art 2 s 18; 1986 c 444*

#### 270.703 REDEMPTION OF PROPERTY.

Subdivision 1. Before sale. Any person whose property has been levied upon shall have the right to pay the amount due, together with the expenses of the proceeding, if any, to the commissioner at any time prior to the sale thereof, and upon payment the commissioner shall restore the property to the person, and all further proceedings in connection with the levy on the property shall cease from the time of payment.

Subd. 2. Redemption of real estate after sale. The owners of any real property sold as provided in this section, their heirs, executors, or administrators, or any person having any interest therein, or a lien thereon, or any person in their behalf, shall be permitted to redeem the property sold, or any particular tract of the property, at any time within 6 months, or in case the real property sold exceeds 10 acres in size, at any time within 12 months, after the sale thereof. The property or tract of property shall be permitted to be redeemed upon payment to the purchaser (or if not found in the county in which the property to be redeemed is situated, then to the commissioner, for the use of the purchaser, or the purchaser's heirs or assigns) of the amount paid by the purchaser together with interest at the rate specified in section 549.09 from the date of the sale.

Subd. 3. Record. When any lands sold are redeemed as provided in this section, the commissioner shall cause entry of the fact to be made upon the record required by section 270.706 and the entry shall be evidence of the redemption.

*History: 1982 c 523 art 2 s 19; 1986 c 444*

#### 270.704 CERTIFICATE OF SALE.

In the case of property sold as provided in section 270.701, the commissioner shall give to the purchaser a certificate of sale upon payment in full of the purchase price. In the case of real property the certificate shall set forth the real property purchased, for whose taxes the property was sold, the name of the purchaser, and the price paid. If real property is declared purchased by the state of Minnesota, the commissioner shall

within ten days from the sale cause the certificate of sale to be duly recorded by the county recorder of the county in which the real property is located.

History: 1952 c 523 art 2 s 20

270.705 EFFECT OF CERTIFICATE OF SALE.

Subdivision 1. Personal property. (a) In all cases of sale pursuant to section 270.701 of personal property, the certificate of sale given pursuant to section 270.704 shall be prima facie evidence of the right of the commissioner to make the sale, and conclusive evidence of the regularity of the proceedings in making the sale. The certificate shall transfer to the purchaser all right, title, and interest of the party delinquent in and to the property sold.

(b) If the property consists of stocks, the certificate of sale shall be notice, when received, to any corporation, company, or association of the transfer, and shall be authority to the corporation, company, or association to record the transfer on its books and records in the same manner as if the stocks were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

(c) If the subject of sale is securities or other evidences of debt, the certificate of sale shall be a good and valid receipt to the person holding the same, as against any person holding or claiming to hold possession of the securities or other evidences of debt.

(d) If the property consists of a motor vehicle, the certificate of sale shall be notice, when received, to the registrar of motor vehicles of this state of the transfer, and shall be authority to the registrar to record the transfer on the books and records in the same manner as if the certificate of title to the motor vehicle were transferred or assigned by the party holding the same, in lieu of any original or prior certificate, which shall be void, whether canceled or not.

Subd. 2. Real property. In the case of the sale of real property pursuant to section 270.701, the certificate of sale given pursuant to section 270.704 shall be prima facie evidence of the facts therein stated, and shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the state of Minnesota attached thereto.

Subd. 3. Junior encumbrances. A certificate of sale of personal property or real property given pursuant to section 270.704 shall discharge the property from all liens, encumbrances, and titles over which the lien of the state of Minnesota with respect to which the levy was made had priority.

History: 1952 c 523 art 2 s 21; 1986 s 444

270.706 RECORDS OF SALE.

The commissioner shall, for the department of revenue, keep a record of all sales of property under section 270.701 and of redemptions of real property. The record shall set forth the tax for which the sale was made, the dates of seizure and sale, the name of the party assessed and all proceedings in making the sale, the amount of expenses, the names of the purchasers, and the date of the certificate of sale. A copy of the record, or any part thereof, certified by the commissioner shall be evidence in any court of the truth of the facts therein stated.

History: 1982 c 523 art 2 s 22

270.707 EXPENSE OF LEVY AND SALE.

The commissioner shall determine the expenses to be allowed in all cases of levy and sale.

History: 1982 c 523 art 2 s 23

270.708

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270.708 APPLICATION OF PROCEEDS OF LEVY.

Subdivision 1. Collection of liability. Any money realized by proceedings under this chapter, whether by seizure, by surrender under section 270.70 (except pursuant to subdivision 9 thereof), by sale of seized property, or by sale of property redeemed by the state of Minnesota (if the interest of the state of Minnesota in the property was a lien arising under the provisions of section 270.69), shall be applied as follows:

(a) First, against the expenses of the proceedings; then

(b) If the property seized and sold is subject to a tax administered by the commissioner of revenue which has not been paid, the amount remaining after applying clause (a) shall next be applied against the tax liability (and, if the tax was not previously assessed, it shall then be assessed); and

(c) The amount, if any, remaining after applying clauses (a) and (b) shall be applied against the tax liability in respect of which the levy was made or the sale was conducted.

Subd. 2. Surplus proceeds. Any surplus proceeds remaining after the application of subdivision 1 shall, upon application and satisfactory proof in support thereof, be credited or refunded by the commissioner to the person or persons legally entitled thereto.

History: 1982 c 523 art 2 s 24

270.709 AUTHORITY TO RELEASE LEVY AND RETURN PROPERTY.

Subdivision 1. Release of levy. It shall be lawful for the commissioner to release the levy upon all or part of the property or rights to property levied upon if the commissioner determines that the release will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy.

Subd. 2. Return of property. If the commissioner determines that property has been wrongfully levied upon, it shall be lawful for the commissioner to return:

(a) The specific property levied upon, at any time;

(b) An amount of money equal to the amount of money levied upon, at any time before the expiration of nine months from the date of the levy; or

(c) An amount of money equal to the amount of money received by the state of Minnesota from a sale of the property, at any time before the expiration of nine months from the date of the sale.

For purposes of clause (c), if property is declared purchased by the state of Minnesota at a sale pursuant to section 270.701, subdivision 5 (relating to manner and conditions of sale), the state of Minnesota shall be treated as having received an amount of money equal to the minimum price determined pursuant to section 270.701, subdivision 5 or, if larger, the amount received by the state of Minnesota from the resale of the property.

History: 1982 c 523 art 2 s 25

270.71 ACQUISITION AND RESALE OF SEIZED PROPERTY.

For the purpose of enabling the commissioner of revenue to purchase or redeem seized property in which the state of Minnesota has an interest arising from a lien for unpaid taxes, there is appropriated to the commissioner an amount representing the cost of such purchases or redemptions. Seized property acquired by the state of Minnesota to satisfy unpaid taxes shall be resold by the commissioner. The commissioner shall preserve the value of seized property while controlling it, including but not limited to the procurement of insurance. For the purpose of refunding the proceeds from the sale of levied or redeemed property which are in excess of the actual tax liability plus costs of acquiring the property, there is hereby created a levied and redeemed property refund account in the agency fund. All amounts deposited into this account are appropriated to the commissioner of revenue. The commissioner shall report quarterly on the status of this program to the chairs of the house taxes and appropriations committees and senate taxes and tax laws and finance committees.

History: 1982 c 523 art 2 s 26; 1986 c 444

4 Tommy Stearns  
Div Bureau of Enforcement  
243-8916

6-1210H  
Chenoweth  
2/11/90

Original sponsor(s): SEN. ZHAROFF

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 272 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act imposing taxes on controlled substances; and  
7 providing for an effective date."

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

9 \* Section 1. AS 43 is amended by adding a new chapter to read:

10 CHAPTER 52. TAX ON CONTROLLED SUBSTANCES.

11 Sec. 43.52.010. TAX IMPOSED. (a) There is levied an excise tax  
12 in the following amounts on each of the controlled substances set out  
13 below that a person possesses in the state:

14 (1) \$ \_\_\_\_\_ on each gram of a schedule IA controlled sub-  
15 stance; *heroin \$250-350 gram  
cocaine \$2 tablet  
heroin \$20-65 tablet*

16 (2) \$ \_\_\_\_\_ on each gram of a schedule IIA controlled  
17 substance; *crack \$120-150 gram  
LSD \$2-5 hit  
amphetamine \$240-300 gram*

18 (3) \$ \_\_\_\_\_ on each gram of a schedule IIIA or schedule  
19 IVA controlled substance if the amount of the schedule IIIA or  
20 schedule IVA controlled substance that the person possesses equals or  
21 exceeds *iron H2O gram  
heroin  
heroin  
heroin } tablet?*

22 (A) the number of tablets, ampules, or syrettes set  
23 out in AS 11.71.040(a)(3)(B); or

24 (B) the aggregate weight set out in AS 11.71.040(a)-  
25 (3)(C);

26 (4) \$ \_\_\_\_\_ on each gram of a schedule VA controlled  
27 substance if the amount of the schedule VA controlled substance that  
28 the person possesses equals or exceeds *cocaine spray?*

29 (A) the number of tablets, ampules, or syrettes set

1 out in AS 11.71.040(a)(3)(D); or

2 (B) the aggregate weight set out in AS 11.71.040(a)-  
3 (3)(E);

4 (5) \$ \_\_\_\_\_ on each gram of a schedule VIA controlled sub-  
5 stance if the amount of the controlled substance that the person  
6 possesses equals or exceeds the aggregate weight set out in AS 11.-  
7 71.040(a)(3)(F). *1 gram container \$15 gram*

8 (b) For the purpose of calculating the tax under this section, a  
9 quantity of a controlled substance is measured by the weight of the  
10 substance, whether pure, impure, or dilute, in the person's posses-  
11 sion.

12 Sec. 43.52.020. STAMPS AFFIXED. (a) When a person acquires or  
13 imports into the state a controlled substance on which the tax under  
14 this chapter is due, if a stamp evidencing payment of the tax has not  
15 already been affixed to the container in which the substance is en-  
16 closed, the person shall have the stamp permanently affixed on the  
17 container immediately upon receiving the substance. If the controlled  
18 substance is subdivided into more than one container, a stamp must be  
19 affixed to each container.

20 (b) Each stamp may be used only once.

21 Sec. 43.52.030. PAYMENT OF TAX. (a) The tax imposed by this  
22 chapter is due and payable by the person immediately upon the person's  
23 acquisition of the controlled substance.

24 (b) A person who is liable for the tax imposed by this chapter  
25 shall pay the face value for each stamp.

26 (c) If another state or unit of local government has previously  
27 levied and collected an excise tax on a controlled substance, subject  
28 to the tax imposed by this chapter, the taxpayer must pay the differ-  
29 ence between the tax due under AS 43.52.010 and the tax previously

1 paid. If the tax previously paid to the other state or unit of local  
2 government was equal to or greater than the tax due under AS 43.52.-  
3 010, a tax is not due. If a reduction or exemption is claimed under  
4 this subsection, the burden is on the taxpayer to show that an excise  
5 tax on the controlled substance has been paid to another state or unit  
6 of local government.

7 Sec. 43.52.040. ADMINISTRATION OF CHAPTER. (a) The department  
8 shall

9 (1) administer this chapter;

10 (2) collect, supervise, and enforce the collection of taxes  
11 due under this chapter and enforce the penalties provided in this  
12 title for failure to pay a tax when due; and

13 (3) adopt a uniform system of providing official stamps for  
14 controlled substances upon which a tax is imposed.

15 (b) The department may adopt regulations necessary for the  
16 administration of this chapter.

17 Sec. 43.52.050. ASSESSMENT OF TAX BY COMMISSIONER. (a) An  
18 assessment for a person not possessing valid stamps showing that the  
19 tax has been paid shall be considered a jeopardy assessment or col-  
20 lection. The commissioner shall

21 (1) assess a tax and applicable penalties based on personal  
22 knowledge or information available to the commissioner.

23 (2) mail to the taxpayer at the taxpayer's last known  
24 address, or serve in person, a written notice of the amount of tax and  
25 penalty;

26 (3) demand immediate payment of the tax; and

27 (4) if payment is not immediately made, collect the tax and  
28 penalty by any method prescribed in this title.

29 (b) The tax and penalties assessed by the commissioner in an

1 assessment made under (a) of this section are presumed to be valid and  
2 correctly determined and assessed. The burden is upon the taxpayer to  
3 show their incorrectness or invalidity. A certificate by the commis-  
4 sione. of the amount of tax and penalties determined or assessed is  
5 admissible in evidence and is prima facie evidence of the facts it  
6 contains.

7 (c) Except for AS 43.20.270(b)(2) and (k), the provisions of  
8 AS 43.10.030 and AS 43.20.270 apply to this chapter. However, if the  
9 commissioner has reason to believe that collection of the tax is in  
10 jeopardy, the commissioner may give notice and demand immediate pay-  
11 ment of the tax. If the tax is not promptly paid, the commissioner

12 (1) may proceed to collect by levy under AS 43.20.270(c);

13 (2) may not sell the property seized for collection of the  
14 tax until the time has expired for filing an appeal of the assessment  
15 of the tax under AS 43.05.240;

16 (3) shall return the property seized if the owner provides  
17 a surety bond equal to the appraisal value of the owner's interest in  
18 the property, as determined by the commissioner, or deposits with the  
19 commissioner security in a form and amount as the commissioner may  
20 determine to assure payment of the tax liability.

21 Sec. 43.52.060. TAX PAYMENT REQUIRED FOR POSSESSION. (a) A  
22 person who possesses a controlled substance in an amount the posses-  
23 sion of which would be a felony under AS 11.71 must pay the tax on the  
24 controlled substance imposed under AS 43.52.010 and affix the stamp  
25 issued by the department on the controlled substance.

26 (b) A person lawfully in possession of a controlled substance is  
27 not subject to the tax required under this chapter.

28 Sec. 43.52.070. CRIMINAL PENALTIES. The penalties provided in  
29 AS 43.05.290 apply to the tax levied in this chapter.

1           Sec. 43.52.080. CIVIL PENALTY. A person who is in control of a  
2 controlled substance in violation of this chapter is considered to  
3 have possession of the controlled substance. A person in possession  
4 of a controlled substance in violation of this chapter is personally  
5 liable for the tax, plus a penalty of 100 percent.

6           Sec. 43.52.090. CONFIDENTIAL NATURE OF INFORMATION. (a) The  
7 commissioner and employees of the department may not reveal facts  
8 obtained from a person in the administration of this chapter except in  
9 connection with a proceeding involving taxes due under this chapter  
10 from the person. This subsection does not prohibit the commissioner  
11 from publishing statistics about the tax levied by this chapter that  
12 do not disclose the identity of persons who have purchased the stamps  
13 as evidence of payment of the tax.

14           (b) Information obtained by the department from a person may not  
15 be used against the person in the prosecution of an offense unless the  
16 information

17                 (1) is obtained independently of the person's acquiring the  
18 official stamps; or

19                 (2) consists of testimony given or statements made in a  
20 proceeding involving taxes due from the person under this chapter.

21           (c) A stamp denoting payment of the tax imposed by this chapter  
22 may not be used against the taxpayer in the prosecution of a criminal  
23 proceeding.

24           Sec. 43.52.100. ACCOUNTING FOR RECEIPTS. The commissioner of  
25 administration shall separately account for money collected under this  
26 chapter that the department deposits in the general fund.

27           Sec. 43.52.110. RELATIONSHIP OF CHAPTER TO OTHER LAW. (a) At  
28 the request of the taxpayer, the superior court shall stay the pro-  
29 ceedings in an action to enforce the assessment, levy, and collection

1 of the tax imposed by this chapter until the conclusion of criminal  
2 proceedings related to the controlled substance for which the tax is  
3 imposed.

4 (b) This section does not prohibit the department from immedi-  
5 ately seizing assets or collecting taxes.

6 (c) A court or the department may not grant a taxpayer immunity  
7 for testimony given, or statements made, in connection with a proceed-  
8 ing involving taxes due from the person under this chapter.

9 Sec. 43.52.199. DEFINITIONS. In this chapter

10 (1) "controlled substance" has the meaning given in AS 11.-  
11 71.900;

12 (2) "schedule IA controlled substance" means a controlled  
13 substance included in the schedule in AS 11.71.140;

14 (3) "schedule IIA controlled substance" means a controlled  
15 substance included in the schedule in AS 11.71.150;

16 (4) "schedule IIIA controlled substance" means a controlled  
17 substance included in the schedule in AS 11.71.160;

18 (5) "schedule IVA controlled substance" means a controlled  
19 substance included in the schedule in AS 11.71.170;

20 (6) "schedule VA controlled substance" means a controlled  
21 substance included in the schedule in AS 11.71.180;

22 (7) "schedule VIA controlled substance" means a controlled  
23 substance included in the schedule in AS 11.71.190;

24 (8) "tax" means the tax levied by AS 43.52.010.

25 \* Sec. 2. AS 43.05.230(a) is amended to read:

26 (a) It is unlawful for a current or former officer, employee, or  
27 agent of the state to divulge facts obtained in the administration of  
28 a tax levied by AS 43.52, or the amount of income or the particulars  
29 set out or disclosed in a report or return made under this title,

1           except

2                   (1) in connection with official investigations or proceed-  
3 ings of the department, whether judicial or administrative, involving  
4 taxes due under this title;

5                   (2) in connection with official investigations or proceed-  
6 ings of the child support enforcement agency, whether judicial or  
7 administrative, involving child support obligations imposed or impos-  
8 able under AS 25 or AS 47;

9                   (3) as provided in AS 38.05.036 pertaining to audit func-  
10 tions; and

11                   (4) as otherwise provided in this section.

12 \* Sec. 3. This Act takes effect January 1, 1990.  
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Original sponsor: Zharoff

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 272 ( )

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act imposing taxes on controlled substances; and  
7 providing for an effective date."

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

9 \* Section 1. AS 43 is amended by adding a new chapter to read:

10 CHAPTER 52. TAX ON CONTROLLED SUBSTANCES.

11 Sec. 43.52.010. TAX IMPOSED. (a) Except as provided in (b) of  
12 this section, there is levied an excise tax in the following amounts  
13 on the following controlled substances that a person possesses in the  
14 state:

15 (1) \$100 on each one-tenth gram of a schedule IA controlled  
16 substance;

17 (2) \$10 on each one-tenth gram of a schedule IIA controlled  
18 substance;

19 (3) \$3.50 on each gram of a schedule IIIA, IVA, VA, or VIA  
20 controlled substance.

21 (b) If a controlled substance is in the form of a dosage unit,  
22 the excise tax levied on the controlled substance is \$20 per dosage  
23 unit.

24 (c) For the purpose of calculating the tax under this section, a  
25 quantity of a controlled substance is measured by the weight of the  
26 substance, whether pure, impure, or dilute, in the person's pos-  
27 session. If the controlled substance is normally dispensed or used in  
28 the form of a dosage unit, for the purpose of calculating the tax  
29 under this section, the quantity of the controlled substance shall be

1 determined by the number of dosage units.

2       Sec. 43.52.020. STAMPS AFFIXED. (a) When a person acquires or  
3 imports into the state a controlled substance on which the tax under  
4 this chapter is due, if a stamp or other indicia evidencing payment of  
5 the tax has not already been affixed, the person shall have the stamp  
6 or other indicia permanently affixed on the controlled substance imme-  
7 diately upon receiving the substance.

8       (b) Each stamp or other indicia may be used only once.

9       Sec. 43.52.030. PAYMENT OF TAX. (a) The tax imposed by this  
10 chapter is due and payable by the person immediately upon the person's  
11 acquisition of the controlled substance.

12       (b) A person who is liable for the tax imposed by this chapter  
13 shall pay the face value for each stamp or other indicia of purchase.

14       (c) For purposes of calculating the tax due under this chapter,  
15 the controlled substance is measured by the weight or number of dosage  
16 units of the substance in the person's possession.

17       Sec. 43.52.040. ADMINISTRATION OF CHAPTER. (a) The department  
18 shall

19               (1) administer this chapter;

20               (2) collect, supervise, and enforce the collection of taxes  
21 due under this chapter and enforce the penalties provided in this  
22 title for failure to pay a tax when due; and

23               (3) adopt a uniform system of providing official stamps or  
24 other official indicia for controlled substances upon which a tax is  
25 imposed.

26       (b) The department may adopt regulations necessary for the  
27 administration of this chapter.

28       Sec. 43.52.050. ASSESSMENT OF TAX BY COMMISSIONER. (a) An  
assessment for a person not possessing valid stamps or other official

1       indicia showing that the tax has been paid shall be considered a  
2       jeopardy assessment or collection. The commissioner shall

3               (1) assess a tax and applicable penalties based on personal  
4       knowledge or information available to the commissioner;

5               (2) mail to the taxpayer at the taxpayer's last known  
6       address, or serve in person, a written notice of the amount of tax and  
7       penalty;

8               (3) demand immediate payment of the tax; and

9               (4) if payment is not immediately made, collect the tax and  
10      penalty by any method prescribed in this title.

11              (b) The tax and penalties assessed by the commissioner in an  
12      assessment made under (a) of this section are presumed to be valid and  
13      correctly determined and assessed. The burden is upon the taxpayer to  
14      show their incorrectness or invalidity. A statement filed by the  
15      commissioner with the court administrator, or any other certificate by  
16      the commissioner of the amount of tax and penalties determined or  
17      assessed is admissible in evidence and is prima facie evidence of the  
18      facts it contains.

19              (c) Except for AS 43.20.270(b)(2), the provisions of AS 43.10.-  
20      030 and AS 43.20.270 apply to this chapter.

21              Sec. 43.52.060. TAX PAYMENT REQUIRED FOR POSSESSION. A person  
22      may not possess a controlled substance subject to the tax imposed by  
23      this chapter unless

24                      (1) the tax has been paid on the controlled substance; and

25                      (2) a stamp or other official indicia issued by the depart-  
26      ment has been affixed to the controlled substance.

27              Sec. 43.52.070. CRIMINAL PENALTIES. The penalties provided in  
28      AS 43.05 apply to the tax levied in this chapter.

29              Sec. 43.52.080. CIVIL PENALTY. A person who is in control of a

1 controlled substance in violation of this chapter is considered to  
2 have possession of the controlled substance. A person in possession  
3 of a controlled substance in violation of this chapter is personally  
4 liable for the tax, plus a penalty of 100 percent.

5 Sec. 43.52.090. CONFIDENTIAL NATURE OF INFORMATION. (a) The  
6 commissioner and employees of the department may not reveal facts  
7 obtained from a person in the administration of this chapter except in  
8 connection with a proceeding involving taxes due under this chapter  
9 from the person. This subsection does not prohibit the commissioner  
10 from publishing statistics about the tax levied by this chapter that  
11 do not disclose the identity of persons who have purchased the stamps  
12 as evidence of payment of the tax.

13 (b) Information obtained by the department from a person may not  
14 be used against the person in the prosecution of an offense unless the  
15 information is obtained independently of the person's acquiring the  
16 official stamps or other official indicia required by this chapter.

17 (c) A stamp denoting payment of the tax imposed by this chapter  
18 may not be used against the taxpayer in the prosecution of a criminal  
19 proceeding.

20 Sec. 43.52.100. ACCOUNTING FOR RECEIPTS. The commissioner of  
21 administration shall separately account for money collected under this  
22 chapter that the department deposits in the general fund.

23 Sec. 43.52.110. RELATIONSHIP OF CHAPTER TO OTHER LAW. (a) The  
24 superior court may stay the proceedings in an action to enforce the  
25 assessment, levy, and collection of the tax imposed by this chapter  
26 until a criminal prosecution based on possession of controlled sub-  
27 stances subject to the tax has been determined.

28 (b) This chapter does not in any manner provide immunity for a  
29 person from criminal prosecution under state law.

1           Sec. 43.52.199. DEFINITIONS. In this chapter

2           (1) "controlled substance" has the meaning given in AS 11.-  
3 71.900;

4           (2) "schedule IA controlled substance" means a controlled  
5 substance included in the schedule in AS 11.71.140;

6           (3) "schedule IIA controlled substance" means a controlled  
7 substance included in the schedule in AS 11.71.150;

8           (4) "schedule IIIA controlled substance" means a controlled  
9 substance included in the schedule in AS 11.71.160;

10           (5) "schedule IVA controlled substance" means a controlled  
11 substance included in the schedule in AS 11.71.170;

12           (6) "schedule VA controlled substance" means a controlled  
13 substance included in the schedule in AS 11.71.180;

14           (7) "schedule VIA controlled substance" means a controlled  
15 substance included in the schedule in AS 11.71.190;

16           (8) "tax" means the tax levied by AS 43.52.010.

17 \* Sec. 2. This Act takes effect January 1, 1990.  
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# STATE OF ALASKA

## DEPARTMENT OF LAW

### CRIMINAL DIVISION

STEVE COWPER, GOVERNOR

REPLY TO:

CRIMINAL DIVISION CENTRAL OFFICE  
P.O. BOX KC  
JUNEAU, ALASKA 99811-0310  
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OFFICE OF SPECIAL PROSECUTIONS  
AND APPEALS  
1031 WEST 4TH AVENUE, SUITE 318  
ANCHORAGE, ALASKA 99501-5993  
PHONE: (907) 279-7424

July 27, 1989

The Honorable Fred F. Zharoff  
Alaska State Senator  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Zharoff:

As we discussed at the end of the session, the Criminal Division has continued to work on a committee substitute for SB 272. Taking the April 25, 1989 Chenoweth work draft as a starting point, we prepared the amendments set out in this letter. Although the amendments substantially improve the bill, and there is authority from other jurisdictions suggesting that taxation of controlled substances is constitutional, we cannot guarantee that this legislation will withstand a court challenge in Alaska.

In additions to the specific amendments offered below, I have a number of observations.

1. In developing the above amendments, I spoke with both a lawyer in the Minnesota Department of Revenue (Therese Koenig-Smith, 612-296-3438), and the person responsible for the drug tax program in Minnesota (Chris Sanft, 612-296-1940). We discussed the reasons why Minnesota chose to limit application of the drug tax law to dealers (defined as persons in possession of more than a specified quantity of drugs). Minnesota made this decision for two reasons: (1) since failing to pay the drug tax is a felony offense, the legislature did not want to turn a misdemeanor (e.g. possession of one gram of marijuana in an automobile) into a felony based solely on the drug tax law, and therefore, made the law applicable to possession of felony quantities of controlled substances; and (2) the cost of pursuing a tax action against a person in possession of one gram of marijuana is high and would not be offset by the tax revenues collected, therefore, the law was made applicable to persons in possession of a sufficient quantity of drugs to make the tax action cost-effective.

We share the concerns of the Minnesota policy makers, and believe a better approach would be to make the law

applicable only to "dealers." The definition of "dealer" in Minnesota is a person in possession of a felony quantity of controlled substances. We encourage you to amend SB 272 to make it applicable only to persons in possession of a felony quantity of controlled substances as set out in AS 11.71.040. In addition, based on the cost of pursuing tax assessments, it may be wise to raise the threshold quantity for imposition of taxes above what is set out in AS 11.71.040.

2. A recent case, State v. Durrant, 769 P.2d 1174 (Kan. 1989) (copy attached), upheld the constitutionality of the Kansas drug tax statute in the face of a challenge based on infringement of the right against self-incrimination. The court in Durrant at pages 1180-81 discussed the necessity for imposing penalties on any person who discloses confidential tax information as a way to protect against the use of self-incriminating statements in criminal prosecutions. Under AS 43.05.230, it is a crime punishable by a \$5000 fine, or by two years in jail, to divulge "the particulars set out or disclosed in a report or return made under this title." However, the drug tax law does not provide for either reports or returns. Therefore, either AS 43.05.230 needs to be amended to cover the situation presented in cases involving drug taxes, or criminal penalties for disclosure of confidential information should be written into AS 43.52.090. Although our recommendation would be to add a section to AS 43.52.090, you should discuss this issue with the Department of Revenue to see which alternative would make administration of the chapter easier.
3. We are concerned about the amount of tax imposed on Schedule IA controlled substances. Since the tax is set at \$100 on each one-tenth of a gram, the tax on a gram of substances such as opium, codeine, and heroin would be \$1000 a gram, or \$28,000 an ounce. This high rate of taxation opens the door to the argument that the tax is punitive, and therefore, criminal in nature and an impermissible exercise of taxing powers. See, e.g., Zwak v. United States, 848 F.2d 1179 (11th Cir. 1988); Sonzinsky v. United States, 300 U.S. 506, 81 L.Ed 772, 57 S.Ct. 554 (1937); and Annot. 81 L.Ed. 776 (1937). If an Alaska court found that the measure was punitive, it might mean, for example, that the protections normally available to criminal defendants, such as court appointed counsel, would be available to persons involved in tax proceedings. It could also mean that the state would be precluded, based on constitutional due process considerations, from both collecting a tax and pursuing

a criminal prosecution. See, e.g. United State v. Halper, \_\_\_ U.S. \_\_\_, 45 Cr.L.Rptr. 3033 (May 15, 1989).

We suggest that the amount of tax imposed on Schedule IA controlled substances be reduced to a more reasonable amount.

4. The statute is silent on the issue of whether a defendant would be entitled to retain sufficient assets to hire a private attorney. I assume this is because you did not intend to provide an exception to the law allowing seizure of all assets necessary to meet the entire tax liability. The United States Supreme Court recently determined, based in part on an analysis of legislative intent, that assets to pay attorney's fees can be forfeited without infringing on a criminal defendant's constitutional right to an attorney. See, United States v. Monsanto, \_\_\_ U.S. \_\_\_, 45 Cr.L.Rptr. 3133 (June 22, 1989) and Caplin & Drysdale v. United States, \_\_\_ U.S. \_\_\_, 45 Cr.L.Rptr. 3143 (June 22, 1989). In order to clarify the intent of the Alaska legislature on this issue, it would be prudent that the bill be accompanied by a statement of legislative intent to allow seizure of assets that could otherwise be used to pay attorney's fees.

5. The law does not make any provision for credit for previously paid taxes, and as a result, may impermissibly allow for double taxation. Minnesota amended its drug tax law this year to avoid this problem with the following language:

If another state or local unit of government has previously assessed an excise tax on the marijuana or controlled substances, the taxpayer must pay the difference between the tax due under [the section of law requiring payment of drug taxes] and the tax previously paid. If the tax previously paid to the other state or local unit of government was equal to or greater than the tax due under [the section of law requiring payment of drug taxes], no tax is due. The burden is on the taxpayer to show that an excise tax on the marijuana or controlled substances has been paid to another state or local unit of government.

6. As written, on page 3, lines 19 - 20, the bill requires that existing distraint procedures be used to collect drug tax assessments. However, we understand that you want authority to immediately seize property, and do not want there to be a ten day delay (or longer if a person

files an appeal). In its present form, the legislation does not provide this authority. For the sake of comparison, a copy of Minnesota's tax procedures is attached for your information, and may provide a helpful model for the legislative drafters. In subdivision 2 of section 270.70, for example, a specific waiver of the ten-day notice period is included.

One point of caution: in drafting jeopardy assessment procedures it is important to provide the level of procedural due process required by the state and federal constitutions. The specific issue is whether a judicial proceeding after the seizure of assets and before their sale, coupled with a full hearing on the merits later, is sufficient to meet the due process hearing requirement. A lengthy discussion of this issue is set out in Sisson v. Triplett, 428 N.W.2d 565, 568-571 (Minn. 1988). In Minnesota, the court approved the immediate seizure of assets because the statute specifically provided an opportunity for a judicial hearing and other relief prior to sale of the property by: (1) allowing property to be returned upon posting a bond; (2) providing for an injunction to prohibit the enforcement of a levy or sale upon a showing of irreparable injury; and (3) creating an action for "equitable relief" for release of the property.

7. We reviewed the bill from the perspective of the Criminal Division. However, we do not have special expertise in the field of taxation. In addition to our review, we strongly suggest that the next work draft of the bill be reviewed by an attorney familiar with Alaska's tax laws.

The specific amendments we suggest to the April 25, 1989 Chenoweth work draft are:

Amendment 1: "Dosage unit" could be interpreted to mean either one tablet, or multiple tablets, of a controlled substance. The amendment clarifies the intent of the legislation.

Page 1, line 21: The term "dosage unit" should either be defined, or replaced with the phrase "tablet, ampule, or syrette."

Page 1, line 28: The term "dosage unit" should either be defined, or replaced with the phrase "tablet, ampule, or syrette."

Page 2, line 1: The term "dosage units" should either be defined, or replaced with the phrase "tablets, ampules, or syrettes."

Page 2, lines 15 - 16: The term "dosage units" should either be defined, or replaced with the phrase "tablets, ampules, or syrettes."

Amendment 2: As currently drafted, the bill requires that the stamp be affixed to the controlled substance, which is a physical impossibility. The amendment corrects this problem.

Page 2, lines 2 - 8: The existing section should be deleted and replaced with the following:

Sec. 43.52.020. STAMPS AFFIXED. (a) When a person acquires or imports into the state a controlled substance on which the tax under this chapter is due, if a stamp evidencing payment of the tax has not already been affixed to the container in which the substance is enclosed, the person shall have the stamp permanently affixed on the container immediately upon receiving the substance.

(b) If the controlled substance is subdivided into more than one container, a stamp must be affixed to each container.

(c) Each stamp may be used only once.

Amendment 3: Since the legislation requires purchase of stamps, and affixing of stamps, and makes no provision for alternative indicia of purchase, the reference does not make sense and should be deleted from the bill.

Page 2, line 13: Delete the phrase "or other indicia of purchase".

Page 2, lines 23-24: Delete the phrase "or other official indicia".

Page 2, line 29 and Page 3, line 1: Delete the phrase "or other official indicia."

Amendment 4: This phrase was taken from the Minnesota statute, does not make sense in Alaska, and should be deleted from the bill.

Page 3, lines 14 - 15: Delete phrase "Statement filed by the commissioner with the court administrator, or any other".

Amendment 5: As written, the tax law would apply to drugs lawfully obtained by prescription, possessed for research approved under federal law, or possessed by doctors, pharmacies and hospitals. The amendment adds an exception for possession of controlled substances under these circumstances, and is modelled on a similar provision in the Minnesota law.

Page 3, lines 21 - 26: The existing section should be deleted and replaced with the following:

Sec. 43.52.060. TAX PAYMENT REQUIRED FOR POSSESSION. (a) A person may not possess a controlled substance subject to the tax imposed by the chapter unless

(1) the tax has been paid on the controlled substance; and

(2) a stamp issued by the department has been affixed to the controlled substance.

(b) A person lawfully in possession of a controlled substance is not subject to the tax required under this chapter.

Amendment 6: There are two criminal penalty provisions in AS 43.05. The amendment clarifies which penalty provision applies to drug tax cases.

Page 3, line 28: The reference to "AS 43.05" should be changed to "AS 43.05.290".

Amendment 7: Although an exception is made in AS 43.52.090(a) for release of information obtained in connection with a proceeding involving drug taxes, a similar exception is not contained in AS 43.52.090(b). If proposed amendment 8 is incorporated into the bill, and the taxpayer is given the option of staying the tax proceedings until conclusion of related criminal cases, there is no reason to prohibit prosecution use of testimony

given during the course of tax enforcement actions. The following amendment would authorize such use:

Page 4, lines 13 - 16: The existing subsection (b) should be deleted and replaced with the following:

(b) Information obtained by the department from a person may not be used against the person in the prosecution of an offense unless the information

(1) is obtained independently of the person's acquiring the official stamps or other official indicia required by this chapter; or

(2) consists of testimony given, or statements made, in connection with a proceeding involving taxes due under this chapter from the person.

Amendment 8: As mentioned in the materials I sent you on April 11, 1989, the Criminal Division has deep concerns about the effect of tax proceedings on our ability to prosecute drug offenders. In order to avoid conflicts between the civil and criminal proceedings, the amendment provides for a mandatory stay of civil proceedings until conclusion of the underlying criminal case upon request of the taxpayer, and prohibits a court or the Department of Revenue from granting immunity for testimony given during tax proceedings. However, we cannot say with assurance that this solution is adequate to avoid the constitutional issues raised by the Alaska Supreme Court in Resek v. State, 706 P.2d 288 (Alaska 1985).

Page 4, line 23 - 27: The existing subsection (a) should be deleted and replaced with the following:

(a) Upon request of the taxpayer, the superior court shall stay a hearing on the merits of a tax action brought under this chapter until the conclusion of related criminal proceedings. Nothing in this section shall be interpreted as prohibiting the department from immediately seizing assets or collecting taxes. A court or the department may not grant a taxpayer transactional, use, or derivative-use immunity for testimony given, or statements made, in connection with a proceeding involving taxes due under this chapter from the person.

The Honorable Fred F. Zharoff

July 27, 1989

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If you have any questions, please feel free to call. If a new work draft is prepared, I would very much appreciate receiving a copy.

Very truly yours,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By: 

Laurie H. Otto  
Assistant Attorney General

Attachment

cc: ✓ The Honorable Jan Faiks  
Douglas B. Baily  
Bob Evans  
Royce Weller

LHO:me-103