

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672  
6395 SENATE LABOR & COMMERCE

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Section 43 (AS 10.06.470(a)). Sec. 40 of SB 204. Coordinates subsection with new language of AS 10.06.453(a).

Section 44 (AS 10.06.4 (b)). Sec. 41 of SB 204. Allows a corporation to establish in its bylaws the machinery for holding a special board meeting or a meeting of a committee designated by the board. Shortens the general provision relating to the minimum required written notice of the meeting from 20 to 10 days and notice by other listed means from 72 to 24 hours. The general requirement that notice of a special meeting must disclose the proposed agenda is made subject to bylaw provisions.

Section 45 (AS 10.06.483(d)). Sec. 42 of SB 204. Corrects a citation. Deletes the reference to "share certificates" because they are covered by another section and there was a conflict.

Section 46 (AS 10.06.483(e)). Sec. 43 of SB 204. Allows officers a limited right to rely on legal counsel and public accountants.

Section 47 (AS 10.06.483(f)-(g)). Sec. 44 of SB 204. Follows the suggestion of the ALI Statement on Corporate Governance and articulates the business judgment defense for officers. No jurisdiction has, to this point, ever attempted a statutory formulation of the business judgment rule. The reader is referred to the official comments of the ALI statement for a fuller understanding of the relationship between the duties of care and loyalty and the business judgment rule.

Section 48 (AS 10.06.576(f)). Sec. 45 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 49 (AS 10.06.576(g)). Sec. 46 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 50 (AS 10.06.578(c)). Sec. 47 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 51 (AS 10.06.580(f)). Sec. 48 of SB 204. Coordinates subsection with new ability to issue certificateless shares.

Section 52 (AS 10.06.605(b)). Sec. 49 of SB 204. In addition to technical changes, indicates that a corporation may dissolve if one of the three listed situations occurs.

Section 53 (AS 10.06.628(d)). Sec. 50 of SB 204. Coordinates subsection with changes to AS 10.06.425(d).

Section 54 (AS 10.06.630(e)). Sec. 51 of SB 204. Coordinates subsection with changes to AS 10.06.425(e).

Section 55 (AS 10.06.633(a)). Sec. 52 of SB 204. Allows the commissioner to dissolve a corporation if the corporation is delinquent six months in paying its biennial corporation tax. Deletes paragraph (8) since AS 10.06.155 (registration of agent by nonresident with controlling interest) is repealed by sec. 61 of the bill.

Section 56 (AS 10.06.828). Sec. 53 of SB 204. Makes an application for a certificate of authority or any other application subject to a filing fee.

Section 57 (AS 10.06.855). Sec. 54 of SB 204. Requires that fees and charges provided for in AS 10.06 be paid in advance.

Section 58 (AS 10.06.960). Same as sec. 55 of SB 204, except corrects citation. Updates the citation for the Alaska Native Claims Settlement Act.

Section 59 (AS 10.06.960(e)-(g)). An altered version of sec. 56 of SB 204. Adds a new subsec. (f). Makes SB 204's subsec. (f) now (g). Grants the boards of native corporations the authority to amend their articles without the necessity of a vote of the shares if the purpose is to bring the articles into conformity with federal law. Defines "act" for the section. States that a native corporation is governed by ANCSA (43 U.S.C. 1601 - 1629e) to the extent the act is inconsistent with AS 10.06, authorizes the corporation to take any action, including amendments of its articles, authorized by ANCSA, and considers the action approved and adopted if approved under ANCSA. States that an amendment approved under ANCSA and delivered to the commissioner under AS 10.06.512 shall be filed by the commissioner under AS 10.06.910, and a certificate of amendment issued.

Section 60 (AS 10.06.990(12)). Same as sec. 57 of SB 204. Deletes the term "controlling interest" since it is not used in AS 10.06.

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Section 61 (AS 10.06.990(47)). Same as sec. 58 of SB 204. Defines "entire board" for the chapter.

Section 62. A new section. Authorizes a native corporation, under certain conditions and after the effective date of the corporations code, to continue to elect its directors in the classes and for the terms provided under its bylaws, notwithstanding certain sections of AS 10.06. Withdraws this authorization if the corporation modifies or eliminates its bylaw provisions on the classification and terms of its directors.

Section 63 (AS 10.06.155). An altered version of sec. 59 of SB 204. Adds two additional items to be repealed: AS 10.06.210(1)(L) and AS 10.06.230(b). Repeals AS 10.06.155 ("Registration of agent by non-resident with controlling interest"), 10.06.210(1)(L), and 10.06.230(b). AS 10.06.210(1)(L) is repealed because it is not consistent with the changes made in sec. 37. AS 10.06.230(b) is inconsistent with the changes made in the bill regarding the number of directors.

Section 64 gives the bill an effective date.

TLB:kb  
wkk4/046

Original sponsor: Rules/Legislative Council

1 IN THE SENATE

BY THE JUDICIARY COMMITTEE

2 CS FOR SENATE BILL NO. 204 (Judiciary)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to corporations; and providing for  
7 an effective date."

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

9 \* Section 1. AS 10.06.010 is amended to read:

10 Sec. 10.06.010. GENERAL POWERS. Subject to the limitations in  
11 its articles of incorporation, the provisions of this chapter and  
12 other applicable law, a corporation has all the powers of a natural  
13 person in carrying out its business activities, including, without  
14 limitation, the power to

15 (1) have perpetual succession by its corporate name;

16 (2) sue and be sued in its corporate name;

17 (3) adopt a corporate seal and alter it, and use it by  
18 having it or a facsimile of it impressed, affixed, or reproduced;

19 (4) buy, take, receive, lease, or otherwise acquire, own,  
20 hold, improve, use, and otherwise deal in, real or personal property  
21 or an interest in the property, wherever situated;

22 (5) sell, convey, mortgage, pledge, lease, exchange, trans-  
23 fer, and otherwise dispose of all or a part of its property and as-  
24 sets;

25 (6) lend money, if properly approved, to its employees,  
26 [AND, IF PROPERLY APPROVED, TO ITS] officers, and directors, and  
27 otherwise assist its employees, officers, and directors;

28 (7) buy, take, receive, subscribe for, or otherwise ac-  
29 quire, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or

1 otherwise dispose of, and otherwise use and deal in shares or other  
2 interests in, or obligations of, other domestic or foreign corpora-  
3 tions, associations, partnerships, or individuals, or direct or indi-  
4 rect obligations of the United States or of any other government,  
5 state, territory, governmental district or municipality or an instru-  
6 mentality of these;

7 (8) make contracts and guarantees, incur liabilities,  
8 borrow money at the rates of interest the corporation determines,  
9 issue notes, bonds, and other obligations, and secure its obligations  
10 by mortgage or pledge of all or any of its property, franchise and  
11 income;

12 (9) lend money for its corporate purposes, invest and  
13 reinvest its money, and take and hold real and personal property as  
14 security for the payment of money loaned or invested;

15 (10) conduct business, carry on operations, and have offices  
16 and exercise the powers granted by this chapter in a state, territory,  
17 district, or possession of the United States, or in a foreign country;

18 (11) elect or appoint officers and agents of the corporation  
19 and define their duties and fix their compensation;

20 (12) make and alter bylaws not inconsistent with its arti-  
21 cles of incorporation or with state law, for the administration and  
22 regulation of the affairs of the corporation;

23 (13) donate for the public welfare or for charitable, scien-  
24 tific or educational purposes, and in time of war donate in aid of war  
25 activities;

26 (14) transact lawful business in time of war in aid of the  
27 United States in the prosecution of the war;

28 (15) pay pensions and establish pension plans, pension  
29 trusts, profit-sharing plans, stock bonus plans, stock option plans

1 and other incentive plans for its directors, officers, and employees;

2 (16) cease its corporate activities and surrender its corpo-  
3 rate franchise;

4 (17) have and exercise the powers of a limited or general  
5 partner [PARTNERSHIP] or a joint venturer [ADVENTURER] in association  
6 with one or more persons, corporations, partnerships, or associations;

7 (18) have and exercise all powers necessary or convenient to  
8 carry out the purposes for which the corporation is organized.

9 \* Sec. 2. AS 10.06.020 is amended to read:

10 Sec. 10.06.020. LIMITATIONS ON AUTHORITY OF CORPORATE AGENTS. A  
11 limitation upon the powers of the shareholders, officers, or direc-  
12 tors, or the manner of exercise of their powers, contained in or  
13 implied by the [ARTICLES OF INCORPORATION,] bylaws, by [OR] action of  
14 the board, [OR] by AS 10.06.605 - 10.06.678, [OR] 10.06.705 - 10.06.-  
15 788, or by a shareholders' agreement may not be asserted as between  
16 the corporation or a shareholder and a third person, except in a  
17 proceeding

18 (1) by a shareholder or the state to enjoin the doing or  
19 continuance of unauthorized business by the corporation or its offi-  
20 cers, or both, in a case where a third party has not acquired rights  
21 under AS 10.06.025(a);

22 (2) to dissolve the corporation; or

23 (3) by the corporation or by a shareholder suing in a  
24 representative suit against the officers or directors of the corpo-  
25 ration for violation of their duty.

26 \* Sec. 3. AS 10.06.025(a) is amended to read:

27 (a) A contract or conveyance made in the name of the corporation  
28 that is authorized or ratified by the board, or is done within the  
29 scope of the authority, actual or apparent, conferred by the board or

1 within the agency power of the officers executing it, except as the  
2 board's authority is limited by law [OTHER THAN THIS CHAPTER], binds  
3 the corporation, and the corporation acquires rights under the con-  
4 tract, whether the contract is executed or is wholly or in part execu-  
5 tory.

6 \* Sec. 4. AS 10.06.105(c) is amended to read:

7 (c) A person may not adopt a name that contains the word "corpo-  
8 ration", "incorporated", or "limited", or an abbreviation of one of  
9 these words, unless the person has been issued a certificate of incor-  
10 poration, or, in the case of a foreign corporation, a certificate of  
11 authority, by the commissioner. This subsection does not prohibit a  
12 limited partnership from using the word "limited" or an abbreviation  
13 of "limited" in its name.

14 \* Sec. 5. AS 10.06.130 is amended to read:

15 Sec. 10.06.130. USE OF SAME OR DECEPTIVELY SIMILAR NAME. Incor-  
16 poration, obtaining a certificate of authority by a foreign corpora-  
17 tion, or registration [REGISTRATION] of a corporate name gives the  
18 exclusive right to the use of the name. The person who has incorpo-  
19 rated, received a certificate of authority, or registered the corpo-  
20 rate name under this chapter may enjoin the use of the same or decep-  
21 tively similar name and has a cause of action for damages against a  
22 person who uses the same or deceptively similar name.

23 \* Sec. 6. AS 10.06.230(a) is amended to read:

24 (a) Unless a provision is contained in the articles, the bylaws  
25 shall state the number of directors of the corporation or state that  
26 the number of directors may not be less than a stated number or more  
27 than a stated number, with the exact number of the directors to be  
28 fixed, within the limits specified, by approval of the board or the  
29 shareholders in the manner provided in the bylaws. [THE STATED

1 MAXIMUM NUMBER OF DIRECTORS MAY NOT BE GREATER THAN TWO TIMES THE  
2 STATED MINIMUM NUMBER MINUS ONE AND THE NUMBER OF MINIMUM NUMBER OF  
3 DIRECTORS MAY NOT BE LESS THAN THREE.] If the articles provide for  
4 the number of directors, the number of directors may only be changed  
5 by an amendment to the articles.

6 \* Sec. 7. AS 10.06.343 is amended to read:

7 Sec. 10.06.343. STOCK RIGHTS AND OPTIONS. Subject to a pro-  
8 vision in its articles, a corporation may create and issue, whether or  
9 not in connection with the issuance and sale of any of its shares or  
10 other securities, rights or options entitling the holders of the  
11 rights or options [SHARES] to purchase from the corporation shares of  
12 any class or classes. These rights or options shall be evidenced in  
13 the manner the board approves and, subject to the provisions of the  
14 articles, must [SHALL] set out the terms upon which, the time within  
15 which, and the price at which the shares may be purchased from the  
16 corporation upon the exercise of the right or option. If the rights  
17 or options are to be issued to directors, officers, or employees of  
18 the corporation or of a subsidiary of the corporation and not to the  
19 shareholders generally, their issuance shall be authorized by the  
20 approval of the outstanding shares or must [SHALL] be consistent with  
21 a plan so approved or ratified. In the absence of fraud in the trans-  
22 action, the judgment of the board as to the adequacy of the considera-  
23 tion received for the rights or options is conclusive.

24 \* Sec. 8. AS 10.06.348 is amended to read:

25 Sec. 10.06.348. CERTIFICATES REPRESENTING SHARES. Except as  
26 otherwise provided under AS 10.06.349, the [THE] shares of a corpo-  
27 ration shall be represented by certificates signed by the president or  
28 vice-president and the secretary or an assistant secretary of the  
29 corporation, and may be sealed with the seal of the corporation or a

1 facsimile of the seal. The signatures of the president or vice-  
2 president and the secretary or assistant secretary upon a certificate  
3 may be facsimiles if the certificate is countersigned by a transfer  
4 agent or registered by a registrar, other than the corporation itself  
5 or an employee of the corporation. If an officer who has signed or  
6 whose facsimile signature has been placed on the certificate ceases to  
7 be an officer before the certificate is issued, the certificate may be  
8 issued by the corporation with the same effect as if the officer were  
9 an officer at the date of its issue.

10 \* Sec. 9. AS 10.06 is amended by adding a new section to read:

11 Sec. 10.06.349. SHARES WITHOUT CERTIFICATES. (a) Unless the  
12 articles or bylaws provide otherwise, the board of directors may  
13 authorize the issuance without certificates of some or all of the  
14 corporation's classes or series of shares. The authorization does not  
15 affect shares that are already represented by certificates until the  
16 certificates are surrendered to the corporation.

17 (b) Within a reasonable time after the issuance or transfer of  
18 shares without certificates, the corporation shall send the share-  
19 holder a written statement giving the information required by AS 10.-  
20 06.350 to be on certificates, and, if applicable, the information  
21 required by AS 10.06.424(c) to be disclosed to the shareholder when  
22 there is no certificate.

23 \* Sec. 10. AS 10.06.353 is amended to read:

24 Sec. 10.06.353. FULL PAYMENT REQUIRED FOR CERTIFICATE. A share  
25 with or without a certificate may not be issued [FOR A SHARE] until  
26 the share is fully paid.

27 \* Sec. 11. AS 10.06.355 is amended to read:

28 Sec. 10.06.355. ISSUANCE OF FRACTIONAL SHARES OR SCRIP. (a) A  
29 corporation may issue a [CERTIFICATE FOR A] fractional share, and, by

1 action of its board, may issue, instead of a fractional certificate,  
2 scrip in registered or bearer form that entitles the holder to receive  
3 a [CERTIFICATE FOR A] full share upon the surrender of the scrip  
4 aggregating a full share.

5 (b) A [CERTIFICATE FOR A] fractional share entitles the holder  
6 to exercise voting rights, to receive dividends, and to participate in  
7 the assets of the corporation in the event of liquidation. Unless  
8 otherwise provided in the scrip, scrip does not entitle the holder to  
9 exercise voting rights, to receive dividends, or to participate in the  
10 assets of the corporation in the event of liquidation.

11 (c) The board may issue scrip subject to the condition that it  
12 is void if not exchanged for [CERTIFICATES REPRESENTING] full shares  
13 before a specified date, or subject to the condition that the shares  
14 for which the scrip is exchangeable may be sold by the corporation and  
15 the proceeds distributed to the holders of that scrip, or subject to  
16 other conditions that [WHICH] the board considers advisable.

17 \* Sec. 12. AS 10.06 is amended by adding a new section to read:

18 Sec. 10.06.356. SHARES HELD BY NOMINEES. (1) A corporation may  
19 establish a procedure by which the beneficial owner of shares that are  
20 registered in the name of a nominee is recognized by the corporation  
21 as the shareholder.

22 (b) The procedure may set out

23 (1) the types of nominees to whom it applies;

24 (2) the rights or privileges that the corporation recog-  
25 nizes in a beneficial owner;

26 (3) the manner in which the procedure is selected by the  
27 nominee;

28 (4) the information that must be provided when the proce-  
29 dure is selected;

1 (5) the period when selection of the procedure is effec-  
2 tive; and

3 (6) other aspects of the rights and duties created.

4 \* Sec. 13. AS 10.06.358(c) is amended to read:

5 (c) For the purposes of this chapter, the amount of a distribu-  
6 tion payable in property shall be determined on the basis of the value  
7 at which the property is carried on the corporation's financial state-  
8 ments in accordance with this section [GENERALLY ACCEPTED ACCOUNTING  
9 PRINCIPLES].

10 \* Sec. 14. AS 10.06.358(d) is amended to read:

11 (d) Only a corporation that classifies its assets as current  
12 assets and fixed assets in accordance with this section [UNDER GEN-  
13 ERALLY ACCEPTED ACCOUNTING PRINCIPLES] is governed by (a)(2)(B) of  
14 this section.

15 \* Sec. 15. AS 10.06.358 is amended by adding new subsections to read:

16 (e) For the purposes of this section, the board of directors may  
17 base a determination that a distribution is not prohibited either on  
18 financial statements prepared in accordance with generally accepted  
19 accounting principles or on the basis of accounting practices and  
20 principles that are fair and reasonable in the circumstances.

21 (f) Financial statements and determinations prepared or arrived  
22 at in accordance with generally accepted accounting principles are  
23 fair and reasonable. The fair and reasonable quality of statements  
24 and determinations prepared under other practices and principles shall  
25 be proved by the corporation.

26 \* Sec. 16. AS 10.06.360 is amended to read:

27 Sec. 10.06.360. PROHIBITED DISTRIBUTION; INABILITY TO MEET  
28 MATURING DEBTS AND LIABILITIES. A corporation or subsidiary of a  
29 corporation may not make a distribution to the corporation's

1 shareholders if the corporation or the subsidiary making the distri-  
2 bution is, or as a result of the distribution would be, [LIKELY TO BE]  
3 unable to meet its liabilities as they mature.

4 \* Sec. 17. AS 10.06.385(b) is amended to read:

5 (b) Subject to any provisions in its articles [OF INCORPORATION]  
6 with respect to the notice required for redemption of shares, the  
7 corporation may give notice of the redemption of any or all shares  
8 subject to redemption by publishing a notice of redemption in a news-  
9 paper of general circulation in the judicial district in which the  
10 principal executive office of the corporation is located at least once  
11 a week for two successive weeks, beginning not earlier than 60 nor  
12 later than 20 days before the date fixed for redemption. The notice of  
13 redemption shall set out the following:

14 (1) the class or series of shares or part of any class of  
15 series of shares to be redeemed;

16 (2) the date fixed for redemption;

17 (3) the redemption price; and

18 (4) the place at which the shareholders may obtain payment  
19 of the redemption price upon surrender of their share certificates or  
20 certificateless shares.

21 \* Sec. 18. AS 10.06.385(d) is amended to read:

22 (d) On or before the date fixed for redemption of redeemable  
23 shares, a corporation may deposit with a bank or trust company in this  
24 state as a trust fund a sum sufficient to redeem the shares called on  
25 the date fixed for redemption, with irrevocable instructions to the  
26 bank or trust company to publish a notice of redemption, or to com-  
27 plete the publication if begun, and to pay, on and after or before the  
28 date fixed for redemption, the redemption price of the shares to  
29 holders of the shares upon the surrender of their share certificates

1 or certificateless shares. From and after the date of the deposit  
2 with the bank or trust company, although before the date fixed for  
3 redemption, the shares called for redemption are redeemed and divi-  
4 dends on those shares cease to accrue after the date fixed for redemp-  
5 tion. The deposit constitutes full payment of the shares to their  
6 holders and from and after the date of the deposit the shares are no  
7 longer outstanding and the holders of the shares cease to be share-  
8 holders with respect to the shares and have no rights with respect to  
9 the shares except the right to receive from the bank or trust company  
10 payment of the redemption price of the shares without interest, upon  
11 surrender of the certificates for the shares or the certificateless  
12 shares, and any right to convert the shares that may exist and con-  
13 tinue for a period fixed by the terms of the shares.

14 \* Sec. 19. AS 10.06.405 is amended by adding a new subsection to read:

15 (d) The failure of a corporation to hold an annual meeting at  
16 the time stated in or fixed under its bylaws does not cause the corpo-  
17 ration to forfeit its status, does not cause a dissolution of the  
18 corporation, and does not affect the validity of corporate action.

19 \* Sec. 20. AS 10.06.410 is amended to read:

20 Sec. 10.06.410. NOTICE OF SHAREHOLDERS' MEETINGS. Written or  
21 printed notice stating the place, day, and hour of the meeting and, in  
22 the case of a special meeting, the purpose for which the meeting is  
23 called, shall be delivered not less than 10 [20] or more than 60 days  
24 before the date of the meeting, either personally or by mail, by or at  
25 the direction of the president, the secretary, the officer, or persons  
26 calling the meeting, to each shareholder of record entitled to vote at  
27 the meeting. If mailed, the notice is considered delivered when  
28 deposited with postage prepaid in the United States mail addressed to  
29 the shareholder at the address of the shareholder as it appears on the

1 stock transfer books of the corporation, or, if the shareholder has  
2 filed with the secretary of the corporation a written request that  
3 notice be mailed to a different address, addressed to the shareholder  
4 at [THE CORPORATION SHALL MAIL THE NOTICE TO] the new address. An  
5 affidavit of the secretary or other person giving the notice or of a  
6 transfer agent of the corporation that the notice required by this  
7 section has been given, is prima facie evidence of the facts stated in  
8 the affidavit.

9 \* Sec. 21. AS 10.06.413(a) is amended to read:

10 (a) At least 10 [20] days before each meeting of shareholders,  
11 the officer or agent having charge of the stock transfer books for  
12 shares of a corporation shall make a list of the shareholders entitled  
13 to vote at the meeting or an adjournment of the meeting arranged in  
14 alphabetical order, with the address of and the number of shares held  
15 by each shareholder. The list shall be kept on file at the registered  
16 office of the corporation and is subject to inspection by a share-  
17 holder or the agent or attorney of a shareholder at any time during  
18 usual business hours for a period of 10 [20] days before the meeting.  
19 The list shall also be produced and kept open at the time and place of  
20 the meeting and shall be subject to the inspection of a shareholder  
21 during the meeting. The original stock transfer books are prima facie  
22 evidence as to the shareholders who are entitled to examine the list  
23 or transfer books or to vote at a meeting of shareholders.

24 \* Sec. 22. AS 10.06.413(c) is amended to read:

25 (c) An officer or agent having charge of the stock transfer  
26 books who fails to prepare the list of shareholders, keep it on file  
27 for a period of 10 [20] days, or produce and keep it open for inspec-  
28 tion at the meeting, as provided in this section, is liable for a  
29 penalty of \$5,000 and shall pay this sum to a shareholder who makes a

1 written request for performance of the duties imposed by this section.

2 \* Sec. 23. AS 10.06.418(b) is amended to read:

3 (b) A proxy is not valid after the expiration of 11 months from  
4 the date of the proxy unless it qualifies as an irrevocable proxy  
5 under (e) of this section. A proxy continues in full force and effect  
6 until revoked by the person executing it, except as provided in this  
7 section. A person may revoke a proxy by a writing delivered to the  
8 corporation stating that the proxy is revoked, by a subsequent proxy  
9 executed by the person executing the prior proxy and delivered [PRE-  
10 SENTED] to the corporation [MEETING], or by attendance at the meeting  
11 and voting in person by the person executing the proxy. The dates  
12 contained on the forms of proxy presumptively determine the order of  
13 execution, regardless of the postmark dates on the envelopes in which  
14 the proxies are mailed.

15 \* Sec. 24. AS 10.06.418(e) is amended to read:

16 (e) Notwithstanding (c) of this section, a proxy that states  
17 that it is irrevocable is irrevocable for the period specified in the  
18 proxy when it is held by the following or a nominee of the following:

19 (1) a person to whom the shares are pledged for the perfor-  
20 mance of an obligation or the payment of a debt [PLEDGEE];

21 (2) a person who has purchased, agreed to purchase, or  
22 holds an option to purchase the shares or a person who has sold a  
23 portion of the shares of the person in the corporation to the maker of  
24 the proxy;

25 (3) a person who has contracted to perform services as an  
26 employee of the corporation, if a proxy is required by the contract of  
27 employment and if the proxy states that it was given in consideration  
28 of the contract of employment, the name of the employee, and the  
29 period of employment contracted for;

1 (4) a person designated by or under an agreement under  
2 AS 10.06.425 [AS 10.06.425(b)]; or

3 (5) a beneficiary of a trust with respect to shares held by  
4 the trust.

5 \* Sec. 25. AS 10.06.418(f) is amended to read:

6 (f) Notwithstanding the period of irrevocability specified in a  
7 proxy, the proxy becomes revocable when the pledge is redeemed, the  
8 option or agreement to purchase is terminated or the seller no longer  
9 owns any shares of the corporation or dies, the period of employment  
10 provided for in the contract of employment has terminated, the agree-  
11 ment under AS 10.06.425 [AS 10.06.425(b)] has terminated, or the  
12 person ceases to be a beneficiary of the trust. In addition, a proxy  
13 may be made irrevocable if it is given to secure the performance of a  
14 duty or to protect a title, either legal or equitable, until the  
15 happening of events that, by its terms, discharge the obligations  
16 secured by it.

17 \* Sec. 26. AS 10.06.418(g) is repealed and reenacted to read:

18 (g) Notwithstanding a provision in a proxy that makes the proxy  
19 irrevocable, a proxy is revoked when the shares are transferred unless  
20 the transferee knows about the provision or the proxy, or the irrevoc-  
21 ability or notice of the proxy appears on a certificate representing  
22 the shares.

23 \* Sec. 27. AS 10.06.420(e) is repealed and reenacted to read:

24 (e) Except as prohibited in this subsection, shares standing in  
25 the name of another corporation may be voted by the officer, agent, or  
26 proxy as the bylaws of the other corporation may prescribe, or, in the  
27 absence of a provision, as the board of the other corporation may  
28 determine. The shares of a corporation may not be voted if they are  
29 owned, directly or indirectly, by a second corporation, domestic or

foreign, and the first corporation owns, directly or indirectly, a majority of the shares entitled to vote for the directors of the second corporation.

\* Sec. 28. AS 10.06.420(i) is amended to read:

(i) Beginning on the date on which written notice of redemption of redeemable shares has been mailed to the holders of the shares and a sum sufficient to redeem the shares has been deposited with a bank or trust company with irrevocable instruction and authority to pay the redemption price to the holders of the shares upon surrender of the certificates for the shares or the certificateless shares, the shares may not vote on any matter and are not considered to be outstanding shares.

\* Sec. 29. AS 10.06 is amended by adding a new section to read:

Sec. 10.06.421. CORPORATION'S ACCEPTANCE OF CERTAIN DOCUMENTS.

(a) If the name signed on a vote, consent, waiver, or proxy appointment corresponds to the name of a shareholder, the corporation, if acting in good faith, is entitled to accept the document and give it effect as the act of the shareholder.

(b) If the name signed on a document does not correspond to the name of its shareholder, the corporation, if acting in good faith, is nevertheless entitled to accept the document and give it effect as the act of the shareholder if

(1) the shareholder is an entity and the name signed purports to be that of an officer or agent of the entity;

(2) the name signed purports to be that of an administrator, executor, guardian, or conservator representing the shareholder and, if the corporation requests, evidence of fiduciary status acceptable to the corporation has been presented with respect to the document;

1 (3) the name signed purports to be that of a receiver or  
2 trustee in bankruptcy of the shareholder and, if the corporation  
3 requests, evidence of this status acceptable to the corporation has  
4 been presented with respect to the document;

5 (4) the name signed purports to be that of a pledgee,  
6 beneficial owner, or attorney-in-fact of the shareholder and, if the  
7 corporation requests, evidence acceptable to the corporation or the  
8 signatory's authority to sign for the shareholder has been presented  
9 with respect to the document;

10 (5) two or more persons are the shareholder as cotenants or  
11 fiduciaries, the name signed purports to be the name of at least one  
12 of the coowners, and the person signing appears to be acting on behalf  
13 of all the coowners.

14 (c) The corporation is entitled to reject a document if the  
15 secretary or other officer or agent authorized to tabulate votes,  
16 acting in good faith, has a reasonable basis to doubt the validity of  
17 the signature on the document or the signatory's authority to sign for  
18 the shareholder.

19 (d) The corporation and its officer or agent who accepts or  
20 rejects a document in good faith and in accordance with the standards  
21 of this section are not liable in damages to the shareholder for the  
22 consequences of the acceptance or rejection.

23 (e) Corporate action based on the acceptance or rejection of a  
24 document under this section is valid unless a court of competent  
25 jurisdiction determines otherwise.

26 (f) In this section, "document" means vote, consent, waiver, or  
27 proxy appointment.

28 \* Sec. 30. AS 10.06 is amended by adding a new section to read:

29 Sec. 10.06.424. SHAREHOLDER AGREEMENTS. (a) The shareholders

1 of a corporation may enter into an agreement among all the  
2 shareholders to impose restrictions on the transfer or registration of  
3 shares of the corporation to

4 (1) maintain the corporation's status, including election  
5 of S corporation status under 26 U.S.C. (Internal Revenue Code), when  
6 the status depends on the number or identity of its shareholders; in  
7 this paragraph, "S corporation" has the meaning given in 26 U.S.C.  
8 1361;

9 (2) preserve exemptions under federal or state securities  
10 laws;

11 (3) ensure that shareholders will be able to control who  
12 may participate in the corporation's business;

13 (4) ensure that shareholders who wish to retire will be  
14 able to liquidate their investments without disrupting corporate af-  
15 fairs;

16 (5) ensure that estates of deceased shareholders will be  
17 able to liquidate the decedents' shares in the corporation;

18 (6) obligate the shareholder first to offer to the corpo-  
19 ration or other persons, separately, consecutively, or simultaneously,  
20 an opportunity to acquire the restricted shares;

21 (7) obligate the corporation or other persons, separately,  
22 consecutively, or simultaneously, to acquire the restricted shares;

23 (8) require the corporation, the holder of any class of its  
24 shares, or another person, to approve the transfer of restricted  
25 shares, if the requirement is not manifestly unreasonable; and

26 (9) accomplish another reasonable purpose.

27 (b) The shareholders of a corporation may enter into an  
28 agreement among all of the shareholders to provide for the selection  
29 of directors and officers.

1 (c) The existence of a shareholders' agreement that is consis-  
2 tent with this section shall be noted conspicuously on the front or  
3 back of each stock certificate together with a statement indicating  
4 that the agreement, or a copy of the agreement, is on file at the  
5 principal office of the corporation and that the corporation will  
6 allow inspection of the agreement or furnish a copy of the agreement  
7 without charge. If the share has been issued under AS 10.06.349  
8 without a certificate, a statement that discloses the existence of the  
9 shareholders' agreement shall be sent within a reasonable time to the  
10 shareholder.

11 (d) Shares issued before compliance with (c) this section, if  
12 acquired by a person without knowledge of the shareholders' agreement,  
13 are not subject to the shareholders' agreement.

14 (e) A shareholders' agreement may not alter or waive AS 10.06.-  
15 350, 10.06.358, 10.06.360, 10.06.430, 10.06.438, 10.06.544, 10.06.570,  
16 10.06.633, 10.06.648, or 10.06.653.

17 (f) In this section, "shares" includes a security that is con-  
18 vertible into shares or that carries a right to subscribe for or  
19 acquire shares.

20 \* Sec. 31. AS 10.06.425(a) is amended to read:

21 (a) Any number of shareholders of a corporation may create a  
22 voting trust for the purpose of conferring upon a trustee or trustees  
23 the right to vote or otherwise represent their shares, for a period  
24 not to exceed 10 years, by entering into a written voting trust agree-  
25 ment specifying the terms and conditions of the voting trust, by  
26 depositing a copy of the agreement with the corporation at its regis-  
27 tered office, and by transferring their shares to the trustee or  
28 trustees for the purpose of the agreement. The trustee or trustees  
29 shall keep a record of the holders of voting trust certificates evi-

1 dencing a beneficial interest in the voting trust, giving the names  
2 and addresses of all the holders and the number and class of the  
3 shares for which the voting trust certificates are issued, and shall  
4 deposit a copy of the record with the corporation at its registered  
5 office. The copies of the voting trust agreement and the record  
6 deposited with the corporation are subject to the same right of ex-  
7 amination by a shareholder of the corporation, in person or by agent  
8 or attorney, as are the books and records of the corporation under  
9 AS 10.06.430, and the copies of the agreement and the record are  
10 subject to examination by a holder of record of voting trust certifi-  
11 cates, either in person or by agent or attorney, at a reasonable time  
12 for a proper purpose. This subsection does not invalidate an irrevocable proxy complying with AS 10.06.418(e).

13 \* Sec. 32. AS 10.06.425(b) is repealed and reenacted to read:

14 (b) Shareholders may enter into a voting agreement or any other  
15 agreement if the agreement is consistent with this chapter.

16 \* Sec. 33. AS 10.06.430(a) is amended to read:

17 (a) A corporation organized under this chapter shall keep cor-  
18 rect and complete books and records of account, minutes of proceedings  
19 of its shareholders, board, and committees of the board, and a record  
20 of its shareholders, containing the names and addresses of all share-  
21 holders and the number and class of the shares held by each. The  
22 books and [,] records of account, [AND] minutes, and the record of  
23 shareholders may be in written form or in any other form capable of  
24 being converted into written form within a reasonable time.

25 \* Sec. 34. AS 10.06.430(b) is amended to read:

26 (b) A corporation organized under this chapter shall make its  
27 books and records of account, or certified copies of them, reasonably  
28 available for inspection and copying at the registered office or

1 principal place of business in the state [BY THE DEPARTMENT OR] by a  
2 shareholder of the corporation. Shareholder inspection shall be upon  
3 written demand stating with reasonable particularity the purpose of  
4 the inspection. The inspection may be in person or by agent or attor-  
5 ney, at a reasonable time and for a proper purpose. Only books and  
6 records of account, minutes, and the record of shareholders directly  
7 connected [RELEVANT] to the stated purpose of the inspection may be  
8 inspected or copied.

9 \* Sec. 35. AS 10.06.430(c) is amended to read:

10 (c) An officer or agent who, or a corporation that, refuses to  
11 allow a shareholder, or the agent or attorney of the shareholder, to  
12 examine and make copies from its books and records [RECORD] of ac-  
13 count, minutes, and record of shareholders, for a proper purpose, is  
14 liable to the shareholder for a penalty in the amount of 10 percent of  
15 the value of the shares owned by the shareholder or \$5,000, whichever  
16 is greater, in addition to other damages or remedy given the share-  
17 holder by law. It is a defense to an action for penalties under this  
18 section that the person suing has within two years sold or offered for  
19 sale a list of shareholders of the corporation or any other corpo-  
20 ration or has aided or abetted a person in procuring a list of share-  
21 holders for this purpose, or has improperly used information secured  
22 through a prior examination of the books and records of account, [OR]  
23 minutes, or record of shareholders of the corporation or any other  
24 corporation, or was not acting in good faith or for a proper purpose  
25 in making the person's demand.

26 \* Sec. 36. AS 10.06.433(a) is amended to read:

27 (a) The board shall send an annual report to the shareholders  
28 not later than 180 days after the close of the fiscal year or the date  
29 on which notice of the annual meeting in the next fiscal year is sent

1 under AS 10.06.410, whichever is first. A [, UNLESS IN THE CASE OF A]  
2 corporation with less than 100 holders of record of its shares, as  
3 determined under AS 10.06.408, is exempt from this annual requirement  
4 unless its articles or bylaws impose the requirement [IS EXPRESSLY  
5 WAIVED IN THE ARTICLES OF INCORPORATION]. The annual report must  
6 [SHALL] contain a balance sheet as of the end of the fiscal year and  
7 an income statement and statement of changes in financial position for  
8 the fiscal year, accompanied by a report on the fiscal year by inde-  
9 pendent accountants or, if there is no such report, the certificate of  
10 an authorized officer of the corporation that the statements were pre-  
11 pared without audit from the books and records of the corporation.

12 \* Sec. 37. AS 10.06.435(a) is amended to read:

13 (a) An action may be brought in the right of a domestic or  
14 foreign corporation to procure a judgment in its favor by a holder of  
15 shares of the corporation of voting trust certificates of the corpo-  
16 ration, or of a beneficial interest in shares [OR CERTIFICATES] of the  
17 corporation.

18 \* Sec. 38. AS 10.06.450(c) is repealed and reenacted to read:

19 (c) A director is not acting in good faith if the director has  
20 knowledge concerning the matter in question that makes reliance other-  
21 wise permitted by (b) of this section unwarranted.

22 \* Sec. 39. AS 10.06.450 is amended by adding a new subsection to read:

23 (f) A director who makes a business judgment in good faith  
24 fulfills the duty of care under this section if the director

25 (1) is not interested in the subject of the business judg-  
26 ment;

27 (2) is informed about the subject of the business judgment  
28 to the extent the director reasonably believes to be appropriate under  
29 the circumstances; and  
30

1 (3) rationally believes that the business judgment is in  
2 the best interest of the corporation.

3 \* Sec. 40. AS 10.06.453(a) is repealed and reenacted to read:

4 (a) The board of directors shall consist of one or more members.  
5 The number of directors shall be fixed by, or in the manner provided  
6 in, the bylaws, unless the articles fix the number of directors, in  
7 which case a change in the number of directors shall be made only by  
8 amendment of the articles. If the number of directors is not other-  
9 wise set, the number of directors is three.

10 \* Sec. 41. AS 10.06.453(b) is amended to read:

11 (b) Except as otherwise provided in AS 10.06.230 and this sec-  
12 tion, the [THE] number of directors may be increased or decreased by  
13 amendment of the articles or the bylaws or by action of the board or  
14 the shareholders under the specific provisions of an article or a  
15 bylaw adopted by approval of the outstanding shares. A change in the  
16 number of directors, including by amendment of the articles, is [,]  
17 subject to the following limitations:

18 (1) if [IF] the board is authorized by the articles or the  
19 bylaws to change the number of directors, whether by amending the  
20 bylaws or by taking action under the specific provision of an article  
21 or a bylaw adopted by approval of the outstanding shares, the amend-  
22 ment or action shall require the vote of a majority of the entire  
23 board; [.]

24 (2) a [A] decrease in the number of directors may not  
25 shorten the term of an incumbent director.

26 \* Sec. 42. AS 10.06.465(d) is amended to read:

27 (d) Notwithstanding AS 10.06.453(e), a [A] director may resign  
28 effective upon giving written notice to the chairman of the board, the  
29 president, the secretary, or the board of directors of the corpo-

1 ration, unless the notice specifies a later time for the effectiveness  
2 of the resignation. [NOTWITHSTANDING THE EFFECTIVENESS OF THE RESIG-  
3 NATION, UNDER AS 10.06.453(d) A DIRECTOR HOLDS OFFICE UNTIL A SUCCES-  
4 SOR HAS BEEN ELECTED AND QUALIFIED.] If the resignation is effective  
5 at a future time, a successor may be elected to take office when the  
6 resignation becomes effective.

7 \* Sec. 43. AS 10.06.470(a) is amended to read:

8 (a) A regular or special meeting of the board or a committee of  
9 board may be called by the chairman of the board, the president, a  
10 vice-president, the secretary, or a director [TWO DIRECTORS] and may  
be held at any place inside or outside this state.

11 \* Sec. 44. AS 10.06.470(b) is amended to read:

12 (b) A regular meeting of the board or a committee designated by  
13 the board may be held without notice if the time and place of the  
14 meeting is fixed by the bylaws or the board. A special meeting of the  
15 board or a committee designated by the board shall be held as provided  
16 in the bylaws or, in the absence of bylaw provision, after [UPON]  
17 either notice in writing sent 10 [20] days before the meeting or  
18 notice by electronic means, personal messenger, or comparable person-  
19 to-person communication given at least 24 [72] hours before the meet-  
20 ing. Unless otherwise provided in the bylaws [IN THE CASE OF A SPE-  
21 CIAL MEETING] the notice of a special meeting shall include disclosure  
22 of the business to be transacted and the purpose of the meeting.

23 \* Sec. 45. AS 10.06.483(d) is amended to read:

24 (d) Subject to the provisions of AS 10.06.020 [AS 10.06.020(a)],  
25 a note, mortgage, evidence of indebtedness, contract, [SHARE CERTIFI-  
26 CATE,] conveyance, or other instrument in writing, and an assignment  
27 or endorsement of these, executed or entered into between the corpora-  
28 tion and another person, if signed by two individuals, one of whom is

1 the chairman of the board, the president, or a vice-president and the  
2 other of whom is the secretary, an assistant secretary, the treasurer,  
3 or an assistant treasurer of the corporation, is not invalidated as to  
4 the corporation by a lack of authority of the signing officers in the  
5 absence of actual knowledge on the part of the other person that the  
6 signing officers had no authority to execute the instrument.

7 \* Sec. 46. AS 10.06.483(e) is amended to read:

8 (e) An officer shall perform the duties of the office [AN OFFI-  
9 CER] in good faith and with that degree of care, including reasonable  
10 inquiry, that an ordinarily prudent person in a like position would  
11 use under similar circumstances. Except as provided in (f) of this  
12 section, an officer is entitled to rely on information, opinions,  
13 reports or statements, including financial statements and other finan-  
14 cial data in each case prepared or presented by legal counsel or  
15 public accountants.

16 \* Sec. 47. AS 10.06.483 is amended by adding new subsections to read:

17 (f) An officer is not acting in good faith if the officer has  
18 knowledge concerning the matter in question that makes reliance other-  
19 wise permitted by (e) of this section unwarranted.

20 (g) An officer who makes a business judgment in good faith  
21 fulfills the duty of care under this section if the officer

22 (1) is not interested in the subject of the business judg-  
23 ment;

24 (2) is informed about the subject of the business judgment  
25 to the extent the officer reasonably believes to be appropriate under  
26 the circumstances; and

27 (3) rationally believes that the business judgment is in  
28 the best interest of the corporation.

29 \* Sec. 48. AS 10.06.576(f) is amended to read:

1 (f) At the time of filing the notice of election to dissent, or  
2 within 30 days after the shareholder has filed the notice, the share-  
3 holder shall submit to the corporation, or to its transfer agent, the  
4 certificates representing the shares for which payment is claimed, if  
5 certificates have been issued. The corporation or its transfer agent  
6 shall note conspicuously on the certificates, or on a separate docu-  
7 ment if certificates have not been issued for the shares, that a  
8 notice of election has been filed, and shall return the certificates  
9 or the separate document to the shareholder or to the person who  
10 submitted them on the shareholder's behalf. Unless a court, for good  
11 cause shown, otherwise directs, a shareholder who fails to comply with  
12 this subsection loses the right to dissent granted by this chapter, if  
13 the corporation gives written notice that the right to dissent will be  
14 lost to the shareholder within 45 days from the date that the share-  
15 holder filed the notice of election to dissent. If the corporation  
16 fails to exercise this notice option in a timely manner, the share-  
17 holder retains the right to dissent granted by this chapter.

18 \* Sec. 49. AS 10.06.576(g) is repealed and reenacted to read:

19 (g) When a share of a dissenting shareholder under (f) of this  
20 section is transferred, the new certificate must bear a notation  
21 similar to that made under (f) of this section and state the name of  
22 the original dissenting holder of the shares, or, if the share is a  
23 certificateless share, the corporation must give the transferee a  
24 written notice stating that a notice of election to dissent has been  
25 filed and giving the name of the original dissenting holder. A trans-  
26 feree acquires only the rights in the corporation that the original  
27 dissenting shareholder had at the time of transfer.

28 \* Sec. 50. AS 10.06.578(c) is amended to read:

29 (c) If the corporate action has been completed the offer re-

quired by (a) of this section shall also be accompanied by

(1) advance payment to each shareholder who submitted the share certificates to the corporation, or to whom notice was sent if the shares were certificateless, as provided in AS 10.06.576(f), of the amount offered under (a) of this section; or

(2) a statement to a shareholder who has not submitted the share certificates, if certificates were issued for the shares, that advance payment of the amount offered under (a) of this section will be made by the corporation promptly upon submission of the certificates.

\* Sec. 51. AS 10.06.580(f) is amended to read:

(f) Unless prohibited by AS 10.06.578(g), within 60 days after the final determination of the proceeding, the corporation shall pay to each dissenting shareholder who is a party the amount determined under (e) of this section in exchange for the surrender of the certificate representing the dissenter's shares or the dissenter's shares if the shares are certificateless. Upon payment of the judgment, the dissenting shareholder ceases to have an interest in the shares.

\* Sec. 52. AS 10.06.605(b) is amended to read:

(b) A corporation [THE FOLLOWING CORPORATIONS] may elect by approval of the board to wind up and dissolve if the [A] corporation [THAT] has:

(1) been adjudicated bankrupt;

(2) disposed of all its assets and has not conducted any business for a period of five years immediately preceding the adoption of the resolution to dissolve the corporation; or [AND]

(3) issued no shares.

\* Sec. 53. AS 10.06.628(d) is amended to read:

(d) For purposes of this section, "shareholder" includes a

1 beneficial owner of shares who has entered into an agreement under  
2 AS 10.06 (a) [AS 10.06.425].

3 \* Sec. 54. AS 10.06.630(e) is amended to read:

4 (e) For the purposes of this section, "shareholder" includes a  
5 beneficial owner of shares who has entered into an agreement under  
6 AS 10.06.425(a) [AS 10.06.425].

7 \* Sec. 55. AS 10.06.633(a) is amended to read:

8 (a) A corporation may be dissolved involuntarily by the commis-  
9 sioner if

10 (1) the corporation is delinquent six months in filing its  
11 biennial report or in paying its biennial corporate on tax [A LICENSE  
12 FILING FEE] or a penalty;

13 (2) the corporation has failed for 30 days to appoint and  
14 maintain a registered agent in the state;

15 (3) the corporation has failed for 30 days after change of  
16 its registered office or registered agent to file in the office of the  
17 commissioner a statement of the change;

18 (4) the corporation has failed for two years to complete  
19 dissolution under a certificate of election under AS 10.06.608 to  
20 dissolve;

21 (5) a vacancy on the board of the corporation is not filled  
22 within six months or the next annual meeting, whichever occurs first;

23 (6) a misrepresentation of material facts has been made in  
24 the application, report, affidavit, or other document submitted under  
25 this chapter; or

26 (7) the corporation is 90 days delinquent in filing notice  
27 of change of an officer, director, alien affiliate, or five percent  
28 shareholder, as required by this chapter [; OR

29 (8) THE CORPORATION IS CONTROLLED BY A PERSON WHO WILFULLY

1 FAILS TO COMPLY WITH AS 10.06.155 WITHIN 30 DAYS AFTER RECEIPT BY THE  
2 CORPORATION OR ITS REGISTERED AGENT OF NOTICE OF NONCOMPLIANCE SENT BY  
3 THE DEPARTMENT BY CERTIFIED MAIL].

4 \* Sec. 56. AS 10.06.828 is amended to read:

5 Sec. 10.06.828. INCORPORATION OR FILING FEES. A domestic or  
6 foreign corporation that is required to file articles of incorpo-  
7 ration, an application for a certificate of authority, [OR] amendatory  
8 articles, or other application with the department, except corporate  
9 entities organized under AS 10.20 and corporate entities organized  
10 under the laws of the United States or the laws of a state or terri-  
11 tory of the United States or the laws of a foreign country for the  
12 same purposes as those allowed under AS 10.20, shall pay to the com-  
13 missioner a filing fee established by the department by regulation.  
14 The filing fee shall be uniform and fixed without reference to the  
15 amount of authorized shares.

16 \* Sec. 57. AS 10.06.855 is amended to read:

17 Sec. 10.06.855. PAYMENTS TO BE MADE IN ADVANCE. Fees and  
18 charges provided for in this chapter, including the biennial corpo-  
19 ration tax, shall [MAY] be paid in advance.

20 \* Sec. 58. AS 10.06.960 is amended to read:

21 Sec. 10.06.960. CORPORATIONS ORGANIZED UNDER ALASKA NATIVE  
22 CLAIMS SETTLEMENT ACT [P.L. 92-203]. (a) A corporation organized  
23 under 43 U.S.C. 1601 - 1629e as amended [43 U.S.C. 1601 - 1629a]  
24 (Alaska Native Claims Settlement Act) shall be incorporated under and  
25 is subject to this chapter except

26 (1) each corporation shall issue without further considera-  
27 tion the number of shares of common stock that may be necessary to  
28 comply with the requirements of the act [43 U.S.C. 1601 - 1629a] and  
29 all stock so issued is considered fully paid and nonassessable when

**S B**

**212**

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 1/29/90  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER JUD

\*\*FISCAL NOTE(S) MUST BE ATTACHED  
IN ACCORDANCE WITH AS 24.08.035

DATE TURNED INTO OFFICE 3/5/90

3/10/89

Mr. President:

LABOR AND COMMERCE Committee considered SB 212

insurer solvency; changing Rule 62(a), Rules of Civil Procedure; efd

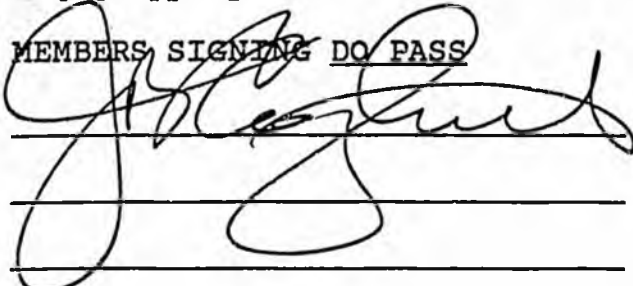
and recommended:

- replace with CS SB 212  same title
- attached amendment(s) and  new title
- \_\_\_\_\_ letter of intent adopted
- do pass
- do not pass
- no recommendation
- individual recommendations
- further referral to \_\_\_\_\_

FISCAL NOTE(S) attached  zero  
 appropriation no FN attached

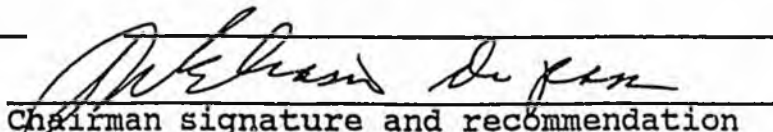
fiscal impact  
 Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS

  
\_\_\_\_\_  
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OTHER RECOMMENDATIONS

Janet No Rec  
Patricia Boyce no rec.  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

  
Chairman signature and recommendation

Committee backup attached



SB 212

STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

March 10, 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 insurer solvency. This bill makes numerous changes in the Alaska insurance code (AS 21) designed to strengthen the ability of the State of Alaska to protect the insurance consumer from insolvent or impaired insurance companies.

The insurance industry is the only financial industry that is primarily regulated by the states and not the federal government. If Alaska's public is to be protected, this very large responsibility must be carried out by the state's insurance regulator, the division of insurance in the Department of Commerce and Economic Development (DCED). At present, Alaska operates under an insurance code adopted in 1966, with few major changes since that time. Two successive audits have reported that in previous years the division of insurance has failed to adequately examine insurance companies licensed to do business in Alaska. In September 1988, the commissioner of DCED reported to me that the industry has exceeded the statutory ability of the state to regulate it. This bill will be a substantial step in remedying this situation by up-dating our insurance code. Most of the proposals are based on model legislation adopted by the National Association of Insurance Commissioners.

The bill addresses six main points.

1. The bill strengthens the capital and surplus required of insurers who do business in Alaska so that insolvency, or the inability to pay claims, will be avoided. Also, capital and surplus requirements at present apply differently to domestic and out-of-state insurers. Domestic

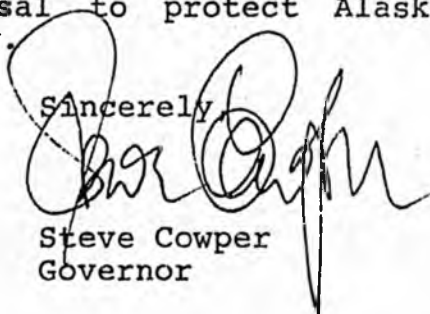
insurers have had to increase their requirements while out-of-state firms doing business here have not. This legislation would require out-of-state or alien insurers to maintain the same capital and surplus as domestic insurers.

2. The federal Tax Reform Act of 1986 has an impact on the insurance industry. Because that Act requires that claims and loss reserves be discounted to present value, some companies have been using arrangements termed "reinsurance" to put their statutory financial reporting on the same basis as their federal income tax reporting. Adequate reinsurance by insurance companies is important to the security of Alaskan policyholders. This proposal provides for a clear, workable definition of "reinsurance" and strengthens the ability of the division of insurance to determine whether adequate reinsurance or some other financial arrangement exists.
3. The bill modernizes Alaska's requirements on investments that may be made by insurance companies so that the state can be assured that a company's capital will not be lost in weak or fraudulent investments.
4. These additional requirements to ensure the financial stability of insurance companies will be effective only if the division of insurance has the regulatory tools to examine the affairs of these companies. This bill strengthens company reporting requirements so that the division will be alerted to potential problems. It also provides clear authority for companies to pay directly examiners hired by the state, and to compensate the state for its examination costs. This will make it possible to examine more companies more often.
5. The bill extends immunity for civil liability to division of insurance personnel, including the director, for carrying out their duties, so that they will not be deterred by the possibility of such suits. It also provides immunity for persons who provide information to the division, such as insurance regulators in other states. A number of state regulators have been sued over the exchange of information with other states. The bill ensures an exchange of needed information between the states.

6. Recent experience with insurance insolvencies in Alaska has demonstrated the inadequacies of our delinquency proceeding statutes. For example, at present our statutes do not provide for clear priorities among claims made on a company subjected to a delinquency proceeding. The bill proposes a new statute for such proceedings, based on a National Association of Insurance Commissioners model.

The division of insurance will provide a more detailed description of this proposal to protect Alaskans from insurance company insolvency.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cowper", written over the word "Sincerely,".

Steve Cowper  
Governor

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: An Act relating to insurer  
           solvency  
 Sponsor: Rules Committee  
 Requestor: Senate Labor & Commerce

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

**EXPENDITURES/REVENUES:** (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
<b>TOTAL OPERATING</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<b>CAPITAL</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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<b>REVENUE</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
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**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

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

**ANALYSIS :** (Attach a separate page if necessary) No fiscal impact in FY 90.

Prepared by: Joan Brown, Administrative Officer Phone: 465-2597  
 Division: Insurance Date: 2/3/90

Approved by Commissioner: Larry Merculieff Date: Feb-90  
 Agency: Department of Commerce & Economic Development

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

## REMARKS ON SB 212

MR. PRESIDENT, I RISE TODAY TO SUPPORT SB 212. THIS BILL AND ITS COMPANION, SB 259, WHICH THIS BODY WILL CONSIDER NEXT, ADDRESS TWO OF THE MOST IMPORTANT CONCERNS THE PEOPLE OF THE STATE OF ALASKA HAVE TODAY: HOW CAN WE BE SURE THAT INSURANCE COMPANIES REMAIN SOLVENT, AND WHAT HAPPENS TO THE CONSUMER IF AN INSURANCE COMPANY BECOMES INSOLVENT. THESE BILLS GO ALONG WAY TOWARD ANSWERING THOSE QUESTIONS.

SB 212 UPDATES AND CLARIFIES ALASKA STATUTES DEALING WITH INSURER INSOLVENCY. THESE STATUTES WERE ADOPTED IN 1966 AND ARE BASICALLY UNCHANGED SINCE THAT TIME.

SPECIFICALLY, <sup>FIVE</sup> ~~THREE~~ AREAS OF THE LAW ARE STRENGTHENED:

1. THE MINIMUM AMOUNT OF CAPITAL AND SURPLUS REQUIRED OF AN INSURANCE COMPANY WISHING TO DO BUSINESS IN THE STATE OF ALASKA HAS BEEN INCREASED. THIS WILL INSURE THAT THE COMPANIES DOING BUSINESS IN THE STATE OF ALASKA ARE FINANCIALLY STRONG AND PROVIDE THE DIVISION OF INSURANCE WITH A FINANCIAL TOOL TO IDENTIFY PROBLEM COMPANIES BEFORE IT IS TOO LATE.

2. THE BILL STRENGTHENS THE STATE'S ABILITY TO DETERMINE WHETHER ADEQUATE REINSURANCE OR SOME OTHER FINANCIAL ARRANGEMENT EXISTS SO THAT THE CONSUMER IS PROTECTED. THIS WILL REDUCE THE ABILITY OF AN INSURANCE COMPANY TO MANIPULATE ITS FINANCIAL STATEMENT TO THE DETRIMENT OF THE ALASKA POLICYHOLDER.
3. THE INVESTMENT STATUTES HAVE BEEN MODERNIZED TO ASSURE THAT AN INSURANCE COMPANY'S CAPITAL IS NOT PLACED IN WEAK OR FRAUDULENT INVESTMENTS.
4. REPORTING REQUIREMENTS ARE STRENGTHENED. QUARTERLY REPORTS AND ELECTRONIC MEDIA REPORTING IS ENABLED.
5. THE DELINQUENCY PROCEEDING STATUTES HAVE BEEN STREAMLINED AND STRENGTHENED. THIS WILL CORRECT A DEFICIENCY IN THE LAW DISCOVERED DURING A RECENT INSURER INSOLVENCY.

THIS IS A LENGTHY AND COMPLEX BILL. HOWEVER, IT IS IMPORTANT THAT OUR REGULATORY LAWS BE KEPT AS UP-TO-DATE AS POSSIBLE. SB 212 DOES THAT AND PROVIDES AN IMPORTANT PROTECTION FOR THE THOUSANDS OF ALASKANS WHO PURCHASE INSURANCE AND RELY ON THE SOLVENCY OF THEIR COMPANY AS THEY CONDUCT THEIR BUSINESS, RAISE THEIR FAMILIES, AND PLAN THEIR RETIREMENT.

DW/WFD2391W42590A

STATE OF ALASKA  
THE LEGISLATURE

POUCH V. STATE CAPITOL  
BUREAU ALASKA 99811  
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1990

SUBJECT: Insurance - CSSB 212 (L&C)  
TO: Senator Dick Eliason  
FROM: Michael F. Ford *m.f.*  
Legislative Counsel

The attached draft contains numerous style and form changes, as well as the following substantive issues that need to be resolved:

1. I have added a new sec. 7 to resolve a conflict between AS 21.06.160 and 21.06.250.
2. In sections 13, 26, and 51, the dates that certain surplus and reserve requirements were to go into effect have been moved forward. This was done to avoid having the bill take effect retroactively. It was unclear whether the retroactive surplus and reserve requirements were inadvertent or intentional.
3. In AS 21.88.(50(a)(3) there is a reference to AS 21.12.-020. AS 21.12.020 is repealed and reenacted in section 20 of the draft. I could not tell if the cross reference should be amended to reflect changes made in section 20.
4. In sec. 21.18.010(1), there is a reference to a definition of "trust company" in AS 21.21. I could not find a definition of this term in that chapter, including amendments to it made by this draft.
5. AS 21.21.290(b) has a cross reference to AS 21.21.280. AS 21.21.280 is amended in section 47 of the draft. Again, the cross reference may need to be amended.
6. You should note that the changes in surplus requirements in section 51 of the bill will also change the surplus requirements applicable to workers' compensation insurance under AS 21.34.030(d).

Senator Dick Eliason  
Page 2  
February 6, 1990

7. In section 53, AS 21.66.080(a) is amended and contains language excepting subsection (b) from the application of subsection (a). It is unclear whether the language in subsection (b) is a true exception to subsection (a). If so, the language in subsection (b) needs to be changed.

8. In section 63, AS 21.78.090 is amended by adding a new subsection (h). That section may allow a guaranty association or foreign guaranty association to intervene in a court proceeding. If this is the intent, this provision would amend Alaska Rule of Civil Procedure 19 and the change should be set out in the title and in a separate section.

9. In section 68, AS 21.78.170 is amended by adding a new subsection (g). That subsection may violate the requirement in the U.S Constitution that judgments in other states be given equal authority, or "full faith and credit."

10. In section 74, AS 21.78.260 is repealed and reenacted to provide a priority for distribution of claims. You should understand that these provisions will not override a federal law that gives priority to federal liens.

11. Finally, you should note that the bill title has been changed to reflect the content of the bill, and to indicate changes to additional court rules.

Please contact me if you have further questions.

MFF:lmb  
L9/096

Enclosure

Original sponsor(s): Rules/Governor

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IN THE SENATE BY THE LABOR & COMMERCE COMMITTEE  
CS FOR SENATE BILL NO. 212 (L&C)  
IN THE LEGISLATURE OF THE STATE OF ALASKA  
SIXTEENTH LEGISLATURE - SECOND SESSION  
A BILL

For an Act entitled: "An Act relating to insurance; changing Alaska Rules of Civil Procedure 19, 41, 62(a), and 65(c); changing Alaska Rules of Appellate Procedure 205, 405, 511, 603, 606, and 611(d); and providing for an effective date."

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

\* Section 1. AS 21.06.120(a) is amended to read:

(a) The director may examine the affairs, transactions, accounts, records, and assets of each authorized and formerly authorized insurer and each licensed and formerly licensed surplus lines broker as often as the director considers advisable. The director shall so examine each domestic insurer at least once every three years. Examination of an alien insurer may be limited to its insurance transactions and affairs in the United States. Examination of a reciprocal insurer may also include examination of its attorney-in-fact to the extent that the transactions of the attorney-in-fact relate to the insurer.

\* Sec. 2. AS 21.06.120 is amended by adding new subsections to read:

(d) The director may examine insurers in participation with the National Association of Insurance Commissioners.

(e) The director may use a contract examiner to carry out the functions of this section. The selection of a contract examiner and the award of a contract is subject to AS 36.30 (State Procurement Code).

1 \* Sec. 3. AS 21.06.140(b) is amended to read:

2 (b) Every person being examined and its officers, employees,  
3 agents, and representatives shall produce and make freely available to  
4 the director the accounts, records, documents, files, information,  
5 assets, and matters in their possession or control relating to the  
6 subject of the examination, and shall facilitate and aid the examina-  
7 tion as far as reasonably possible, including providing to the direc-  
8 tor, at the expense of the person being examined, a copy of any docu-  
9 ment requested during the examination.

10 \* Sec. 4. AS 21.06.150(e) is amended to read:

11 (e) The director may withhold from public inspection documents,  
12 information, accounts, or records received during an examination or  
13 investigation, and an examination or investigation reports, [REPORT]  
14 for as long as the director finds [CONSIDERS] the withholding to be  
15 necessary for the protection of a person [THE PERSON EXAMINED] against  
16 unwarranted injury or to be in the public interest.

17 \* Sec. 5. AS 21.06.160 is amended to read:

18 Sec. 21.06.160. EXAMINATION EXPENSE. (a) Each person examined,  
19 other than as to examinations under AS 21.06.130, shall pay all the  
20 costs of, and expenses incurred by division staff examiners, including  
21 salary and benefit costs, for time spent relating to the examination,  
22 and shall pay the compensation of a contract examiner, to be set at a  
23 reasonable customary rate, for conducting [ACTUAL TRAVEL EXPENSES, A  
24 REASONABLE LIVING EXPENSE ALLOWANCE, AND A PER DIEM AS COMPENSATION OF  
25 EXAMINERS, AS NECESSARILY INCURRED ON ACCOUNT OF] the examination [,  
26 ALL AT REASONABLE RATES CUSTOMARY THEREFOR AND AS ESTABLISHED OR  
27 ADOPTED BY THE DIRECTOR], upon presentation of a detailed account of  
28 the charges and expenses by the director or under an order [PURSUANT  
29 TO THE WRITTEN AUTHORIZATION] of the director. The accounting may

1 either be presented periodically during the course of the examination  
2 or at the termination of the examination. A person may not pay and an  
3 examiner may not accept additional compensation [EMOLUMENT] for an  
4 examination.

5 (b) The director shall pay into the general fund of the state  
6 all money received under (a) of this section. Instead [IN LIEU] of  
7 making a deposit into the general fund, the director may order [GIVE  
8 WRITTEN AUTHORIZATION FOR] the person examined to make direct payment  
9 to the contract examiner for all or part of the contract examiner's  
10 compensation. The contract between the state and a contract examiner  
11 who will receive direct payment under this subsection must require  
12 that the examiner provide the director with a copy of each billing for  
13 the examination [TRAVEL EXPENSES AND LIVING ALLOWANCE].

14 (c) In addition to other penalties provided by this title, if  
15 [IF] the person fails to pay the charges and expenses prescribed in  
16 (a) of this section, the amount may be recovered by suit by the attor-  
17 ney general on behalf of the state and restored to the general fund.  
18 The amount due shall be a first lien upon all of the assets and prop-  
19 erty of the person in this state.

20 \* Sec. 6. AS 21.06 is amended by adding a new section to read:

21 Sec. 21.06.165. IMMUNITY FOR DIRECTOR AND OTHERS. (a) The  
22 director, employees or agents of the division, and the National Asso-  
23 ciation of Insurance Commissioners and its employees, are not liable  
24 for civil damages for an act or omission in the execution of their  
25 authorized activities or duties under this title, or for the publica-  
26 tion or dissemination of a report or bulletin related to their autho-  
27 rized activities or duties.

28 (b) This section does not abrogate or modify the common law or  
29 other statutory privilege or immunity.

1 (c) This section does not preclude liability for civil damages  
2 as a result of reckless, wilful, or intentional misconduct.

3 \* Sec. 7. AS 21.06.250 is amended to read:

4 Sec. 21.06.250. FEES AND LICENSES. The director shall collect  
5 in advance a fee for each license and for services performed by the  
6 division of insurance. Fees may be collected for but are not limited  
7 to applications, [EXAMINATIONS,] licenses and license renewals, cer-  
8 tificates of authority, service of process, printed or photocopied  
9 material, and postage. The director shall adopt regulations setting  
10 the fees in an amount the director determines to be sufficient to  
11 reimburse the state for the actual expense incurred in providing a  
12 service.

13 \* Sec. 8. AS 21.09.020 is amended to read:

14 Sec. 21.09.020. EXCEPTIONS, CERTIFICATE OF AUTHORITY REQUIRE-  
15 MENT. A certificate of authority is not required of an insurer, not  
16 otherwise authorized in this state, in regard to

17 (1) transactions relative to its policies lawfully written  
18 in the state [ALASKA], or liquidation of assets and liabilities of the  
19 insurer (other than collection of new premiums), all as resulting from  
20 its former authorized operations in the state [ALASKA];

21 (2) related transactions [RELATIVE THERETO] subsequent to  
22 issuance of a policy covering only subjects of insurance not resident,  
23 located, or expressly to be performed in the state [ALASKA] at time of  
24 issuance, and which coverage was lawfully solicited, written, and  
25 delivered outside the state [ALASKA];

26 (3) transactions under [PURSUANT TO] surplus lines cover-  
27 ages lawfully written under AS 21.34 [AS 21.33]; or

28 (4) reinsurance, except as to domestic reinsurers.

29 \* Sec. 9. AS 21.09.060 is amended to read:

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Sec. 21.09.060. COMBINATIONS OF INSURING POWERS IN ONE INSURER.

An insurer that otherwise qualifies may be authorized to transact any one kind or combination of kinds of insurance as defined in AS 21.12, except that

(1) a life insurer may also grant annuities, but is not authorized to transact any other kind of insurance than disability; except that if the insurer is otherwise qualified, the director shall continue to authorize a life insurer that, immediately before July 1, 1966, was lawfully authorized to transact in this state a kind or kinds of insurance in addition to life and disability;

(2) a reciprocal insurer may not transact life insurance;

(3) a title insurer must [SHALL] be a stock insurer;

(4) a property or casualty insurer may not transact life insurance and may not grant annuities.

\* Sec. 10. AS 21.09.070(a) is amended to read:

(a) To qualify for authority to transact any one kind of insurance as defined in AS 21.12, or combination of kinds of insurance as shown below, a foreign insurer, or a domestic insurer applying for its original certificate of authority in this state, [OR AN INSURER REAPPLYING FOR A CERTIFICATE OF AUTHORITY IN THIS STATE] after having withdrawn from this state for any cause, shall possess and after that [THEREAFTER] maintain unimpaired basic paid-in capital stock, [( ) if a stock insurer, ( )] or unimpaired basic surplus, [( ) if a foreign mutual insurer or foreign reciprocal insurer ( )], that is unavailable for dividends of any kind, and shall possess when first so authorized, and maintain after that, additional money [FUNDS] in surplus, as follows:

Kind or Kinds	Basic Capital	Additional	<u>Additional</u>
of Insurance	or Basic	Surplus <u>When</u>	<u>Maintained</u>

	<u>Guarantee Surplus</u>	<u>First Authorized</u>	<u>Surplus</u>
1			
2	Life	<u>\$1,000,000</u>	<u>\$750,000</u>
3		[\$800,000]	
4	Disability	<u>1,000,000</u>	<u>750,000</u>
5		[800,000]	
6	Life and		
7	Disability	<u>1,250,000</u>	<u>1,000,000</u>
8		[1,000,000]	
9	Property	<u>1,000,000</u>	<u>750,000</u>
10		[600,000]	
11	Casualty ex-		
12	cluding vehicle	1,000,000	<u>750,000</u>
13	Vehicle	<u>1,000,000</u>	<u>750,000</u>
14		[800,000]	
15	Marine &		
16	transportation	1,000,000	<u>750,000</u>
17	Surety	1,000,000	<u>750,000</u>
18	Title	<u>500,000</u>	<u>250,000</u>
19		[300,000]	
20	Any two or more of		
21	the following kinds		
22	of insurance:		
23	property, marine		
24	and transporta-		
25	tion, vehicle,		
26	casualty ex-		
27	cluding vehicle,		
28	surety and		
29	disability	<u>3,000,000</u>	<u>2,250,000</u>

1		[1,500,000]	[1,500,000]	
2	Legal expenses	<u>1,000,000</u>	<u>1,000,000</u>	<u>750,000</u>
3		[600,000]	[600,000]	
4	Mortgage			
5	Guarantee	1,000,000	1,000,000	<u>750,000</u>

\* Sec. 11. AS 21.09.070(b) is amended to read:

(b) Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in all areas in which it operates or proposes to operate, whether or not only a portion of the kinds of insurance are to be transacted in this state. After a hearing, the director may for the protection of the public require an insurer to maintain funds in excess of the amounts required under (a) of this section, due to the amount, kind, or combination of kinds of insurance transacted by the insurer. Failure of an insurer to maintain funds as ordered by the director is grounds for suspension or revocation of the insurer's certificate of authority.

\* Sec. 12. AS 21.09.070(c) is repealed and reenacted to read:

(c) After June 30, 1991, an insurer may not renew and continue its certificate of authority unless the insurer possesses at least the basic capital or basic surplus, and additional surplus required under this section.

\* Sec. 13. AS 21.09.070 is amended by adding a new subsection to read:

(f) On or after January 1, 1991, a domestic property or casualty insurer may assume reinsurance, either new or renewal, (1) only of the kinds of risks, and to retain risks, within the limits it is otherwise authorized to insure; and (2) only if, in the absence of prior written approval from the director, it maintains, notwithstanding (a) of this section, in policyholder surplus at least \$10,000,000 as of December 31, 1990, \$15,000,000 as of December 31, 1991, and

1 \$20,000,000 as of December 31, 1992. This subsection does not apply  
2 to reinsurance that is required to be assumed by applicable law or  
3 regulation or is assumed under an intracompany pooling arrangement  
4 between affiliated insurers.

5 \* Sec. 14. AS 21.09.080(a) is repealed and reenacted to read:

6 (a) In order for a domestic insurer to renew and continue the  
7 insurer's certificate of authority after June 30, 1991, the insurer  
8 must possess at least the basic capital, basic guarantee surplus, and  
9 additional maintained surplus required under AS 21.09.070(a).

10 \* Sec. 15. AS 21.09.110(3) is amended to read:

11 (3) a copy of its financial statement as of the preceding  
12 December 31, and all subsequent quarterly financial statements, sworn  
13 to by at least two executive officers of the insurer, or certified by  
14 the public insurance supervisory official of the insurer's state of  
15 domicile or of entry into the United States;

16 \* Sec. 16. AS 21.09.140(a) is amended to read:

17 (a) The director shall suspend or revoke an insurer's certifi-  
18 cate of authority

19 (1) if the action is required by a provision of this title;

20 (2) if the insurer no longer meets the requirements for the  
21 authority [ORIGINALLY] granted, on account of the insurer becoming  
22 impaired or insolvent [DEFICIENCY OF ASSETS] or otherwise; or

23 (3) if the insurer's authority to transact insurance is  
24 suspended or revoked by its state of domicile, or state of entry into  
25 the United States if an alien insurer.

26 \* Sec. 17. AS 21.09.200(a) is amended to read:

27 (a) Each authorized insurer shall annually, before March 2, file  
28 with the director a full and true statement of its financial condi-  
29 tion, transactions, and affairs as of the preceding December 31. The

1 reporting format for a given year is the most recently approved Na-  
2 tional Association of Insurance Commissioners' annual financial state-  
3 ment blank form and instructions approved by the director. [THE STATE-  
4 MENT SHALL BE IN THE GENERAL FORM AND CONTEXT ACCEPTABLE TO THE DIREC-  
5 TOR, AND IN CURRENT USE FOR SIMILAR REPORTS TO STATES IN GENERAL WITH  
6 RESPECT TO THE TYPE OF INSURER AND KINDS OF INSURANCE TO BE REPORTED  
7 UPON, AND] supplemented for additional information as required by the  
8 director. The director may require the statement to be filed on  
9 electronic media. The statement shall be verified by the oath of the  
10 insurer's president or vice-president, and secretary, or, if a recip-  
11 rocal insurer, by oath of the attorney-in-fact or its like offices if  
12 a corporation unless verification is waived by the director of insur-  
13 ance.

14 \* Sec. 18. AS 21.09.200 is amended by adding a new subsection to read:  
15 (f) In addition to the requirements of (a) of this section, a  
16 domestic insurer shall file its annual statement with the National  
17 Association of Insurance Commissioners by the due date established by  
18 the association, and shall pay the applicable filing fee. An insurer  
19 that fails to comply with this subsection is subject to the penalties  
20 specified in (e) of this section, calculated from the filing and fee  
21 due date established by the National Association of Insurance Commis-  
22 sioners.

23 \* Sec. 19. AS 21.09 is amended by adding a new section to read:

24 Sec. 21.09.205. QUARTERLY STATEMENT. (a) The director may  
25 require an insurer to file quarterly financial statements. If re-  
26 quired, the statements must follow the format specified in AS 21.09.-  
27 200(a).

28 (b) A quarterly financial statement, if required, is due 60 days  
29 after the end of the quarter to which it applies.

1 (c) An insurer shall pay to the division \$100 for each day the  
2 insurer fails to file the quarterly statement in the form required or  
3 within the time established in (b) of this section.

4 \* Sec. 20. AS 21.12.020 is repealed and reenacted to read:

5 Sec. 21.12.020. REINSURANCE CREDIT ALLOWED A DOMESTIC CEDING  
6 INSURER. (a) Credit for reinsurance shall be allowed a domestic  
7 ceding insurer as either an asset or a deduction from liability on  
8 account of reinsurance ceded only if the reinsurance is ceded to an

9 (1) assuming insurer that is licensed to transact insurance  
10 or reinsurance in this state;

11 (2) assuming insurer that is accredited as a reinsurer in  
12 this state; an accredited reinsurer is one that

13 (A) submits to this state's jurisdiction, submits to  
14 this state's authority to examine its books and records, and is  
15 licensed to transact insurance or reinsurance in at least one  
16 state; or

17 (B) in the case of a United States branch of an alien  
18 assuming insurer, is entered through, and licensed to transact  
19 insurance or reinsurance in, at least one state, files annually  
20 with the director a copy of its annual financial statement that  
21 is filed with the insurance regulatory agency of its state of  
22 domicile, and maintains at least \$20,000,000 in policyholder sur-  
23 plus;

24 (3) assuming insurer that is domiciled in a state, or in  
25 the case of a United States branch of an alien assuming insurer, is  
26 entered through a state that employs standards regarding credit for  
27 reinsurance ceded substantially similar to those applicable under (1)  
28 and (2) of this subsection, the assuming insurer maintains a policy-  
29 holder surplus of at least \$20,000,000, and the assuming insurer

1 submits to the authority of this state to examine its books and re-  
2 cords;

3 (4) assuming alien insurer that

4 (A) maintains a trust fund in a qualified United  
5 States financial institution for the payment of the valid claims  
6 of its United States policyholders and ceding insurers, and their  
7 assigns and successors in interest, that conforms to the follow-  
8 ing requirements:

9 (i) the trust shall be established in a form  
10 approved by the director; the trust instrument must provide  
11 that contested claims are valid and enforceable upon the  
12 final order of any court of competent jurisdiction in the  
13 United States; the trust shall vest legal title to its  
14 assets in the trustees of the trust for its United States  
15 policyholders and ceding insurers, their assigns and succes-  
16 sors in interest; the trust and the assuming insurer are  
17 subject to examination as determined by the director; the  
18 trust must remain in effect for so long as the assuming  
19 insurer has outstanding liabilities due under the reinsur-  
20 ance agreements subject to the trust;

21 (ii) on or before March 1 of each year the trust-  
22 ees shall report in writing to the director on the balance  
23 of the trust and list the trust's investments at the end of  
24 the preceding year, and shall certify the date of termina-  
25 tion of the trust, if so planned, or certify that the trust  
26 does not expire before the following December 31;

27 (iii) in the case of a single assuming insurer, the  
28 trust shall consist of trust money representing the assuming  
29 insurer's liabilities attributable to business written in

1 the United States and, in addition, include a trust surplus  
2 of not less than \$20,000,000; the single assuming insurer  
3 shall make available to the director an annual certification  
4 of the insurer's solvency by the insurer's domiciliary  
5 regulator and by an independent public accountant;

6 (iv) in the case of a group of individual unin-  
7 corporated insurers, the trust shall consist of trust money  
8 representing the group's liabilities attributable to busi-  
9 ness written in the United States and, in addition, include  
10 a trust surplus not less than \$100,000,000; the group shall  
11 make available to the director an annual certification of  
12 the solvency of each of the individual unincorporated insur-  
13 ers by the group's domiciliary regulator and by an indepen-  
14 dent public accountant; and

15 (B) reports annually to the director information  
16 substantially the same as that required to be reported on the  
17 National Association of Insurance Commissioners' annual statement  
18 form by licensed insurers to enable the director to determine the  
19 sufficiency of the trust fund;

20 (5) assuming insurer that does not meet the requirements of  
21 (1) - (4) of this subsection, but only with respect to the insurance  
22 of risks located in jurisdictions where the reinsurance is required by  
23 applicable law or regulation of that jurisdiction.

24 (b) If the assuming insurer is not licensed or accredited to  
25 transact insurance or reinsurance in this state, the credit permitted  
26 by (a)(1) - (4) of this section may not be allowed unless the assuming  
27 insurer agrees in the reinsurance agreements

28 (1) that in the event of the failure of the assuming insur-  
29 er to perform its obligations under the terms of the reinsurance

1 agreement, the assuming insurer, at the request of the ceding insurer,  
2 shall submit to the jurisdiction of a court of competent jurisdiction  
3 in any state of the United States, will comply with all requirements  
4 necessary to give the court jurisdiction and will abide by the final  
5 decision of the court or of an appellate court in the event of an  
6 appeal; this provision is not intended to conflict with or override  
7 the obligation of the parties to a reinsurance agreement to arbitrate  
8 their disputes, if such an obligation is created in the reinsurance  
9 agreement; and

10 (2) to designate the director or an attorney resident in  
11 the United States as its true and lawful attorney upon whom may be  
12 served lawful process in an action, suit, or proceeding instituted by  
13 or on behalf of the ceding insurer.

14 (c) A reduction from liability, for reinsurance ceded to an  
15 assuming insurer not meeting the requirements of (a) of this section,  
16 shall be allowed in an amount not exceeding the liabilities carried by  
17 the ceding insurer. The reduction shall be equal to the amount of  
18 money held by or on behalf of the ceding insurer, including money held  
19 in trust for the ceding insurer, under a reinsurance contract with the  
20 assuming insurer as security for the payment of obligations under it.  
21 If the security is held in the United States subject to withdrawal  
22 solely by, and under the exclusive control of, the ceding insurer, or  
23 in the case of a trust, held in a qualified United States financial  
24 institution, the security must be in the form of

25 (1) cash;

26 (2) securities listed by the Securities Valuation Office of  
27 the National Association of Insurance Commissioners that qualify as  
28 admitted assets under AS 21.21;

29 (3) clean, irrevocable, unconditional letters of credit

1 issued or confirmed by a qualified United States financial institu-  
2 tion; letters of credit meeting applicable standards of issuer accept-  
3 ability as of the dates of their issuance or confirmation shall,  
4 notwithstanding the issuing or confirming institution's subsequent  
5 failure to meet applicable standards of issuer acceptability, continue  
6 to be acceptable as security until their expiration, extension, renew-  
7 al, modification, or amendment, whichever occurs first; or

8 (4) other security acceptable to and approved in advance by  
9 the director.

10 (d) Notwithstanding the other provisions of this section, credit  
11 may not be allowed a domestic ceding insurer unless the reinsurance  
12 contract provides for payment by the assuming insurer on the basis of  
13 the liability of the ceding domestic insurer under the insurance  
14 contracts reinsured without diminution because of the insolvency of  
15 the ceding domestic insurer.

16 (e) Upon request of the director, an insurer shall promptly  
17 inform the director, in writing, of the cancellation or other material  
18 change in any of its reinsurance contracts or arrangements.

19 (f) In this section, "qualified United States financial insti-  
20 tution" means an institution that,

21 (1) for the purposes of (c)(3) of this section,

22 (A) is organized or, in the case of a United States  
23 office of a foreign banking organization, is licensed under the  
24 laws of the United States or a state of the United States;

25 (B) is regulated, supervised, and examined by United  
26 States federal or state authorities having regulatory authority  
27 over banks and trust companies; and

28 (C) has been determined by either the director or the  
29 Securities Valuation Office of the National Association of

1 Insurance Commissioners to meet the standards of financial  
2 condition and standing that are considered necessary and  
3 appropriate to regulate the quality of financial institutions  
4 whose letters of credit are acceptable to the director;

5 (2) for the purposes of the provisions of this section  
6 other than (c) (3) of this section, an institution that

7 (A) is organized or, in the case of a United States  
8 branch or agency office of a foreign banking organization, li-  
9 censed under the laws of the United States or a state of the  
10 United States, and has been granted authority to operate with  
11 fiduciary powers; and

12 (B) is regulated, supervised, and examined by United  
13 States federal or state authorities having regulatory authority  
14 over banks and trust companies.

15 \* Sec. 21. AS 21.12 is amended by adding a new section to read:

16 Sec. 21.12.120. REINSURANCE DEFINED. Reinsurance is a contract  
17 by which the assuming insurer agrees to indemnify the ceding insurer  
18 in whole or in part against liability that the ceding insurer might  
19 incur under a separate contract of insurance with its insured.

20 \* Sec. 22. AS 21.18.010 is repealed and reenacted to read:

21 Sec. 21.18.010. ALLOWABLE ASSETS. In a determination of the  
22 financial condition of an insurer, only those assets that are owned by  
23 the insurer and that consist of the following are allowed:

24 (1) cash in the possession of the insurer, or in transit  
25 under its control, including the true balance of a deposit in a sol-  
26 vent bank, savings and loan association, or trust company as defined  
27 in AS 21.21;

28 (2) investments, securities, properties, and loans acquired  
29 or held under this title, and in connection with those assets, the

1 following items:

2 (A) interest due or accrued on a bond or evidence of  
3 indebtedness qualifying as an admitted asset that is not in  
4 default and that is not valued on a basis including accrued  
5 interest;

6 (B) declared and unpaid dividends on stock and shares,  
7 unless the amount has otherwise been allowed as an asset;

8 (C) interest due or accrued upon a collateral loan in  
9 an amount not to exceed one year's interest;

10 (D) interest due or accrued on deposits in solvent  
11 banks, savings and loan associations, and trust companies, and  
12 interest due or accrued on other assets, if the interest is, in  
13 the judgment of the director a collectible asset;

14 (E) interest due or accrued on a current real estate  
15 mortgage loan that is an admitted asset, in an amount not exceed-  
16 ing the value of the property over the unpaid loan principal less  
17 delinquent taxes on the property; however, if the interest is in  
18 default more than three months, or a tax or installment on the  
19 property is due and unpaid for more than three months, allowance  
20 may not be made for unpaid interest on the loan;

21 (F) rent due or accrued on real property if the rent  
22 is not in arrears for more than three months; rent more than  
23 three months in arrears is allowed if the payment of the rent is  
24 secured by property with a current market value not less than 75  
25 percent of the total rent due, held in the name of the tenant and  
26 conveyed to the insurer as collateral;

27 (G) the unaccrued portion of taxes paid before the due  
28 date on real property;

29 (3) premium notes, policy loans, and other policy assets,

1 liens on policies, certificates of life insurance, annuity contracts,  
2 and accrued interest on them, in an amount not exceeding the legal  
3 reserve, and other policy liabilities carried on each individual  
4 policy;

5 (4) bills receivable for premiums, or installment premiums  
6 other than for life insurance, if the total amount does not exceed the  
7 unearned premium amount for the policy on which it is accepted and if  
8 all payment required is current;

9 (5) the net amount of uncollected and deferred premiums and  
10 annuity considerations in the case of a life insurer;

11 (6) premiums in the course of collection, other than for  
12 life insurance, not more than three months past due, less commissions  
13 payable on them, except that the three-month limitation of this para-  
14 graph does not apply to

15 (A) premiums payable directly or indirectly by the  
16 United States government or by any of its instrumentalities;

17 (B) reinsurance premiums payable by ceding insurers  
18 authorized to transact business in this state; or

19 (C) reinsurance premiums receivable that might be  
20 offset by amounts carried by the reinsurer as liabilities for  
21 amounts due to the insurer for unpaid losses or other mutual  
22 debts; however, reinsurance premiums more than 90 days past due  
23 may not be allowed in excess of 10 percent of the reinsurer's  
24 total admitted assets as shown on its most recent annual finan-  
25 cial statement on file with the director;

26 (7) premiums, not more than three months past due, exclud-  
27 ing commissions payable on them, due from a controlling or controlled  
28 person, to the extent that

29 (A) the premiums collected by the controlling or

1 controlled person and not remitted to the insurer are held in a  
2 trust account with a bank or other depository approved by the  
3 division and may not be commingled with other money of the con-  
4 trolling or controlled person; a disbursement from the trust  
5 account may be made only to the insurer, the insured, or, for the  
6 purpose of returning a premium, an entity who is entitled to  
7 returned premiums on behalf of the insured; however, the invest-  
8 ment income derived from the trust may be allocated as the  
9 parties consider proper; a controlling or controlled person shall  
10 deposit premiums collected into the trust account within five  
11 working days after collection; the director shall disapprove a  
12 trust agreement that, in the director's judgment, does not assure  
13 the safety of the premiums collected;

14 (B) the controlling or controlled person has provided  
15 to the insurer, and the insurer has maintained in its possession,  
16 an unexpired, clean, irrevocable, and unconditional letter of  
17 credit, payable to the insurer, for a term of not less than one  
18 year with automatic extension for one year, unless the benefi-  
19 ciary has received in writing notification of intention not to  
20 renew 30 days before the original expiration date; the letter of  
21 credit must be issued in conformity with the requirements set out  
22 in this subparagraph, and the amount of the letter of credit must  
23 equal or exceed the liability of the controlling or controlled  
24 person to the insurer, at all times during the period that the  
25 letter of credit is in effect, for premiums collected by the  
26 controlling or controlled person; a letter of credit must be  
27 issued under arrangements satisfactory to the division and the  
28 letter must be issued by a banking institution that is a member  
29 of the Federal Reserve System and that has a financial standing

1 satisfactory to the department; the director shall disapprove a  
2 letter of credit that, in the director's judgment, does not  
3 assure the safety of the premiums;

4 (C) the controlling or controlled person has provided  
5 to the insurer, and the insurer has maintained in its possession,  
6 evidence that the controlling or controlled person has purchased  
7 and has currently in effect a financial guaranty bond, payable to  
8 the insurer, issued for a continuous term, cancelable only on  
9 30-day written notice to the beneficiary of intention to termi-  
10 nate with the bond continuing in effect for acts committed before  
11 the date of termination, and that is in conformity with the  
12 requirements set out in (B) of this paragraph; the amount of the  
13 bond must equal or exceed the liability of the controlling or  
14 controlled person to the insurer, at all times during which the  
15 financial guaranty bond is in effect, for the premium collected  
16 by the controlling or controlled person; a financial guaranty  
17 bond must be issued under an arrangement satisfactory to the  
18 division, by an insurer that is authorized to transact business  
19 in the state, that has a financial standing satisfactory to the  
20 division and that is neither controlled nor controlling in rela-  
21 tion to either the insurer or the person for whom the bond is  
22 purchased; and

23 (D) a financial examination indicates that the con-  
24 trolling or controlled person is solvent and has the ability to  
25 pay the premiums as they become due; the financial examination,  
26 as scheduled by the director, shall be based on a review of the  
27 books and records of the controlling or controlled person;

28 (8) notes and written obligations not past due, taken for  
29 premiums other than life insurance premiums, on policies permitted to

1 be issued on that basis and to the extent of the unearned premium  
2 reserves carried on the policies;

3 (9) the full amount of reinsurance that is recoverable by a  
4 ceding insurer from a solvent reinsurer and that is authorized under  
5 AS 21.12.020;

6 (10) amounts receivable by an assuming insurer representing  
7 money withheld by a solvent ceding insurer under a reinsurance treaty,  
8 not exceeding the amounts carried by the assuming insurer as liability  
9 for unpaid losses and reserves under the contract;

10 (11) deposits or equities recoverable from underwriting  
11 associations, syndicates, and reinsurance funds or from a suspended  
12 banking institution to the extent considered by the director available  
13 for the payment of losses and claims and at values to be determined by  
14 the director;

15 (12) electronic data processing and related equipment, and  
16 operating software constituting a data processing, record keeping, or  
17 an accounting system if the cost of the system, including subsequent  
18 additions to the original system, is \$50,000 or more and if that cost  
19 is to be amortized in full over a period not to exceed 10 calendar  
20 years;

21 (13) intercompany transactions arising from income tax  
22 allocations among organizations participating in a consolidated tax  
23 return, if

24 (A) there is a written agreement that is in compliance  
25 with regulations adopted by the Internal Revenue Service and the  
26 agreement includes a

27 (i) description of the method of allocation and  
28 the manner in which intercompany balances will be settled;  
29 and

1 (ii) requirement that an intercompany balance will  
2 be settled within a reasonable time following the filing of  
3 the consolidated tax return;

4 (B) receivables arising out of the agreement are due  
5 from a solvent organization that is not in default on its obliga-  
6 tions and that meets all other requirements for admitted assets;  
7 and

8 (C) liabilities that offset the related intercompany  
9 receivables are recorded in the financial statement of one or  
10 more of the other organizations participating in the agreement;

11 (14) the amount of foreign exchange differential on the  
12 excess of assets over liabilities recorded in foreign currencies;

13 (15) an unsecured receivables from a solvent affiliate, that  
14 is not more than six months past due, if a liability to offset the  
15 receivable is recorded in the affiliate's corresponding financial  
16 statement;

17 (16) receivables arising from wholly and partially uninsured  
18 accident and health plans;

19 (17) all assets, not inconsistent with the provisions of  
20 this section, that are allowed in the annual statement form and with  
21 the annual statement instructions most recently published by the  
22 National Association of Insurance Commissioners and approved by the  
23 director; or

24 (18) other assets, not inconsistent with the provisions of  
25 this section, considered by the director to be available for the  
26 payment of losses and claims, at values to be determined by the direc-  
27 tor.

28 \* Sec. 23. AS 21.18.030 is repealed and reenacted to read:

29 Sec. 21.18.030. ASSETS NOT ALLOWED. (a) In addition to assets

1 excluded by the application of AS 21.18.010, the following are ex-  
2 pressly not allowed as assets in a determination of the financial  
3 condition of an insurer:

4 (1) good will, trade names, and other similar intangible  
5 assets;

6 (2) advances to officers, other than policy loans, whether  
7 secured or not secured, and advances to employees, agents, and other  
8 persons on personal security only;

9 (3) stock of the insurer, owned by it, or any material  
10 equity in the stock or loans secured by the stock, or a material  
11 proportionate interest in the stock acquired or held through the  
12 ownership by the insurer of an interest in another firm, corporation,  
13 or business unit;

14 (4) tangible personal property, including furniture, fix-  
15 tures, furnishings, safes, vehicles, libraries, stationery, litera-  
16 ture, and supplies, other than electronic data processing machines  
17 authorized by AS 21.18.010, except property acquired through foreclo-  
18 sure of chattel mortgages acquired under AS 21.21.270, or property  
19 that is reasonably necessary for the maintenance and operation of real  
20 estate lawfully acquired and held by the insurer other than real  
21 estate used by the insurer for home office, branch office, and similar  
22 purposes;

23 (5) the amount, if any, by which the aggregate book value  
24 of investments as carried on the ledger assets of the insurer exceeds  
25 the aggregate value as determined under this title;

26 (6) bonds, notes, or other evidences of indebtedness that  
27 are secured by mortgages or deeds of trust that are in default;

28 (7) payments made under the Internal Revenue Code of 1986  
29 for the alternative minimum tax, or refunds receivable that are in

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dispute from a federal or state taxing authority;

(8) commuted commissions by which the present value of future commissions is paid in advance to agents;

(9) commissions and fees forwarded to agents before the earning of the commissions and fees by the agent;

(10) unsecured loans due from outside sources.

(b) All nonadmitted assets and all other assets of doubtful value or character included as ledger or nonledger assets in a statement by an insurer to the director, or in an examiner's report to the director, shall also be reported, to the extent of the value disallowed, as deductions from the gross assets of the insurer, unless the director permits a reserve to be carried among the liabilities of the insurer in place of a deduction.

\* Sec. 24. AS 21.18.060(a) is repealed and reenacted to read:

(a) Except as otherwise provided in AS 21.18.070, an insurer shall maintain an unearned premium reserve on all policies in force against loss or damage to property, including loss or damage under general casualty or surety insurance.

\* Sec. 25. AS 21.18.060(b) is amended to read:

(b) The director may require that the reserves be equal to the unearned portions of the gross premiums in force after deducting applicable reinsurance in solvent [INSOLVENT] insurers as computed on each respective risk from the policy's date of issue. Except as required by [IF] the director under this subsection [DOES NOT SO REQUIRE], the portions of the gross premium in force, less applicable reinsurance in solvent insurers, to be held as an unearned premium reserve shall be computed according to the following table:

Term for Which Policy	Reserve for Unearned
Was Written	Premium

1	1 year or less . . . . .	1/2
2	2 years . . . . .	1st year 3/4
3		2nd year 1/4
4	3 years . . . . .	1st year 5/6
5		2nd year 1/2
6		3rd year 1/6
7	4 years . . . . .	1st year 7/8
8		2nd year 5/8
9		3rd year 3/8
10		4th year 1/8
11	5 years . . . . .	1st year 9/10
12		2nd year 7/10
13		3rd year 1/2
14		4th year 3/10
15		5th year 1/10
16	Over 5 years . . . . .	pro rata

\* Sec. 26. AS 21.18 is amended by adding new sections to read:

Sec. 21.18.073. UNEARNED PREMIUM RESERVE FOR TITLE INSURANCE.

In addition to an adequate reserve as to outstanding losses as required under AS 21.18.050, a title insurer shall establish, segregate, and maintain a guaranty fund or unearned premium reserve as provided in this section. At all times and for all purposes, the sums required by this section to be reserved for unearned premiums on title guarantees and policies shall be considered and constitute unearned portions of the original premiums and shall be charged as a reserve liability of the insurer in determining its financial condition. While the sums are reserved, they are withdrawn from the use of the insurer for its general purposes, constitute a trust in favor of the holders of title guarantees and policies, and must be held available for reinsurance of

1 the title guarantees and policies in the event of the insolvency of  
2 the insurer. This section does not preclude the insurer from invest-  
3 ing the reserves in investments authorized by law for the insurer.  
4 The income from invested reserves may be included in the general  
5 income of the insurer to be used by the insurer for a lawful purpose.  
6 The unearned premium reserve required by this section consists of not  
7 less than the amount computed as follows with respect to a policy of  
8 title insurance issued by a title insurer after December 31, 1990:

9 (1) 10 percent of the total amount of risk premiums written  
10 in the calendar year for title insurance contracts must be assigned  
11 originally to the reserve;

12 (2) during each of the 20 years immediately following the  
13 year in which the title insurance contract was issued, the reserve  
14 applicable to the contract must be reduced by five percent of the  
15 original amount of the reserve; with respect to a policy of title  
16 insurance issued by a title insurer before January 1, 1991, the insur-  
17 er shall maintain at all times a reserve of not less than \$.30 for  
18 each \$1,000 of the fee amount of all title guarantees and policies  
19 issued during the preceding 10 years; this reserve amount, required to  
20 be reserved for unearned premiums on title guarantees and policies,  
21 shall at all times and for all purposes be considered and constitute  
22 unearned portions of the original premiums and shall be charged as a  
23 reserve liability of the insurer in determining its financial condi-  
24 tion; that portion of the unearned premium reserve established with  
25 respect to a title guarantee or policy issued more than 10 years  
26 before January 1, 1991, shall be released, shall no longer constitute  
27 part of the unearned premium reserve, and may be used for any purpose  
28 by the insurer.

29 Sec. 21.18.075. BAIL BOND RESERVE. In place of the unearned

1 premium reserve required on surety bonds under AS 21.18.050, the  
2 department may require a surety insurer or limited surety insurer to  
3 set up and maintain a reserve on all bail bonds or other single premi-  
4 um bonds without a definite expiration date, furnished in judicial  
5 proceedings, equal to 25 percent of the total consideration charged  
6 for the bonds that are outstanding as of the date of a current finan-  
7 cial statement of the insurer.

8 \* Sec. 27. AS 21.18.120(a) is amended to read:

9 (a) All bonds or other evidences of debt having a fixed term and  
10 rate of interest held by an insurer may, if issued by a solvent entity  
11 [AMPLY SECURED] and not in default in principal or interest, be valued  
12 as follows:

13 (1) if purchased at par, at the par value;

14 (2) if purchased above or below par, on the basis of the  
15 purchase price with amortization of bond premium or discount [ADJUST-  
16 ED] to bring the value to par at maturity and yield in the meantime  
17 the effective rate of interest at which the purchase was made, or  
18 instead [IN LIEU] of this method, according to another [AN] accepted  
19 method of valuation approved by the director;

20 (3) the purchase price may not [SHALL] in any [NO] case be  
21 taken at a higher figure than the actual market value at the time of  
22 purchase, plus actual brokerage, transfer, postage or express charges  
23 paid in the acquisition of the securities;

24 (4) unless otherwise provided by valuation established or  
25 approved by the director, [NO] security may not [SHALL] be carried at  
26 or above the call price for the entire issue during any period within  
27 which the security may be called.

28 \* Sec. 28. AS 21.18 is amended by adding a new section to read:

29 Sec. 21.18.900. DEFINITIONS. In this chapter

1 (1) "admitted asset" means an asset allowed by AS 21.18.010  
2 to be included in the determination of the financial condition of a  
3 domestic or foreign insurer or the United States branch of an alien  
4 insurer;

5 (2) "affiliate" has the meaning given in AS 21.22.200.

6 (3) "controlling" or "controlled" has the meaning given in  
7 AS 21.22.200 and includes a person that individually, or in combina-  
8 tion with other persons, owes to the insurer an amount that exceeds 50  
9 percent of the insurer's total premiums in the course of collection as  
10 stated on the insurer's financial statement;

11 (4) "foreign currency" means the monetary denominations of  
12 a country other than the dollar used by the United States;

13 (5) "ledger asset" means an asset recorded on the general  
14 ledger of an insurer;

15 (6) "nonadmitted assets" means an asset recorded on the  
16 insurer's ledger that is not allowed by AS 21.18.010 to be included in  
17 the determination of the financial condition of a domestic or foreign  
18 insurer or the United States branch of an alien insurer;

19 (7) "nonledger asset" means an asset not recorded on the  
20 general ledger of an insurer;

21 (8) "solvent" means able to satisfy all current and future  
22 obligations and operate as an ongoing entity.

23 \* Sec. 29. AS 21.21.020(c) is amended to read:

24 (c) Eligibility of an investment shall be determined as of the  
25 date of its making or acquisition [, EXCEPT AS STATED IN (b) OF THIS  
26 SECTION].

27 \* Sec. 30. AS 21.21.030(c) is amended to read:

28 (c) This chapter does not prohibit the acquisition by an insurer  
29 of other or additional securities or property if received as a

1 dividend or as a lawful distribution of assets, or, subject to (d) of  
2 this section, under a lawful and bona fide agreement of bulk  
3 reinsurance, merger, or consolidation. An acquired investment [SO  
4 ACQUIRED] that is not otherwise eligible under this chapter or subject  
5 to (d) of this section shall be disposed of under AS 21.21.300, if  
6 personal property or securities, or under AS 21.21.290, if real  
7 property.

8 \* Sec. 31. AS 21.21.030 is amended by adding new subsections to read:

9 (d) A bona fide agreement of bulk reinsurance, merger, or con-  
10 solidation in which the consideration received is comprised of assets,  
11 25 percent or more of which, as valued under AS 21.18, are ineligible  
12 under this chapter, requires the specific written approval of the  
13 director before the agreement is entered.

14 (e) The director may, at any time, order the immediate disposi-  
15 tion of any or all of the ineligible assets received, or may order the  
16 reversal of the agreement of bulk reinsurance, merger, or consolida-  
17 tion, or may order other action that the director considers appro-  
18 priate under the circumstances.

19 \* Sec. 32. AS 21.21.050 is amended to read:

20 Sec. 21.21.050. DIVERSIFICATION OF INVESTMENTS. An insurer  
21 shall invest in or hold as admitted assets categories of investments  
22 only within applicable limits as follows:

23 (1) [ONE PERSON:] an insurer may not, except with the  
24 consent of the director, have [AT ANY ONE TIME] a combination of  
25 investments in or loans upon the security of the obligations, proper-  
26 ty, or securities of any one person, or insurer, aggregating an amount  
27 exceeding five percent of the insurer's assets; this restriction does  
28 not apply to

29 (A) general obligations of the United States; [OF

1 AMERICA; or

2 (B) general obligations of a state of the United  
3 States that is not insolvent and whose securities are not then in  
4 default; or

5 (C) [INCLUDE] policy loans made under AS 21.21.210;

6 (2) [VOTING STOCK:] an insurer may not invest in or hold at  
7 any one time more than 10 per cent of the outstanding voting stock of  
8 a corporation, except with the consent of the director given with  
9 respect to voting rights of preference stock during default of divi-  
10 dends; this paragraph [PROVISION] does not apply to stock of a wholly-  
11 owned subsidiary of the insurer or to controlling stock of an insurer  
12 acquired under AS 21.21.170;

13 (3) [MINIMUM CAPITAL:] an insurer, other than title insur-  
14 er, shall invest and maintain invested funds in an amount not less [IN  
15 AMOUNT] than the higher of

16 (A) the minimum basic capital for stock insurers or  
17 basic guarantee surplus for mutual insurers and additional sur-  
18 plus for both stock and mutual insurers [PAID-IN CAPITAL STOCK]  
19 required under AS 21.09.070; or

20 (B) 50 percent of the total capital and surplus shown  
21 on the most recent statement of the insurer's financial condition  
22 as filed with the director under AS 21.09.200 [THIS TITLE OF A  
23 DOMESTIC STOCK INSURER TRANSACTING LIKE KINDS OF INSURANCE,] only  
24 in

25 (i) cash;

26 (ii) the fully insured portion of bank deposits  
27 when the insurance is provided by a solvent agency of the United  
28 States government or by collateral in the form of the securities  
29 provided for under AS 21.21.060 and 21.21.080; or

1 (iii) [AND] the securities provided for under  
2 AS 21.21.060 and [,] 21.21.080 [AND 21.21.260];

3 (4) [LIFE INSURANCE RESERVES:] a life insurer shall [ALSO]  
4 invest and keep invested its funds in an amount not less than the  
5 reserves under its life insurance policies and annuity contracts,  
6 other than variable annuities, in force, in cash or [AND/OR] the  
7 securities or investments provided for under this chapter;

8 (5) [CORPORATE OBLIGATIONS:] except with the director's  
9 written consent, an insurer may not have invested at any one time more  
10 than 20 per cent of its assets in the class of securities described in  
11 AS 21.21.140, exclusive of obligations of public utilities;

12 (6) [COMMON STOCKS:] an insurer may invest and have invest-  
13 ed at any one time in aggregate amount not more than 10 per cent of  
14 its assets in all stocks under AS 21.21.160, 21.21.170<sub>1</sub> and 21.21.200<sub>1</sub>  
15 except with the director's written consent; determination of the  
16 amount that [WHICH] an insurer has invested in common stocks for the  
17 purposes of this paragraph is [SHALL BE] based on the cost of the  
18 stocks to the insurer; this paragraph does not apply to stock of a  
19 controlled or subsidiary insurance corporation or other corporation  
20 held under AS 21.21.170 and 21.21.180;

21 (7) [MISCELLANEOUS:] except with the director's written  
22 consent, an insurer may not have invested at any one time more than 10  
23 percent of its assets in any one of the class of securities described  
24 in [ANY ONE OF THE FOLLOWING SECTIONS:] AS 21.21.100, 21.21.150<sub>1</sub> [AND]  
25 21.21.190, or 21.21.250(c) [;]

26 (8) OTHER SPECIFIC LIMITS: LIMITS IN INVESTMENTS IN THE  
27 CATEGORY OF REAL ESTATE ARE AS PROVIDED IN AS 21.21.280; AND OTHER  
28 SPECIFIC LIMITS APPLY AS STATED IN THE SECTIONS DEALING WITH OTHER  
29 RESPECTIVE KINDS OF INVESTMENTS].

1 \* Sec 33. AS 21.21.080 is amended to read:

2           Sec. 21.21.080. STATE, COUNTY, MUNICIPAL, AND SCHOOL OBLIGA-  
3 TIONS. An insurer may invest in bonds or other evidences of indebt-  
4 edness that are general obligations of [, OR ARE SECURED BY FLEDGE OR  
5 SPECIFIC REVENUES BY,] this state or of another state of the United  
6 States or of a province of Canada, or of a political subdivision or  
7 all other taxing districts of these states or provinces, if the state  
8 or province

9                     (1) is not insolvent;

10                    (2) has the power to levy taxes for the prompt payment of  
11 the principal and interest of the obligations; and

12                    (3) is not in default in the payment of principal or inter-  
13 est on its direct, general obligations at the date of the investment.

14 \* Sec. 34. AS 21.21.130 is amended to read:

15           Sec. 21.21.130. [INTER-AMERICAN] DEVELOPMENT BANKS [BANK]. An  
16 insurer may invest in obligations issued, assumed, or guaranteed by  
17 the Inter-American Development Bank, the African Development Bank, or  
18 the Asian Development Bank, if the bank is solvent and not in default  
19 in the payment of principal or interest on any of its direct, general  
20 obligations at the date of the investment.

21 \* Sec. 35. AS 21.21.140(a) is amended to read:

22           (a) An insurer may invest in bonds, debentures, notes, and other  
23 evidences of indebtedness issued, assumed, or guaranteed by a solvent  
24 domestic debtor institution not in default in the payment of principal  
25 or interest on any of its direct, general obligations on the date of  
26 the investment, if the bond, debenture, note, or other evidence of  
27 indebtedness [EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA  
28 OR OF CANADA, OR OF A STATE OR PROVINCE, WHICH IS NOT IN DEFAULT AS TO  
29 PRINCIPAL OR INTEREST AND WHICH] is secured by adequate collateral and

1 bears fixed interest and if during each of any three, including either  
2 of the last two, of the five fiscal years preceding the date of acqui-  
3 sition by the insurer, the net earnings of the domestic debtor [ISSU-  
4 ING, ASSUMING OR GUARANTEEING] institution available for its fixed  
5 charges [, DEFINED IN (d) OF THIS SECTION,] have been not less than  
6 one and one-quarter times the total of its charges for that year. In  
7 determining the adequacy of collateral security, not more than  
8 one-third of the total value of the required collateral may consist of  
9 common stock.

10 \* Sec. 36. AS 21.21.140(b) is amended to read:

11 (b) An insurer may invest in secured and unsecured obligations  
12 of domestic debtor [THESE] institutions, other than the obligations in  
13 (a) of this section, bearing interest at a fixed rate, with mandatory  
14 principal and interest due at specified times, if the net earnings of  
15 the domestic debtor [ISSUING, ASSUMING OR GUARANTEEING] institution  
16 available for its fixed charges for a period of five fiscal years  
17 immediately preceding the date of acquisition by the insurer have  
18 averaged per year not less than one and one-half times its average  
19 annual fixed charges applicable to that period and if during either of  
20 the last two years of that period the net earnings have been not less  
21 than one and one-half times its fixed charges for the year.

22 \* Sec. 37. AS 21.21.140(c) is amended to read:

23 (c) An insurer may invest in adjustment, income, or other con-  
24 tingent interest obligations of domestic debtor [THESE] institutions  
25 if the net earnings of the domestic debtor [ISSUING, ASSUMING OR  
26 GUARANTEEING] institution available for its fixed charges for a period  
27 of five fiscal years immediately preceding the date of acquisition by  
28 the insurer have averaged per year not less than one and one-half  
29 times the sum of its average annual fixed charges and its average

1 annual maximum contingent interest applicable to that period and if  
2 during either of the last two years of that period the net earnings  
3 have been not less than one and one-half times the sum of its fixed  
4 charges and maximum contingent interest for the year.

5 \* Sec. 38. AS 21.21.140(d) is repealed and reenacted to read:

6 (d) In this section, "domestic debtor" means an institution  
7 existing under the laws of the United States or Canada, or a state of  
8 the United States or a province of Canada.

9 \* Sec. 39. AS 21.21.150 is amended to read:

10 Sec. 21.21.150. PREFERRED OR GUARANTEED STOCK. An insuror may  
11 invest in preferred or guaranteed stocks or shares of a solvent insti-  
12 tution, not in default on any of its obligations, existing under the  
13 laws of the United States [OF AMERICA] or [OF] Canada, or of a state  
14 of the United States or province of Canada [THEREOF], if all of the  
15 prior obligations and prior preferred stocks, if any, of the institu-  
16 tion at the date of acquisition of the investment by the insurer are  
17 eligible as investments under this chapter and if the net earnings of  
18 the institution available for its fixed charges during each of the  
19 last two fiscal years immediately preceding the date of acquisition of  
20 the investment by the insurer have been, and during each of the last  
21 five fiscal years immediately preceding the date of acquisition of the  
22 investment by the insurer have averaged, not less than one and one-  
23 half times the sum of its average annual fixed charges, if any, its  
24 average annual maximum contingent interest, if any, and its average  
25 annual preferred dividend requirements whether the dividends are  
26 cumulative or noncumulative and whether paid or not. [FOR THE PUR-  
27 POSSES OF THIS SECTION THE COMPUTATION SHALL REFER TO THE FISCAL YEARS  
28 IMMEDIATELY PRECEDING THE DATE OF ACQUISITION OF THE INVESTMENT BY THE  
29 INSURER, AND THE TERM "PREFERRED DIVIDEND REQUIREMENT" MEANS

1 CUMULATIVE OR NONCUMULATIVE DIVIDENDS, WHETHER PAID OR NOT].

2 \* Sec. 40. AS 21.21.160 is amended to read:

3 Sec. 21.21.160. COMMON STOCKS. An insurer may invest in nonas-  
4 sessable common stocks, other than insurance stocks, of a solvent  
5 corporation, not in default on any of its obligations, existing under  
6 the laws of the United States [OF AMERICA] or [OF] Canada, or a state  
7 of the United States or province of Canada [THEREOF], if cash or stock  
8 dividends have been earned and paid on its common stock in each of the  
9 five fiscal years preceding the acquisition; and if, [FURTHER,] all  
10 prior obligations or preference stock of the corporation, if any, are  
11 eligible for investment under this chapter. If the issuing corpora-  
12 tion has not been in legal existence for the whole of the five preced-  
13 ing fiscal years but was formed as a consolidation or merger of two or  
14 more businesses, the test of eligibility for investment of its common  
15 stock under this section is [SHALL BE] be based upon consolidated  
16 [CONSOLIDATION] pro forma statements of the predecessor or constituent  
17 institutions.

18 \* Sec. 41. AS 21.21.170(a) is amended to read:

19 (a) An insurer may invest in the stocks of another [OTHER]  
20 solvent insurer, not in default on any of its obligations, [INSURERS]  
21 formed under the laws of this or another state, if the [WHICH] stocks  
22 meet the applicable requirements of AS 21.21.150 and 21.21.160.

23 \* Sec. 42. AS 21.21.190 is amended to read:

24 Sec. 21.21.190. EQUIPMENT TRUST CERTIFICATES. An insurer may  
25 invest in equipment trust obligations or [OF] certificates adequately  
26 secured and evidencing an interest in transportation equipment, wholly  
27 or in part within the United States, if the [OF AMERICA, WHICH] obli-  
28 gations or certificates carry the right to receive determined portions  
29 of rental, purchase, or other fixed obligatory payments to be made for

1 the use or purchase of the transportation equipment.

2 \* Sec. 43. AS 21.21 is amended by adding a new section to read:

3 Sec. 21.21.245. POOLED INVESTMENTS. (a) An insurer may invest  
4 in the securities of eligible pooled investment companies, if 90  
5 percent of the assets of the pooled investment companies would other-  
6 wise be eligible for investment under AS 21.21.060, 21.21.150, 21.21.-  
7 160, 21.21.200, 21.21.225, or 21.21.230, if the investments were not  
8 held in a pooled investment format.

9 (b) In addition to meeting the requirements of (a) of this  
10 section, a pooled investment is eligible for initial investment by an  
11 insurer, and continued holding by an insurer, only if it appears on  
12 the most recent list of eligible pooled investment companies main-  
13 tained by the director.

14 (c) In determining adherence to the limits established under  
15 AS 21.21.050, the pooled investments are measured as if the insurer  
16 held pro rata the investments of the pooled investment company.

17 \* Sec. 44. AS 21.21.250 is amended by adding a new subsection to read:

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

23 \* Sec. 45. AS 21.21.270(b) is amended to read:

24 (b) Before the acquisition of a chattel mortgage under this  
25 section, items of property to be included shall be separately apprais-  
26 ed by a qualified independent appraiser and the fair market value  
27 determined. A chattel mortgage loan may not exceed in amount the same  
28 ratio of loan to the value of the property that is applicable to the  
29 companion loan on the real property.

1 \* Sec. 46. AS 21.21.270(c) is amended to read:

2 (c) This section does not prohibit an insurer from taking liens  
3 on personal property

4 (1) as additional security for an investment otherwise  
5 eligible under this chapter; or

6 (2) to improve an insurer's collection efforts or security  
7 concerning an investment either eligible or ineligible under this  
8 chapter.

9 \* Sec. 47. AS 21.21.280 is amended to read:

10 Sec. 21.21.280. REAL ESTATE. An insurer may invest in real  
11 estate only if used for the purposes or acquired in the manner and  
12 within the limits as follows:

13 (1) the land and the buildings on the land in which it has  
14 its principal office [,] and the other real estate that is required  
15 [REQUISITE] for its convenient accommodation in the transaction of its  
16 business; except that the aggregate investment under this paragraph  
17 may not exceed 10 percent of the insurer's admitted assets as shown on  
18 the insurer's most recent statement of financial condition as filed  
19 with the director under AS 21.09.200 unless otherwise authorized by  
20 the director;

21 (2) with the prior approval of the director, a parcel of  
22 real estate acquired under (1) of this section may include excess  
23 space for rent to others if it is reasonably anticipated that the  
24 excess is required in order to have a building that will be a viable  
25 economic unit;

26 (3) real estate acquired in satisfaction of loans, mort-  
27 gages, liens, judgments, decrees, or debts previously owing to the  
28 insurer in the course of its business;

29 (4) [(3)] real estate acquired in part payment of the

1 consideration on the sale of other real estate owned by the insurer  
2 [IT], if the transaction does not increase the insurer's investment in  
3 real estate;

4 (5) [(4)] real estate acquired by gift or devise [,] or  
5 through merger, consolidation, or bulk reinsurance of another insurer  
6 under this title;

7 (6) [(5)] the seller's interest in real property subject to  
8 an agreement of purchase or sale, but the sum invested in a parcel of  
9 real estate may [SHALL] not exceed three-fourths of the market value  
10 of the parcel if [PROVIDED] it consists of one or two family residen-  
11 tial property, or [AND] two-thirds of the market value of all other  
12 parcels of real estate;

13 (7) [(6)] real estate, or any interest in real estate  
14 acquired or held by purchase, lease, or otherwise, other than real  
15 estate to be used primarily for agricultural purposes, ranching,  
16 [RANCH] mining, development of oil or mineral resources, or recrea-  
17 tional, amusement, or club purposes, [ACQUIRED AS AN INVESTMENT] for  
18 the production of income, and other than real estate described in (1)  
19 of this section, that is situated in any state of the United States,  
20 and the construction of improvements upon it, on the following condi-  
21 tions:

22 (A) the prior approval of the director has been ob-  
23 tained; the director shall give approval on a showing by the  
24 insurer that

25 (i) the insurer has adequate assets available for  
26 the long-term investment and the interests of the insurer's  
27 policyholders will not be jeopardized by it;

28 (ii) the investment will not exceed the reasonable  
29 value of the property or of the interest in it that the

1 insurer proposes to acquire;

2 (iii) there is a reasonable probability of occupan-  
3 cy of the property sufficient to make the investment profit-  
4 able; and

5 (iv) there is reasonable cause to believe that the  
6 insurer will be in compliance with the provisions of this  
7 subparagraph over the entire period that the insurer owns  
8 the property;

9 (B) the insurer must own the entire property, except  
10 that it may share ownership with one or more insurers authorized  
11 to do business in the state under agreements that will assure  
12 concerted action in management and control of the property in  
13 case of the insolvency of a participating insurer, and if each  
14 investment made under this subparagraph by the insurer and by  
15 each participating insurer is not less than \$250,000 unless prior  
16 written approval is obtained from the director;

17 (C) the insurer, alone or in conjunction with partici-  
18 pants qualified under (B) of this paragraph, may let contracts  
19 for construction and pay costs of construction and leasing, hold,  
20 maintain, lease, and manage the property, collect rents and other  
21 income from it, and sell the property in whole or in part;

22 (D) the property may be encumbered by leases to ten-  
23 ants and by rights-of-way, easements, mineral reservations,  
24 building restrictions, and restrictive covenants, if

25 (i) the encumbrances do not interfere substan-  
26 tially with the use of the property or result in a forfei-  
27 ture of the property; or

28 (ii) a policy of title insurance, equal in amount  
29 to the cost of the property, issued by a responsible title

1                    insurer qualified to do business in the state in which the  
2                    property is located, insures the insurer against loss or  
3                    damage arising from such encumbrances or reversionary  
4                    rights:

5                    (E) [OR ACQUIRED TO BE IMPROVED OR DEVELOPED FOR SUCH  
6                    INVESTMENT PURPOSES UNDER AN EXISTING PROGRAM; THE INSURER MAY  
7                    HOLD, IMPROVE, DEVELOP, MAINTAIN, MANAGE, LEASE, SELL, AND CONVEY  
8                    REAL ESTATE ACQUIRED BY IT UNDER THIS PARAGRAPH;] an insurer may  
9                    not, except with the director's written consent, have at any one  
10                   time invested in real estate [UNDER THIS PARAGRAPH] an amount  
11                   exceeding five percent of its admitted assets;

12                    (8) [(7)] additional real estate and equipment incident to  
13                    real estate, if necessary or convenient for the purpose of enhancing  
14                    the sale or other value of real estate previously acquired or held by  
15                    the insurer under (3) - (5) or (7) [(2) - (4), OR (6)] of this sec-  
16                    tion; the real estate and equipment shall be included together with  
17                    the real estate that is enhanced [FOR THE ENHANCEMENT OF WHICH IT WAS  
18                    ACQUIRED], for the purpose of applicable investment limits, and are  
19                    [SHALL BE] subject to disposal at the same time and under the same  
20                    conditions as those applying to the enhanced real estate under AS 21.-  
21                    21.290;

22                    (9) [(8)] except with the director's consent, all real  
23                    estate owned by the insurer [UNDER THIS SECTION], except the seller's  
24                    interest specified in (6) [(5)] of this section, may not at any one  
25                    time exceed 15 percent of the insurer's assets.

26                    \* Sec. 48. AS 21.21.310(a) is amended to read:

27                    (a) Real estate, personal property, or securities lawfully  
28                    acquired and held by an insurer after expiration of the period for  
29                    disposal of them or any extension of the period granted by the

1 director, as provided in AS 21.21.290 and 21.21.300, may not be  
2 allowed as an admitted asset of the insurer.

3 \* Sec. 49. AS 21.21 is amended by adding new sections to read:

4 Sec. 21.21.350. INVESTMENT TRANSACTIONS WITH AFFILIATED OR  
5 CONTROLLING PERSONS. (a) Except as provided in this section or  
6 AS 21.21.180, an insurer may not

7 (1) invest in or dispose of otherwise eligible investments  
8 issued by or due from affiliated parties;

9 (2) purchase from an affiliated party an otherwise eligible  
10 investment; or

11 (3) use the services of a broker or commissioned sales  
12 agent who is an affiliated or controlling person in securing an other-  
13 wise eligible investment without first fulfilling the obligations  
14 imposed under this section.

15 (b) Before completing investment activities with or through  
16 affiliated or controlling persons, an insurer shall fully disclose and  
17 document in writing to its board of directors and the committee au-  
18 thorized by the board and charged with the supervision or making of  
19 the investment or loan involved, the material facts concerning the  
20 affiliation or circumstances of control. An insurer may not complete  
21 an investment activity with or through affiliated or controlling  
22 persons, unless the board of directors by specific board action,  
23 authorizes the transaction and concludes that the transaction complies  
24 with (c) and (d) of this section. The vote of the board authorizing  
25 the transaction must be recorded in the minutes, on a member-by-member  
26 basis, and must indicate each vote approving, disapproving, or ab-  
27 staining on the transaction.

28 (c) Investments or loans with affiliated or controlling persons  
29 shall be consummated at current market transfer prices and under a fee

1 structure and at interest or discount rates that are commercially  
2 reasonable in the area in which the transaction occurs.

3 (d) The insurer's board of directors is responsible for de-  
4 termining that the transfer prices are at current market and determin-  
5 ing the commercial reasonableness of the transactions with affiliated  
6 or controlling persons. The board of directors may rely on indepen-  
7 dent third-party experts in making its determination.

8 (e) This section does not apply to policy loans or in circum-  
9 stances in which the financial interest of the affiliated or control-  
10 ling party is only nominal or so remote as not to give rise to a  
11 conflict of interest.

12 Sec. 21.21.355. CERTAIN DEPOSITS NOT PROHIBITED. This chapter  
13 does not prevent the board of directors of an insurer from depositing  
14 securities

15 (1) with a committee appointed for the purpose of protect-  
16 ing the interests of policyholders;

17 (2) with the authorities of a state or country in which it  
18 is necessary to do so in order to secure permission to transact its  
19 appropriate business; or

20 (3) as collateral for the securing of a bond required for  
21 the business of the insurer.

22 Sec. 21.21.360. OPTIONS AND FUTURES CONTRACTS. (a) With the  
23 prior written approval of the director of a policy of hedging under-  
24 taken to reduce an insurer's risk from market fluctuations or the  
25 effect of inflation, and adoption in writing of the policy by an  
26 insurer's board of directors, an insurer may invest in options and  
27 futures contracts.

28 (b) Put and call options traded on a regulated exchange are  
29 valued as follows:

1 (1) for hedges of items carried at amortized cost:

2 (A) options owned are valued at the premium paid to  
3 purchase the option;

4 (B) options sold must have the proceeds reserved at  
5 full value until the option either expires, is exercised, or a  
6 closing transaction has been effected;

7 (C) if, during the life of the option, the option is  
8 no longer effective as a hedge, valuation at cost ceases and the  
9 option owned or proceeds reserved is valued at its current market  
10 value;

11 (D) unrealized gains or losses over the life of the  
12 option are deferred until the ultimate disposition occurs; at  
13 disposition, if the hedge was effective, the gain or loss is  
14 recognized as an adjustment to the basis of the hedged item  
15 acquired and amortized into income over the remaining life of the  
16 hedged item, or deducted from the consideration received for the  
17 security sold; if the hedge was not effective and the option  
18 expires or is terminated through a closing transaction, the gain  
19 or loss is recognized on the date of expiration or termination;

20 (E) for effective hedges, that are impractical to  
21 match against specific hedged assets or liabilities, an insurer  
22 not wishing to use the accounting specified in (D) of this para-  
23 graph may, at its discretion, recognize the gain or loss of the  
24 option upon its disposition;

25 (2) for hedges of items carried at market value:

26 (A) options owned are valued at the current market  
27 price and changes are treated as unrealized gains or losses;

28 (B) options sold must have the proceeds credited to a  
29 liability reserve that is marked to market, and the changes

1 treated as unrealized gains or losses;

2 (C) if the option is exercised, the premium is added  
3 to the cost of the security acquired or deducted from the consid-  
4 eration received for the security sold;

5 (3) for options acquired or sold not involving a hedging  
6 transaction, the cost or other carrying value is not allowed as an  
7 admitted asset.

8 (c) Stock options and purchase warrants that are transferable  
9 into securities that are not restricted as to transferability are  
10 valued as follows, whether or not physically attached to any other  
11 security:

12 (1) publicly traded warrants and options, other than ex-  
13 change traded, are valued at market value;

14 (2) a warrant or option having no public market that is  
15 currently transferable into shares of common stock that have no public  
16 market is valued at the difference resulting from the subtraction from  
17 the analytically determined value of the stock of the transfer price  
18 for the warrant or option;

19 (3) a warrant or option having no public market that is  
20 currently transferable into shares of common stock that have a coun-  
21 terpart public market but that are themselves restricted is valued at  
22 \$1; the warrant or option is not allowed as an admitted asset;

23 (4) a warrant or option that has no public market and for  
24 which the first transfer date is subsequent to the date of the state-  
25 ment has no value for statement purposes.

26 (d) An insurer's investment in financial futures contracts is  
27 valued as follows:

28 (1) positions in futures contracts are initially valued at  
29 the amount of a cash deposit, if any, placed with a broker;

1 (2) gains or losses on futures contracts that insurers are  
2 permitted to defer are to be added, in the case of losses, or deduct-  
3 ed, in the case of gains, to the basis of the contract;

4 (3) for hedges of items carried at amortized cost,

5 (A) gains or losses may be deferred until the earliest  
6 of the completion of the hedging transaction or the determination  
7 that the anticipated transaction will no longer take place;

8 (B) if, during the life of the hedge, the futures  
9 contract is no longer effective as a hedge, deferral accounting  
10 ceases and a gain or loss is recognized to the extent that the  
11 futures results have not been offset by the effects of price or  
12 interest rate changes on the hedged item;

13 (C) if the anticipated transaction will no longer take  
14 place, hedge accounting ceases and the total gain or loss on the  
15 futures contract since inception is recognized;

16 (D) upon completion of the hedging transaction, the  
17 deferred gains or losses are added to the basis of the hedged  
18 item;

19 (E) upon completion of the hedging transaction, if it  
20 is impractical to match gains or losses to specific hedged assets  
21 or liabilities, an insurer not wishing to use the accounting  
22 method specified in (D) of this paragraph may recognize the  
23 previously deferred gains or losses upon completion of the hedg-  
24 ing transaction;

25 (4) for hedges of items carried at market, the gains or  
26 losses on futures contracts are recognized currently;

27 (5) for futures contracts not involved hedging transac-  
28 tions, gains or losses are recognized currently.

29 (e) The cost of or other carrying value of warrants or options

1 exercisable into securities that are restricted as to transferability,  
2 and the restricted securities into which they are transferable, are  
3 not allowed as admitted assets.

4 (f) Without the express, written permission of the director  
5 before a change, the alternative methods of adjusting the hedged item  
6 or recognizing gains or losses at disposition as described in this  
7 section must be consistently applied from period-to-period for a  
8 particular type of hedging program. Appropriate disclosures shall be  
9 made as to whether one or both methods are used and the basis for  
10 determining the method or methods used.

11 \* Sec. 50. AS 21.21.600 is amended to read:

12 Sec. 21.21.600. DEFINITIONS [DEFINITION OF DOMESTIC INSURER].

13 In this chapter, unless the context requires otherwise,

14 (1) "affiliated" has the meaning given in AS 21.22.200;

15 (2) "assets" means assets that are allowable assets under  
16 AS 21.18.010;

17 (3) "bank" means an organization organized under the laws  
18 of a state requiring the permission of either the United States Comp-  
19 troller of the Currency or the state of domicile director of banking  
20 or equivalent state officer, to both accept deposits of individuals  
21 and businesses and make commercial loans, and whose deposits are  
22 insured by the Federal Deposit Insurance Corporation;

23 (4) "control" and "controlling" have the meaning given in  
24 AS 21.22.200;

25 (5) "domestic insurer" has the meaning given in AS 21.90.-  
26 900 and, in addition, for the purposes of this chapter, includes an  
27 insurer that [WHICH] has been authorized to do business in this state  
28 and that [WHICH], during its three preceding fiscal years taken to-  
29 gether, or during any lesser period of time if it has been licensed to

1 transact its business in this state [THE STATE OF ALASKA] only for  
2 such lesser periods of time, has written an average of more gross  
3 premiums in this state [THE STATE OF ALASKA] than it has written in  
4 its state of domicile during the same period, and the gross premiums  
5 written constitute 33 percent or more of its total gross premiums  
6 written everywhere in the United States for the three year or lesser  
7 period, as reported in its three most recent annual statements;

8 (6) "durable equipment" means only mechanical refrigera-  
9 tors, air conditioning equipment, mechanical laundering machines,  
10 heating and cooking stoves and ranges; in the case of apartment  
11 houses, motels, and hotels, "durable equipment" includes room furni-  
12 ture and furnishings;

13 (7) "fixed charges" includes interest on funded and unfund-  
14 ed debt, amortization of debt discount, and rental for leased prop-  
15 erties;

16 (8) "independent" means not affiliated or not controlled;

17 (9) "most recent statement of financial condition" means  
18 the annual report or quarterly report most recently filed under  
19 AS 21.09.200 and 21.09.205;

20 (10) "net earnings available for fixed charges" means net  
21 income after deducting operating and maintenance expenses, taxes other  
22 than federal income taxes, depreciation, and depletion, excluding  
23 extraordinary nonrecurring items of income or expenses appearing in  
24 the regular financial statement of an issuing, assuming, or guarantee-  
25 ing institution;

26 (11) "options and futures contracts" means a put or call  
27 option on underlying common stocks, debt instruments, and stock in-  
28 dexes, other stock options, purchase warrants, and financial futures  
29 contracts;

1                   (12) "pooled investments" means a management-type investment  
2                   company or investment trust, or unit investment trust, or similar  
3                   investment vehicle, registered with the Securities and Exchange Com-  
4                   mission under 15 U.S.C. 80a - 81 (Investment Company Act of 1940) and  
5                   qualifying under 26 U.S.C. 851 (Internal Revenue Code of 1986);

6                   (13) "preferred dividend requirement" means cumulative or  
7                   noncumulative dividends, whether paid or not;

8                   (14) "savings and loan" means an organization organized  
9                   under the laws of a state that has qualified for the insurance protec-  
10                   tion provided by the Federal Savings and Loan Insurance Corporation;

11                   (15) "solvent agency of the United States government" means  
12                   an agency of the government of the United States whose assets exceed  
13                   its liabilities, and that has not been defined as insolvent by the  
14                   director for purposes of administering this chapter;

15                   (16) "solvent institution or person or company" means an  
16                   institution, person, or company whose assets exceed its liabilities  
17                   and that has not been defined as insolvent by the director for pur-  
18                   poses of administering this chapter.

19 \* Sec. 51. AS21.34.040(c) is amended to read:

20                   (c) A nonadmitted insurer may be eligible to provide coverage in  
21                   this state if it qualifies under one of the following:

22                   (1) a foreign but nonalien stock insurer may qualify under  
23                   this subsection if it has the [A] minimum unimpaired basic capital and  
24                   additional surplus equal to that required in its domiciliary jurisdic-  
25                   tion, or maintains [\$1,500,000 ON SEPTEMBER 18, 1984, \$2,500,000 ON  
26                   JUNE 20, 1985, \$3,500,000 ON JUNE 20, 1986, AND] \$5,000,000 as of [ON]  
27                   June 20, 1987, \$6,000,000 as of December 31, 1990, \$10,000,000 as of  
28                   December 31, 1991, \$12,500,000 as of December 31, 1992, and  
29                   \$15,000,000 as of December 31, 1993, whichever is greater;

1 (2) a foreign but nonalien mutual insurer, a reciprocal  
2 insurer, or a mutual protection and indemnity association may qualify  
3 under this subsection if it has the minimum unimpaired basic surplus  
4 and additional surplus equal to that required in its domiciliary  
5 jurisdiction or maintains \$6,000,000 as of December 31, 1990,  
6 \$10,000,000 as of December 31, 1991, \$12,500,000 as of December 31,  
7 1992, and \$15,000,000 as of December 31, 1993, whichever is greater;

8 (3) an alien insurer may qualify under this subsection if  
9 it meets the minimum [CAPITAL AND SURPLUS] requirements in (1) or (2)  
10 of this subsection and maintains in the United States an irrevocable  
11 trust fund in either a national bank or a member of the Federal Re-  
12 serve System [SYSTEM], in an amount not less than \$2,500,000, as  
13 security to the full amount [\$1,500,000], for the protection of all  
14 its policyholders and creditors of each member of the mutual insurer,  
15 reciprocal insurer, or mutual protection and indemnity association in  
16 the United States; the trust fund must consist of instruments of  
17 substantially the same character and quality as those that are eligi-  
18 ble investments for the capital and statutory reserves of admitted  
19 insurers authorized to write like kinds of insurance in this state or  
20 of irrevocable, clean, and unconditional letters of credit; the trust  
21 fund must have an expiration [EXPIRY] date that at no time is less  
22 than five years;

23 (4) [(3)] a Lloyd's or other similar unincorporated group  
24 of alien individual insurers may qualify if it maintains a trust fund  
25 in an amount not less than \$50,000,000, as security to the full  
26 amount, for the protection of all its policy holders and creditors of  
27 each member of the group in the United States; the trust fund must  
28 consist of instruments of substantially the same character and quality  
29 as those that are eligible investments for the capital and statutory