

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6396 SENATE LABOR & COMMERCE

800

1 reserves of admitted insurers authorized to write like kinds of insur-
2 ance in this state or of irrevocable, clean, and unconditional letters
3 of credit; the trust fund must have an expiration date that at no time
4 is less than five years;

5 (5) [OF NOT LESS THAN \$50,000,000 AS SECURITY TO THE FULL
6 AMOUNT, FOR ALL POLICY HOLDERS AND CREDITORS IN THE UNITED STATES, OF
7 EACH MEMBER OF THE GROUP; (4)] an "insurance exchange" created by the
8 laws of individual states may qualify if it maintains capital and
9 surplus, or the substantial equivalent, of not less than \$50,000,000
10 [\$15,000,000] in the aggregate; for insurance exchanges that maintain
11 funds for the protection of all insurance exchange policyholders, each
12 individual syndicate shall maintain minimum capital and surplus, or
13 the substantial equivalent, of not less than \$3,000,000; in the event
14 the insurance exchange does not maintain funds for the protection of
15 all its policyholders, each individual syndicate shall meet the mini-
16 mum [CAPITAL AND SURPLUS] requirements of (1) or (2) of this sub-
17 section.

18 * Sec. 52. AS 21.36 is amended by adding a new section to read:

19 Sec. 21.36.365. IMMUNITY FOR REPORTS ON FRAUD. (a) A person is
20 not liable for civil damages for filing a report with or furnishing
21 other information whether written or oral, concerning suspected,
22 anticipated, or completed fraudulent acts to

23 (1) law enforcement officials, their agents and employees;

24 (2) the National Association of Insurance Commissioners,
25 the division of insurance, an agency in a state that regulates insur-
26 ance, or an organization established to detect and prevent fraudulent
27 insurance acts, their agents, employees, or designees.

28 (b) This section does not preclude liability for civil damages
29 as a result of reckless, wilful, or intentional misconduct.

1 * Sec. 53. AS 21.66.080 is amended to read:

2 Sec. 21.66.080. ANNUAL STATEMENT. Except as provided in (b) of
3 this section, every [EVERY] corporation, on or before March 1
4 [MARCH 2] of each year, shall furnish the director a sworn statement
5 of assets and liabilities, and of all title premiums received by it
6 during the preceding calendar year, setting out among other things
7 that three percent of all gross premiums on title insurance policies
8 issued by it during the year, covering property in this state, have
9 been set aside and held by it in an account known as the Title Insur-
10 ance Unearned Premium Reserve Fund, as provided in this chapter. The
11 reporting format for a given year is the most recently approved Na-
12 tional Association of Insurance Commissioners' Annual Financial State-
13 ment blank form and instructions approved by the director, supplement-
14 ed for additional information as required by the director. The direc-
15 tor may require the statement to be filed on electronic media. The
16 statement must [SHALL] also show [IN THE FORM WHICH MAY BE PRESC
17 BY THE DIRECTOR] all unpaid losses and claims upon title insurance
18 policies of which the corporation has received due notice in writing
19 from or on behalf of the insured. With the filing of the statement
20 the corporation shall pay a filing fee set under AS 21.06.250.

21 * Sec. 54. AS 21.66.080 is amended by adding a new subsection to read:

22 (b) A domestic title insurance company shall comply with AS 21.-
23 09.200(f).

24 * Sec. 55. AS 21.66 is amended by adding a new section to read:

25 Sec. 21.66.085. QUARTERLY STATEMENT. (a) The director may
26 require an insurer to file quarterly financial statements. If requir-
27 ed, the statements must follow the format specified in AS 21.66.-
28 080(a).

29 (b) A quarterly financial statement, if required, is due 60 days

1 after the end of the quarter to which it applies.

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

5 * Sec. 56. AS 21.66.090(b) is amended to read:

6 (b) With the filing of the application, the corporation shall
7 pay a fee set under AS 21.06.250 and, in addition, shall pay all
8 [TRAVELING] expenses [OF THE DIRECTOR OR AN AUTHORIZED REPRESENTATIVE
9 OF THE DIRECTOR AND PER DIEM AT THE CURRENT LEVEL FOR STATE EMPLOYEES
10 AT THE LOCATION OF THE EXAMINATION] incurred in examining the appli-
11 cant's title plant or plants, as required by AS 21.06.160.

12 * Sec. 57. AS 21.66.130 is repealed and reenacted to read:

13 Sec. 21.66.130. EXPENSES OF EXAMINATION. Expenses incurred due
14 to an examination of the company shall be paid as required by AS 21.-
15 06.160.

16 * Sec. 58. AS 21.69.530(a) is amended to read:

17 (a) If an insurer becomes impaired [A STOCK INSURER'S CAPITAL,
18 AS REPRESENTED BY THE AGGREGATE PAR VALUE OF ITS OUTSTANDING CAPITAL
19 STOCK, BECOMES IMPAIRED, OR THE ASSETS OF A MUTUAL INSURER ARE LESS
20 THAN ITS LIABILITIES AND THE MINIMUM AMOUNT OF SURPLUS REQUIRED TO BE
21 MAINTAINED BY IT UNDER AS 21.69.220 OR 21.69.270 FOR AUTHORITY TO
22 TRANSACT THE KINDS OF INSURANCE BEING TRANSACTED], the director shall
23 [AT ONCE] determine the amount of deficiency and serve notice upon the
24 insurer to make good the deficiency within 60 days after service of
25 the notice.

26 * Sec. 59. AS 21.78.020 is repealed and reenacted to read:

27 Sec. 21.78.020. COMMENCEMENT OF DELINQUENCY PROCEEDINGS. (a) A
28 delinquency proceeding may not be commenced under this chapter, unless
29 commenced by the director. A court does not have jurisdiction to

1 entertain, hear, or determine a delinquency proceeding commenced by a
2 person other than the director.

3 (b) The director shall commence the proceedings by application
4 to the court for an order directing the insurer to show cause why the
5 director should not have the relief requested. On the return of the
6 order to show cause, and after a full hearing, the court shall either
7 deny the application or grant the application, together with other
8 relief that the nature of the case and the interest of the policyhold-
9 ers, creditors, stockholders, members, subscribers, or the public
10 might require.

11 (c) A court does not have jurisdiction to entertain, hear, or
12 determine a complaint asking for an injunction or restraining order or
13 other relief concerning the dissolution, liquidation, rehabilitation,
14 sequestration, conservation, or receivership of an insurer, other than
15 as provided under this chapter.

16 (d) In addition to other grounds for jurisdiction provided by
17 the laws of this state, a court having jurisdiction of the subject
18 matter has jurisdiction over a person served under the Alaska Rules of
19 Civil Procedure or other applicable provisions of law in an action
20 brought by the receiver of a domestic insurer or an alien insurer
21 domiciled in this state if the person

22 (1) served is obligated to the insurer in any way as an
23 incident to an agency or brokerage arrangement that might exist or has
24 existed between the insurer and the agent or broker, in a action on or
25 incident to the obligation;

26 (2) served is a reinsurer who has at any time written a
27 policy of reinsurance for an insurer against which a rehabilitation or
28 liquidation order is in effect when the action is commenced, or is an
29 agent or broker of or for the reinsurer, in any action or incident

1 related to the reinsurance contract; or

2 (3) is or has been an officer, manager, trustee, organizer,
3 promoter, or person in a position of comparable authority or influence
4 in an insurer against which a rehabilitation or liquidation order is
5 in effect when the action is commenced, in any action resulting from
6 such a relationship with the insurer.

7 (e) If the court, on motion of a party, finds that an action
8 should, as a matter of substantial justice, be tried in a forum out-
9 side this state, the court may enter an appropriate order to stay
10 further proceedings on the action in this state.

11 (f) The court shall appoint the director as the receiver in all
12 actions taken under this chapter.

13 * Sec. 10. AS 21.78.030 is repealed and reenacted to read:

14 Sec. 21.78.030. INJUNCTIONS AND ORDERS. (a) A receiver ap-
15 pointed in a proceeding under this chapter may at any time apply for,
16 and a court may grant, a restraining order, preliminary or permanent
17 injunction, or other order considered necessary to prevent

18 (1) the transaction of further business;

19 (2) the transfer of property;

20 (3) interference with the receiver or with a proceeding
21 under this chapter;

22 (4) waste of the insurer's assets;

23 (5) dissipation and transfer of bank accounts;

24 (6) the institution or further prosecution of any actions
25 or proceedings;

26 (7) the obtaining of preferences, judgments, attachments,
27 garnishments, or liens against the insurer, its assets, or its policy-
28 holders;

29 (8) the levying of execution against the insurer, its

1 assets, or its policyholders;

2 (9) the making of a sale or deed for nonpayment of taxes or
3 assessments that would lessen the value of the assets of the insurer;

4 (10) the withholding from the receiver of books, accounts,
5 documents, or other records relating to the business of the insurer;
6 or

7 (11) any other threatened or contemplated action that might
8 lessen the value of the insurer's assets or prejudice the rights of
9 policyholders, creditors, or shareholders, or the administration of a
10 proceeding under this chapter.

11 (b) The receiver may apply to a court outside of the state for
12 the relief described in (a) of this section.

13 (c) A bond may not be required of the director as a prerequisite
14 to issuing an injunction or restraining order under this section.

15 * Sec. 61. AS 21.78.040 is amended by adding new paragraphs to read:

16 (11) has failed to remove a person who, in fact, has execu-
17 tive authority in the insurer, whether an officer, manager, general
18 agent, employee, or other person, if the person has been found after
19 notice and hearing by the director to be dishonest or untrustworthy in
20 a way affecting the insurer's business;

21 (12) after demand by the director under AS 21.06.120 or
22 under this chapter, has failed to promptly make available for ex-
23 amination its own property, books, accounts, documents, or other
24 records, or those of a subsidiary or related company within the con-
25 trol of the insurer, or those of a person having executive authority
26 in the insurer so far as they pertain to the insurer;

27 (13) has, within the previous four years, wilfully violated
28 its charter or articles of incorporation, its bylaws, an insurance law
29 of this state, or a valid order of the director issued under this

1 title; or

2 (14) has failed to file, within the time allowed by law, its
3 annual report or other financial report required by statute and, after
4 written demand by the director, has failed to give an immediate and
5 adequate explanation.

6 * Sec. 62. AS 21.78.040 is amended by adding a new subsection to read:

7 (b) The director may apply to the court for an order appointing
8 the director as receiver of a domestic insurer, and directing the
9 director to rehabilitate the insurer if

10 (1) there is reasonable cause to believe that there has
11 been embezzlement from the insurer, wrongful sequestration or diver-
12 sion of the insurer's assets, forgery or fraud affecting the insurer,
13 or other illegal conduct in, by, or with respect to the insurer that,
14 if established, would endanger assets in an amount threatening the
15 solvency of the insurer;

16 (2) control of the insurer, whether by stock ownership or
17 otherwise, and whether direct or indirect, is in a person or persons
18 found after notice and hearing to be untrustworthy;

19 (3) a person who, in fact, has executive authority in the
20 insurer, whether an officer, manager, general agent, director or
21 trustee, employee, or other person, has refused to be examined under
22 oath by the director concerning the insurer's affairs, whether in this
23 state or elsewhere, and after reasonable notice of the fact the insur-
24 er has failed to promptly and effectively terminate the employment and
25 status of the person and the person's influence on management.

26 * Sec. 63. AS 21.78.090 is amended by adding new subsections to read:

27 (d) An order issued under this section must require an account-
28 ing to the court by the receiver. Accountings must be at the in-
29 tervals that the court specifies in its order.

1 (e) Entry of an order of rehabilitation does not constitute an
2 anticipatory breach of contracts of the issuer.

3 (f) A court in this state before which an action or proceeding
4 is pending in which the insurer is a party or in which the insurer is
5 obligated to defend a party, shall stay the action or proceeding when
6 a rehabilitation order against the insurer is entered. The stay shall
7 be imposed for that period of time necessary for the receiver to
8 obtain proper representation and prepare for further proceedings. The
9 receiver shall take action respecting the pending litigation that the
10 receiver considers necessary in the interests of justice and for the
11 protection of creditors, policyholders, and the public. The receiver
12 shall immediately consider all litigation pending outside this state,
13 and shall petition the courts having jurisdiction over that litigation
14 for stays if necessary to protect the estate of the insurer.

15 (g) A statute of limitations or defense of laches does not run
16 with respect to an action by or against an insurer between the filing
17 of a petition for appointment of a receiver for the insurer and the
18 order granting or denying that petition. An action by or against the
19 insurer that might have been commenced when the petition was filed may
20 be commenced for at least 60 days after the order of rehabilitation is
21 entered or the petition is denied.

22 (h) A guaranty association or foreign guaranty association has
23 standing to appear in a court proceeding concerning the rehabilitation
24 of a domestic insurer if the association is or might become liable to
25 act as a result of the rehabilitation.

26 * Sec. 64. AS 21.78.100 is amended by adding new subsections to read:

27 (c) An order issued under this section must require an account-
28 ing to the court by the receiver. Accountings must be at the in-
29 tervals that the court specifies in its order.

1 (d) Policies, other than life or health insurance or annuities,
2 in effect at the time of issuance of an order of liquidation continue
3 in force only for the lesser of

4 (1) a period of 30 days after the date of entry of the
5 liquidation order;

6 (2) the expiration of the policy coverage;

7 (3) the date on which the insured replaces the insurance
8 coverage with equivalent insurance in another insurer or otherwise
9 terminates the policy; or

10 (4) the date on which the receiver effects a transfer of
11 the policy obligation to a solvent assuming insurer.

12 (e) For purposes of any other provision of law, an order of
13 liquidation terminates policy coverage at the time specified in (d) of
14 this section.

15 (f) A policy of life, health insurance, or annuities, in effect
16 at the time an order of liquidation is issued, continues in force for
17 the period and under the terms provided for by an applicable guaranty
18 association or foreign guaranty association.

19 (g) A policy of life, health insurance, or annuities, and any
20 period of coverage not covered by a guaranty association or foreign
21 guaranty association terminates as provided in (d) and (e) of this
22 section.

23 (h) Upon issuance of an order appointing a receiver of a domes-
24 tic insurer or of an alien insurer domiciled in this state, an action
25 may not be brought against the insurer or receiver, whether in this
26 state or elsewhere, and an existing action may not be maintained or
27 further presented after issuance of an order. A court of this state
28 shall give full faith and credit to an injunction against the receiver
29 or the company, or against the continuation of an existing action

1 against the receiver or the company, if an injunction is included in
2 an order to liquidate an insurer that is issued under corresponding
3 provisions in another state. If, in the receiver's judgment, protec-
4 tion of the estate of the insurer necessitates intervention in an
5 action against the insurer that is pending outside this state, the
6 receiver may intervene in the action. The receiver may defend an
7 action in which the receiver intervenes under this section at the
8 expense of the estate of the insurer.

9 (i) The receiver may, within two years after an order for liq-
10 uidation, or within the additional time that applicable law permits,
11 institute an action or proceeding on behalf of the estate of the
12 insurer if the period of limitation applicable to the action or pro-
13 ceeding fixed by law has not expired at the time of the filing of the
14 petition upon which the liquidation order is entered. If, by agree-
15 ment, a period of limitation is fixed for instituting a suit or pro-
16 ceeding upon a claim, or for filing a claim, proof of claim, proof of
17 loss, demand, or notice, or if in a judicial or other proceeding a
18 period of limitation is fixed, either in the proceeding or by applica-
19 ble law, for taking an action, filing a claim or pleading, or doing an
20 act, and if the period had not expired as of the date of the filing of
21 the petition for liquidation, the receiver may, for the benefit of the
22 estate, take an action or do an act, required of or permitted to the
23 insurer, within a period of 180 days after the entry of an order for
24 liquidation, or within a longer period that is shown to the satisfac-
25 tion of the court not to be unfairly prejudicial to the other party.

26 (j) A statute of limitations or defense of laches does not run
27 with respect to an action against an insurer between the filing of a
28 petition for liquidation against an insurer and the denial of the
29 petition. An action against the insurer that might have been

1 commenced when the petition was filed may be commenced for at least 60
2 days after the petition is denied.

3 (k) A guaranty association or foreign guaranty association has
4 standing to appear in a court proceeding concerning the liquidation of
5 an insurer if the association is, or might become, liable to act as a
6 result of the liquidation.

7 * Sec. 65. AS 21.78.130 is amended by adding new subsections to read:

8 (g) If it appears to the receiver that there has been a vio-
9 lation of civil or criminal law, or breach of a contractual or fiduci-
10 ary obligation detrimental to the insurer by an officer, manager,
11 agent, broker, employee, or other person, the receiver may pursue all
12 appropriate legal remedies on behalf of the insurer.

13 (h) If the receiver determines that reorganization, consolida-
14 tion, conversion, reinsurance, merger, or other transformation of the
15 insurer is appropriate, the receiver shall prepare a plan to implement
16 the changes. Upon application of the receiver for approval of the
17 plan, and after the notice and hearings that the court prescribes, the
18 court may either approve or disapprove the plan proposed, or may
19 modify it and approve it as modified. A plan approved under this
20 section must be, in the judgment of the court, fair and equitable to
21 all parties concerned. If the plan is approved, the receiver shall
22 carry out the plan. In the case of a life insurer, the plan proposed
23 may include the imposition of liens upon the policies of the company,
24 if all rights of shareholders are first relinquished. A plan for a
25 life insurer may also propose imposition of a moratorium upon loan and
26 cash surrender rights under policies, for the period, and to the
27 extent, considered necessary.

28 (i) If the property of the insurer does not contain sufficient
29 cash or liquid assets to defray the costs incurred, the director may

1 advance the costs incurred out of an appropriation to the division for
2 that purpose. Amounts advanced for expenses of administration must be
3 repaid to the state out of the first available money of the insurer.

4 (j) The receiver may

5 (1) hold hearings, subpoena witnesses to compel their
6 attendance, administer oaths, examine a person under oath, and compel
7 a person to subscribe to the person's testimony after it has been
8 correctly reduced to writing, and may require the production of books,
9 papers, records, or other documents that the receiver determines are
10 relevant to the inquiry;

11 (2) remove records and property of the insurer to the
12 offices of the director or to another place that is convenient for the
13 purposes of efficient and orderly execution of the liquidation; a
14 guaranty association or a foreign guaranty association shall be allow-
15 ed reasonable access to the records of the insurer that is necessary
16 for the association to carry out its statutory obligations;

17 (3) intervene in a proceeding, wherever instituted, that
18 might lead to the appointment of a receiver or trustee, and may act as
19 the receiver or trustee if the appointment is offered;

20 (4) enter into agreements with a receiver or commissioner
21 of another state relating to the rehabilitation, liquidation, conser-
22 vation, or dissolution of an insurer doing business in both this state
23 and the other state.

24 * Sec. 66. AS 21.78.170(c) is repealed and reenacted to read:

25 (c) If a claim is denied in whole or in part by the receiver,
26 written notice of the determination shall be given to the claimant or
27 the claimant's attorney by first class mail at the address shown in
28 the proof of claim. An objection by the claimant must be filed with
29 the receiver within 60 days after the date of mailing of the notice.

1 If an objection is not filed, the claimant may not object to the
2 determination.

3 * Sec. 67. AS 21.78.170(d) is repealed and reenacted to read:

4 (d) If an objection is filed with the receiver and the receiver
5 does not alter the denial of the claim as a result of the objection,
6 the receiver shall ask the court for a hearing as soon as practicable
7 and give notice of the hearing by first class mail to the claimant or
8 the claimant's attorney and to any other person directly affected, not
9 less than 10 nor more than 30 days before the date of the hearing.

10 * Sec. 68. AS 21.78.170 is amended by adding new subsections to read:

11 (e) A claim need not be considered or allowed if it does not
12 contain all the information in (a) of this section that might be
13 applicable. The receiver may require that a prescribed form be used
14 and may require that other information and documents be included.

15 (f) At any time, the receiver may request the claimant to pre-
16 sent information or evidence supplementary to that required under (a)
17 of this section, and may take testimony under oath, require production
18 of affidavits or depositions, or otherwise obtain additional informa-
19 tion or evidence.

20 (g) A judgment or order against an insured or the insurer en-
21 tered after the date of filing of a successful petition for liquida-
22 tion, and a judgment or order against an insured or the insurer en-
23 tered at any time by default or by collusion, need not be considered
24 as evidence of liability or the amount of damages. A judgment or
25 order against an insured or the insurer entered within the four months
26 before the filing of the petition need not be considered evidence of
27 liability or of the amount of damages.

28 (h) A claim of a guaranty association or foreign guaranty asso-
29 ciation shall be in the form and contain the substantiation agreed to

1 by the association and the receiver.

2 * Sec. 69. AS 21.78.180(d) is repealed and reenacted to read:

3 (d) The determination of the value of a security held by a
4 secured creditor shall be under the supervision and control of the
5 court, with due regard for recommendations made by the receiver. The
6 value determined must be credited upon the secured claim, and a defi-
7 ciency must be treated as an unsecured claim. If the claimant surren-
8 ders the security to the receiver, the entire claim shall be allowed
9 as if unsecured. The value of a security held by a secured creditor
10 must be determined in one of the following ways, as the court directs:

11 (1) by converting the security into money according to the
12 terms of the agreement under which the security was delivered to the
13 creditor; or

14 (2) by agreement, arbitration, compromise, or litigation
15 between the creditor and the receiver.

16 * Sec. 70. AS 21.78.180 is amended by adding a new subsection to read:

17 (e) If a creditor, whose claim against an insurer is secured in
18 whole or in part by the undertaking of another person, fails to prove
19 and file that claim, the other person may do so in the creditor's
20 name, and is subrogated to the rights of the creditor, whether the
21 claim was filed by the creditor or by the other person in the credi-
22 tor's name, to the extent that the other person discharges the un-
23 dertaking. In the absence of an agreement with the creditor, the
24 other person is not entitled to a distribution until the amount paid
25 to the creditor on the undertaking plus the distributions paid on the
26 claim from the insurer's estate to the creditor equals the amount of
27 the entire claim of the creditor. Any excess received by the creditor
28 shall be held by the creditor in trust for the other person. In this
29 subsection, "other person" does not include a guaranty association or

1 foreign guaranty association.

2 * Sec. 71. AS 21.78.200(a) is amended to read:

3 (a) AS 21.78.020, 21.78.030, 21.78.130 - 21.78.190 and AS 21.-
4 78.330(2) - (5) [21.78.330(1) - (5)] and (7) - (13) constitute and may
5 be referred to as the Uniform Insurers Liquidation Act.

6 * Sec. 72. AS 21.78.250 is repealed and reenacted to read:

7 Sec. 21.78.250. FRAUDULENT TRANSFERS BEFORE PETITION. (a) A
8 transfer made, or an obligation incurred, by an insurer within one
9 year before the filing of a successful petition for rehabilitation or
10 liquidation under this chapter is fraudulent as to then existing and
11 future creditors if made or incurred without fair consideration, or
12 with actual intent to hinder, delay, or defraud either existing or
13 future creditors. A transfer made, or an obligation incurred, by an
14 insurer ordered to be rehabilitated or liquidated under this chapter
15 that is fraudulent under this section, may be avoided by the receiver,
16 unless the transfer or obligation was to a person who in good faith is
17 a purchaser, lienor, or obligee for a present fair equivalent value.
18 A purchaser, lienor, or obligee, who in good faith has given a consid-
19 eration less than fair for the transfer, lien, or obligation may
20 retain the property, lien, or obligation as security for repayment.
21 The court may, on due notice, order a transfer or obligation to be
22 preserved for the benefit of the estate, and in that event, the re-
23 ceiver shall succeed to and may enforce the rights of the purchaser,
24 lienor, or obligee.

25 (b) A transfer

26 (1) of property other than real property is considered to
27 be made when it becomes so far perfected that no subsequent lien
28 obtainable by legal or equitable proceedings on a simple contract
29 could become superior to the rights of the transferee under

1 AS 21.78.252;

2 (2) of real property is considered to be made when it
3 becomes so far perfected that no subsequent bona fide purchaser from
4 the insurer could obtain rights superior to the rights of the trans-
5 feree;

6 (3) that creates an equitable lien is not considered to be
7 perfected if there are available means by which a legal lien could be
8 created;

9 (4) not perfected before the filing of a petition for
10 liquidation is considered to be made immediately before the filing of
11 the successful petition.

12 (c) The provisions of (b) of this section apply whether or not
13 there is or was a creditor who might have obtained a lien or a person
14 who might have become a bona fide purchaser.

15 (d) A transaction of the insurer with a reinsurer is considered
16 fraudulent and may be avoided by the receiver under (a) of this sec-
17 tion if

18 (1) the transaction consists of the termination, adjust-
19 ment, or settlement of a reinsurance contract in which the reinsurer
20 is released from a part of its duty to pay the originally specified
21 share of losses that occurred before the time of the transaction,
22 unless the reinsurer gives a present fair equivalent value for the
23 release; and

24 (2) a part of the transaction took place within one year
25 before the date of filing of the petition through which the receiver-
26 ship was commenced.

27 * Sec. 73. AS 21.78 is amended by adding new sections to read:

28 Sec. 21.78.251. FRAUDULENT TRANSFER AFTER PETITION. (a) After
29 a petition for rehabilitation or liquidation has been filed, a

1 transfer of the real property of the insurer made to a person acting
2 in good faith is valid against the receiver if made for a present fair
3 equivalent value, or, if not made for a present fair equivalent value,
4 then to the extent of the present consideration actually paid, for
5 which amount the transferee has a lien on the property transferred.
6 The commencement of a proceeding in rehabilitation or liquidation is
7 constructive notice upon the recording of a copy of the petition for,
8 or order of, rehabilitation or liquidation with the recorder of deeds
9 in the jurisdiction where the real property in question is located.
10 The exercise by a court of the United States, or any state or juris-
11 diction, to authorize or effect a judicial sale of real property of
12 the insurer in any county or borough in any state is not impaired by
13 the pendency of a proceeding unless the copy is recorded in the county
14 or borough before the consummation of the judicial sale.

15 (b) After a petition for rehabilitation or liquidation has been
16 filed, and before either the receiver takes possession of the property
17 of the insurer or an order of rehabilitation or liquidation is gran-
18 ted,

19 (1) a transfer of any of the property of the insurer, other
20 than real property, made to a person acting in good faith is valid
21 against the receiver if made for a present fair equivalent value, or,
22 if not made for a fair equivalent value, then to the extent of the
23 present consideration actually paid, for which amount the transferee
24 has a lien on the property transferred;

25 (2) a person indebted to the insurer or holding property of
26 the insurer may, if acting in good faith, pay the indebtedness or
27 deliver the property, or any part of it, to the insurer or upon the
28 insurer's order, with the same effect as if the petition were not
29 pending;

1 (3) a person having actual knowledge of the pending reha-
2 bilitation or liquidation is considered not to have acted in good
3 faith;

4 (4) a person asserting the validity of a transfer under
5 this section has the burden of proof.

6 (c) Except as otherwise provided in this section, a transfer by
7 or on behalf of the insurer after the date of the petition for liq-
8 uidation by a person other than the receiver is not valid against the
9 receiver.

10 (d) Nothing in this section impairs the negotiability of curren-
11 cy or negotiable instruments.

12 Sec. 21.78.252. VOIDABLE PREFERENCES AND LIENS. (a) A transfer
13 of property of an insurer to or for the benefit of a creditor, for or
14 on account of an antecedent debt, made by the insurer within one year
15 before the filing of a successful petition for liquidation under this
16 chapter, the effect of which might be to enable the creditor to obtain
17 a greater percentage of the debt than another creditor of the same
18 class would receive is considered a preference. If a liquidation
19 order is entered while the insurer is already subject to a rehabilita-
20 tion order, then a transfer is considered a preference if it is made
21 within one year before the filing of the successful petition for
22 rehabilitation, or within two years before the filing of the success-
23 ful petition for liquidation, whichever time is shorter.

24 (b) A preference may be avoided by the receiver if

25 (1) the insurer was insolvent at the time of the transfer;

26 (2) the transfer was made within the four months before the
27 filing of the petition;

28 (3) the creditor receiving it or to be benefited by it or
29 the creditor's agent had, at the time the transfer was made,

1 reasonable cause to believe that the insurer was insolvent or was
2 about to become insolvent; or

3 (4) the creditor receiving it was an officer, or was an
4 employee, attorney, or other person who acted in that capacity whether
5 or not the creditor held such a position, or was a shareholder holding
6 directly or indirectly more than five percent of a class of an equity
7 security issued by the insurer, or was another person, firm, corpora-
8 tion, association, or group of persons with whom the insurer did not
9 deal at arm's length.

10 (c) If a preference is voidable, the receiver may recover the
11 property or, if it has been converted, the value of the property, from
12 a person who has received or converted the property, except that if a
13 bona fide purchaser or lienor has given less than fair equivalent
14 value, the person has a lien upon the property to the extent of the
15 consideration actually given by the person. If a preference by way of
16 lien or security title is voidable, the court may, after notice, order
17 the lien or title to be preserved for the benefit of the estate, in
18 event the lien or title passes to the receiver.

19 (d) The provisions of this subsection apply whether or not there
20 are or were creditors who might have obtained liens or persons who
21 might have become bona fide purchasers. A transfer

22 (1) of property other than real property is considered to
23 be made when it becomes so far perfected that no subsequent lien
24 obtainable by legal or equitable proceedings on a contract could
25 become superior to the rights of the transferee;

26 (2) of real property is considered to be made when it
27 becomes so far perfected that no subsequent bona fide purchaser from
28 the insurer could obtain rights superior to the rights of the trans-
29 feree;

1 (3) that creates an equitable lien is not considered to be
2 perfected if there are available means by which a legal lien could be
3 created; or

4 (4) not perfected before the filing of a petition for
5 liquidation is considered to be made immediately before the filing of
6 the successful petition.

7 (e) A lien obtainable by legal or equitable proceedings

8 (1) upon a contract is one arising in the ordinary course
9 of a proceeding upon the entry or docketing of a judgment or decree,
10 or upon attachment, garnishment, execution, or like process, whether
11 before, upon, or after judgment or decree and whether before or upon
12 levy; it does not include a lien that, under applicable law, is given
13 a special priority over other liens that are prior in time; or

14 (2) could become superior to the rights of a transferee, or
15 a purchaser could obtain rights superior to the rights of a transferee
16 within the meaning of (d) of this section, if the consequences would
17 follow only from the lien or purchase itself, or from the lien or
18 purchase followed by a step completely within the control of the
19 respective lienholder or purchaser, with or without the aid of minis-
20 terial action by public officials; a lien could not, however, become
21 superior and a person could not create superior rights for the purpose
22 of (d) of this section through acts subsequent to the obtaining of a
23 lien or subsequent to a purchase that requires the agreement or con-
24 currence of a third party or that requires further judicial action or
25 ruling.

26 (f) A transfer of property for or on account of a new and con-
27 temporaneous consideration that is considered under (d) of this sec-
28 tion to be made after the transfer because of delay in perfecting it,
29 does not become a transfer for or on account of an antecedent debt if

1 acts required by the applicable law to be performed in order to per-
2 fect the transfer against a lien or bona fide purchaser's rights are
3 performed within 21 days, or a period expressly allowed by the law,
4 whichever is less. A transfer to secure a future loan, if a loan is
5 actually made, or a transfer that becomes security for a future loan,
6 has the same effect as a transfer for or on account of a new and
7 contemporaneous consideration.

8 (g) If a lien that is considered voidable under (b) of this
9 section has been dissolved by the furnishing of a bond or other obli-
10 gation, and the bond or other obligation has been indemnified directly
11 or indirectly by the transfer or creation of a lien upon property of
12 an insurer before the filing of a petition under this chapter that
13 results in a liquidation order, the indemnifying transfer or lien is
14 also considered voidable.

15 (h) The property affected by a lien that is considered voidable
16 under (b) and (g) of this section shall be discharged from the lien,
17 and that property and the indemnifying property transferred to or for
18 the benefit of a surety shall be transferred to the receiver, except
19 that the court may order a lien to be preserved for the benefit of the
20 estate, and the court may direct that a conveyance be executed as is
21 proper or adequate to evidence the title of the receiver.

22 (i) The court has jurisdiction of a proceeding by the receiver
23 to hear and determine the rights of parties under this section.
24 Reasonable notice of a hearing in the proceeding shall be given to all
25 parties in interest, including the obligee of a releasing bond or
26 other like obligation. If an order is entered for the recovery of
27 indemnifying property in kind or for the avoidance of an indemnifying
28 lien, the court, upon application of a party in interest, shall in the
29 same proceeding determine the value of the property or lien, and if

1 the value of the property is less than the amount of the indemnity or
2 the amount of the lien, the transferee or lienholder may elect to
3 retain the property or lien upon payment of its value, as determined
4 by the court, to the receiver, within the time that the court fixes.

5 (j) The liability of a surety under a releasing bond or other
6 obligation shall be discharged to the extent of the value of the
7 indemnifying property recovered or the indemnifying lien avoided by
8 the receiver, or, if the property is retained under (i) of this sec-
9 tion, to the extent of the amount paid to the receiver.

10 (k) If a creditor has been preferred, and afterward in good
11 faith gives the insurer further credit without security of any kind,
12 for property that becomes a part of the insurer's estate, the amount
13 of the new credit remaining unpaid at the time of the petition may be
14 set off against the preference that would otherwise be recoverable
15 from the creditor.

16 (l) If an insurer, directly or indirectly, within four months
17 before the filing of a successful petition for liquidation under this
18 chapter or at any time in contemplation of a proceeding to liquidate
19 it, pays money or transfers property to an attorney for services
20 rendered or to be rendered, the transaction may be examined by the
21 court on its own motion or shall be examined by the court on petition
22 of the receiver. The transaction may be held valid only to the extent
23 of a reasonable amount to be determined by the court, and the excess
24 may be recovered by the receiver for the benefit of the estate, except
25 that if the attorney is in a position of influence in the insurer or
26 an affiliate, payment of money or the transfer of property to the
27 attorney for services rendered or to be rendered is governed by (b)(4)
28 of this section.

29 (m) An officer, manager, employee, shareholder, member

1 subscriber, attorney, or other person acting on behalf of an insurer,
2 who knowingly participates in giving a preference even though the
3 person has reasonable cause to believe that the insurer is, or is
4 about to become, insolvent at the time of the preference, is person-
5 ally liable to the receiver for the amount of the preference. It is a
6 rebuttable presumption that a preference was given with reasonable
7 cause to believe the insurer is or is about to become insolvent if the
8 transfer was made within four months before the filing of a successful
9 petition for liquidation.

10 (n) If a person receives property from the insurer, or the
11 benefit of the property, and the preference for the property is found
12 voidable under (b) of this section, the person is personally liable
13 for the value of the property and shall account to the receiver for
14 it.

15 (o) Nothing in (m) or (n) of this section affects any other
16 claim by the receiver against any person.

17 Sec. 21.78.253. CLAIMS OF HOLDERS OF VOID OR VOIDABLE RIGHTS.

18 (a) A claim of a creditor who has received or acquired a preference,
19 lien, conveyance, transfer, assignment, or encumbrance that is void-
20 able under this chapter, may not be allowed unless the creditor sur-
21 renders the preference, lien, conveyance, transfer, assignment, or
22 encumbrance. If the avoidance is affected by a proceeding in which a
23 final judgment has been entered, the claim may not be allowed unless
24 the money is paid or the property is delivered to the receiver within
25 30 days after the date of the entering of the final judgment, except
26 that the court having jurisdiction over the liquidation may allow
27 further time if there is an appeal or other continuation of the pro-
28 ceeding.

29 (b) A claim allowable under (a) of this section by reason of

1 avoidance, whether voluntary or involuntary, or a preference, lien,
2 conveyance, transfer, assignment, or encumbrance, may be filed as an
3 excused late filing under AS 21.78.290 if filed within 30 days after
4 the date of avoidance, or within the further time allowed by the court
5 under (a) of this section.

6 * Sec. 74. AS 21.78.260 is repealed and reenacted to read:

7 Sec. 21.78.260. PRIORITY OF DISTRIBUTION. The priority of
8 distribution of claims from an insurer's estate is in accordance with
9 the order in which each class of claims is set out in this section.
10 Every claim in each class must be paid in full, or adequate money
11 retained for payment, before the members of the next class may receive
12 payment. A subclass may not be established within a class. The order
13 of distribution of claims is:

14 (1) class 1: the costs and expenses of administration
15 during rehabilitation and liquidation, including the following:

16 (A) the actual and necessary costs preserving or
17 recovering the assets of the insurer;

18 (B) compensation for all services rendered in the
19 rehabilitation and liquidation;

20 (C) any necessary filing fees;

21 (D) the fees and mileage payable to witnesses;

22 (E) reasonable attorney's fees and other professional
23 services rendered in the rehabilitation and liquidation;

24 (F) the reasonable expenses of a guaranty association
25 or foreign guaranty association that is handling claims;

26 (2) class 2: reasonable compensation to employees for
27 services performed, to the extent that the claim does not exceed two
28 months of monetary compensation and represents payment for services
29 performed within one year before the filing of the petition for

1 liquidation or, if rehabilitation preceded liquidation, within one
2 year before the filing of the petition for rehabilitation; principal
3 officers and directors of the insurer are not entitled to the benefit
4 of this priority except as otherwise approved by the receiver and the
5 court; the priority in this paragraph is in place of any other similar
6 priority that might be authorized by law as to wages or compensation
7 of employees;

8 (3) class 3: all claims under policies, including claims
9 of the federal, or a state or local government, for losses incurred,
10 including third-party claims, and a of a guaranty association
11 or foreign guaranty association claims under life insurance and
12 annuity policies, whether for proceeds, annuity proceeds, or
13 investment values, shall be treated as loss claims; that portion of a
14 loss for which indemnification is provided by other benefits or advan-
15 tages recovered by the claimant, may not be included in this class,
16 other than benefits or advantages recovered or recoverable in dis-
17 charge of familial obligations or support, or by way of succession at
18 death, or as proceeds of life insurance, or as gratuities; payment by
19 an employer to an employee may not be treated as a gratuity;

20 (4) class 4: claims under nonassessable policies for
21 unearned premium or other premium refunds and claims of general credi-
22 tors, including claims of ceding and assuming companies under con-
23 tracts of reinsurance;

24 (5) class 5: claims of the federal, or a state or local
25 government, other than claims under (3) of this section; claims,
26 including those of a government body for a penalty or forfeiture,
27 shall be allowed in this class only to the extent of the pecuniary
28 loss sustained from the act, transaction, or proceeding out of which
29 the penalty or forfeiture arose, along with reasonable and actual

1 costs attributable to it; the remaining portion of the claims are in
2 the class of claims set out in (8) of this section;

3 (6) class 6: claims filed late, or any other claims other
4 than claims under (7) and (8) of this section;

5 (7) class 7: surplus or contribution notes, or similar
6 obligations, and premium refunds on assessable policies; payments to
7 members of domestic mutual insurance companies shall be limited in
8 accordance with law;

9 (8) class 8: the claims of shareholders or other owners,
10 in their capacity as shareholders.

11 * Sec. 75. AS 21.78.270 is repealed and reenacted to read:

12 Sec. 21.78.270. SETOFFS AND COUNTERCLAIMS. (a) Except as
13 provided in (b) of this section and in AS 21.78.271, a mutual debt or
14 mutual credit between an insurer and another person in connection with
15 an action or proceeding under this chapter shall be set off, and only
16 the balance may be allowed or paid.

17 (b) A setoff or counterclaim may not be allowed in favor of a
18 person if the obligation of the

19 (1) insurer to the person would not, at the date of the
20 filing of a petition for liquidation, entitle the person to share as a
21 claimant in the assets of the insurer;

22 (2) insurer to the person was purchased by or transferred
23 to the person with a view to its being used as a setoff;

24 (3) person is to pay an assessment levied against the
25 members or subscribers of the insurer, or is to pay a balance upon a
26 subscription to the capital stock of the insurer, or is in any other
27 way in the nature of a capital contribution; or

28 (4) person is to pay premiums, whether earned or unearned,
29 to the insurer.

1 * Sec. 76. AS 21.78 is amended by adding new sections to read:

2 Sec. 21.78.271. RECOVERY OF PREMIUMS OWED. (a) An

3 (1) agent, broker, premium finance company, or any other
4 person, other than the insured, responsible for the payment of a
5 premium is obligated to pay an unpaid earned premium due the insurer
6 at the time of the declaration of insolvency, as shown on the records
7 of the insurer; neither a credit nor a setoff is allowed to an agent,
8 broker, or premium finance company for an amount advanced to the
9 insurer by the agent, broker, or premium finance company on behalf of,
10 but in the absence of a payment by, the insured;

11 (2) insured is obligated to pay an unpaid earned premium
12 due the insurer at the time of the declaration of insolvency, as shown
13 on the records of the insurer.

14 (b) If there are grounds for believing that a person has violat-
15 ed this section, the director may initiate proceedings under AS 21.-
16 06.170 - 21.06.230.

17 (c) Upon a finding of a violation of this section, the director
18 may order a penalty of not more than \$1,000 for each act in violation
19 of this section and may suspend or revoke the person's license issued
20 under this title.

21 Sec. 21.78.272. REINSURER'S LIABILITY. The amount recoverable
22 by the receiver from reinsurers may not be reduced as a result of
23 delinquency proceedings, regardless of a provision in the reinsurance
24 contract or other agreement. Payment made directly to an insured or
25 other creditor does not diminish the reinsurer's obligation to the
26 insurer's estate unless the reinsurance contract provided for direct
27 coverage of a named insured and the payment was made in discharge of
28 that obligation.

29 * Sec. 77. AS 21.78.280 is repealed and reenacted to read:

1 Sec. 21.78.280. SPECIAL CLAIMS. (a) A contingent and unliq-
2 uidated claim may not share in a distribution of the assets of an
3 insurer that has been adjudicated to be insolvent by an order made
4 under this chapter, except that the claim shall be considered, if
5 properly presented, and may be allowed to share if

6 (1) the claim becomes absolute against the insurer on or
7 before the last day for filing claims against the assets of the insur-
8 er; or

9 (2) there is a surplus and the liquidation is, after that,
10 conducted upon the basis that the insurer is solvent.

11 (b) The claim of a third party, that is contingent only on the
12 third party claimant first obtaining a judgment against the insured,
13 shall be considered and allowed as if there were not a contingency.

14 (c) A claim may be allowed even if contingent, if it is filed
15 under AS 21.78.292. It may be allowed and may participate in all
16 distributions declared after it is filed to the extent that it does
17 not prejudice the orderly administration of the liquidation.

18 (d) A claim that is due except for the passage of time shall be
19 treated as an absolute claim is treated, except that the claim may be
20 discounted at the legal rate of interest.

21 (e) A claim made under an employment contract by a director,
22 principal officer, or person in fact performing similar functions or
23 having similar powers, is limited to payment for services rendered
24 before the issuance of an order of rehabilitation or liquidation under
25 this chapter.

26 * Sec. 78. AS 21.78 is amended by adding a new section to read:

27 Sec. 21.78.281. SPECIAL PROVISIONS FOR THIRD-PARTY CLAIMS. (a)
28 If a third party asserts a cause of action against an insured of an
29 insurer in liquidation, the third party may file a claim with the

1 receiver.

2 (b) Whether or not the third party files claim, the insured
3 may file a claim on the insured's own behalf in the liquidation. If
4 the insured fails to file a claim by the date for filing claims spec-
5 ified in the order of liquidation or within 60 days after mailing of
6 the notice required by AS 21.78.290, whichever is later, the insured
7 is an unexcused late filer.

8 (c) The receiver shall make a recommendation to the court under
9 AS 21.78.260 for the allowance of an insured's claim under (b) of this
10 section after consideration of the probable outcome of a pending
11 action against the insured on which the claim is based, the probable
12 damages recoverable in the action, and the probable costs and expenses
13 of defense. After allowance by the court, the receiver shall withhold
14 from the undistributed assets of the insurer as a reserve the amounts
15 payable on the claim, pending the outcome of litigation and nego-
16 tiation with the insured. If appropriate, the receiver may reconsider
17 the claim on the basis of additional information and may amend recom-
18 mendations made to the court. The insured shall be afforded the same
19 notice and opportunity to be heard on all changes in the recommenda-
20 tions as in its initial determination. The court may amend its allow-
21 ance. As claims against the insured are settled or barred, the in-
22 sured shall be paid from the amount withheld the same percentage as
23 was paid on other claims of like property, based on the lesser of (1)
24 the amount actually recovered from the insured by action or paid by
25 agreement plus the reasonable costs and expenses of defense, or (2)
26 the amount allowed on the claims by the court. After all claims are
27 settled or barred, any sum remaining from the amount withheld reverts
28 to the undistributed assets of the insurer. Delay in final payment
29 under this subsection is not a reason for unreasonable delay of the

1 final distribution and discharge of the receiver.

2 (d) If several claims founded upon one policy are filed, whether
3 by third parties or as claims by the insured under this section, and
4 the aggregate allowed amount of the claims to which the same limit of
5 liability in the policy is applicable exceeds that limit, each claim
6 as allowed shall be reduced in the same proportion so that the total
7 amount of the claims equals the policy limit. Claims by the insured
8 shall be evaluated as in (c) of this section. If an insured's claim
9 is subsequently reduced under (c) of this section, the amount avail-
10 able shall be apportioned ratably among the claims that have been
11 reduced under this subsection.

12 (e) A claim may not be presented under this section if it is or
13 might be covered by a guaranty association or foreign guaranty asso-
14 ciation.

15 * Sec. 79. AS 21.78.290 is repealed and reenacted to read:

16 Sec. 21.78.290. NOTICE TO CREDITORS AND OTHERS. (a) Unless the
17 court directs otherwise, the receiver shall give or cause to be given
18 notice of the liquidation order as soon as possible after the date of
19 the entry of the order of liquidation

20 (1) by first class mail and either by telegram or tele-
21 phone, to the insurance director, commissioner, or superintendent of
22 each jurisdiction in which the insurer is doing business;

23 (2) by first class mail to a guaranty association or a
24 foreign guaranty association that is or that might become obligated as
25 a result of the liquidation;

26 (3) by first class mail to all insurance agents of the
27 insurer;

28 (4) by first class mail to all persons known or reasonably
29 expected to have claims against the insurer, including all

1 policyholders, at the person's last known address as indicated by the
2 records of the insurer; and

3 (5) by publication in a newspaper of general circulation in
4 the locale in which the insurer has its principal place of business
5 and in other locations that the receiver considers appropriate.

6 (b) Notice to potential claimants under (a) of this section must
7 state that a claimant shall file a claim with the receiver, along with
8 the information required by AS 21.78.170(a), on or before the date
9 specified in the notice. The time specified in the notice may not be
10 less than six months after the date the liquidation order was entered.
11 The liquidation need not require a person claiming a cash surrender
12 value or other investment value in life insurance and annuities to
13 file a claim. A claimant has a duty to keep the receiver informed of
14 a change of address.

15 * Sec. 80. AS 21.78 is amended by adding new sections to read:

16 Sec. 21.78.291. DUTIES OF AGENTS. (a) A person who receives
17 notice in the form prescribed in AS 21.78.290 that an insurer that the
18 person represents as an agent is the subject of a liquidation order,
19 shall, within 15 days after receipt of that notice, give written
20 notice of the liquidation order as provided in this section. The
21 notice shall be in writing and shall be sent by first class mail to
22 each policyholder or other person named in a policy issued through the
23 agent by the insurer, at the last address contained in the agent's
24 records. A policy is considered to be issued through an agent if the
25 agent has a property interest in the expiration of the policy, or if
26 the agent has had in the agent's possession a copy of the declarations
27 of the policy at any time during the life of the policy, unless the
28 ownership of the expiration of the policy has been transferred to
29 another. The written notice issued under this section must include

1 the name and address of the insurer, the name and address of the
2 agent, identification of the policy impaired and the nature of the
3 impairment, including termination of coverage as specified in AS 21.-
4 78.100(d) - (g). Notice under this section by a general agent sat-
5 fies the notice requirement for an agent under contract to the general
6 agent. Each agent obligated to give notice under this section shall
7 file a report of compliance with the receiver.

8 (b) An agent failing to give notice or file a report of compli-
9 ance as required in (a) of this section is, after a proceeding under
10 AS 21.06.070 - 21.06.240, subject to a penalty of not more than \$1,000
11 and suspension or revocation of the agent's license issued under this
12 title.

13 (c) The receiver may waive the duties imposed by this section if
14 the receiver determines that other notice to policyholders of the
15 insurer under liquidation is adequate.

16 Sec. 21.78.292. FILING OF CLAIMS. (a) Proof of a claim shall
17 be filed with the receiver, in the form required by AS 21.78.170, on
18 or before the last day for filing specified in the notice required
19 under this chapter, except that proof of a claim for cash surrender
20 value or other investment value in life insurance and annuities need
21 not be filed unless expressly by the receiver.

22 (b) The receiver may, under the following circumstances, permit
23 a claimant who makes a late filing to share in distributions, whether
24 past or future, as if the claim was not late, to the extent that a
25 payment does not prejudice the orderly administration of the liq-
26 uidation:

27 (1) the existence of the claim was not known to the claim-
28 ant and the claim was filed as promptly as was reasonably possible
29 after learning of it;

1 (2) a transfer to a creditor was avoided under this chap-
2 ter, or was voluntarily surrendered under this chapter, and the filing
3 satisfies the conditions of AS 21.78.253; or

4 (3) the valuation under AS 21.78.180(d), of security held
5 by a secured creditor, shows a deficiency, a claim for which is filed
6 within 30 days after the valuation.

7 (c) The receiver shall permit late-filed claims to share in
8 distributions, whether past or future, as if they were not late, if
9 the claims are claims of a guaranty association or foreign guaranty
10 association for reimbursement of covered claims paid or expenses
11 incurred, or both, after the last day for filing, and if the payments
12 were made and expenses were incurred as provided by law.

13 (d) The receiver may consider a claim that is filed late and
14 that is not covered by (b) of this section, and may permit it to
15 receive distributions that are subsequently declared on any claims of
16 the same or lower priority, if the payment does not prejudice the
17 orderly administration of the liquidation. The late-filing claimant
18 shall receive, at each distribution, the same percentage of the amount
19 allowed on the claim as is then being paid to claimants of a lower
20 priority, until the claim has been paid in full.

21 Sec. 21.78.293. RECEIVER'S RECOMMENDATION TO THE COURT. (a)
22 The receiver shall review all claims filed in the liquidation and
23 shall make further investigation that the receiver considers neces-
24 sary. The receiver may compound, compromise, or negotiate the amount
25 for which a claim will be recommended to the court, unless the re-
26 ceiver is required by law to accept a claim as settled by a person or
27 organization, including a guaranty association or foreign guaranty
28 association. As soon as practicable, the receiver shall present to
29 the court a report of the claims against the insurer, along with the

1 receiver's recommendations. The report must include the name and
2 address of each claimant and the amount of the claim finally recom-
3 mended, if any. If the insurer has issued annuities or life insurance
4 policies, the receiver shall report the persons to whom, according to
5 the records of the insurer, amounts are owed as cash surrender values
6 or other investment values, and the amounts owed.

7 (b) The court may approve, disapprove, or modify the receiver's
8 report on claims. Claims in a report that are not modified by the
9 court within a period of 60 days following submission by the receiver
10 shall be treated by the receiver as allowed claims.

11 Sec. 21.78.294. DISTRIBUTION OF ASSETS. Under the direction of
12 the court, the receiver shall distribute assets in a manner that will
13 assure the proper recognition of priorities and a reasonable balance
14 between the expeditious completion of the liquidation and the pro-
15 tection of unliquidated and undetermined claims, including third-party
16 claims. Distribution of assets in kind may be made at valuations set
17 by agreement between the receiver and the creditor, and approved by
18 the court.

19 Sec. 21.78.295. UNCLAIMED AND WITHHELD MONEY. (a) All un-
20 claimed money that is subject to distribution and remains in the
21 receiver's hands when the receiver is ready to apply to the court for
22 discharge, including the amount distributable to a creditor, share-
23 holder, member, or other person who is unknown and cannot be found,
24 shall be deposited with the Department of Revenue, and shall be paid,
25 without interest, to the person entitled to receive it or to the
26 person's legal representative upon proof satisfactory to the Depart-
27 ment of Revenue of the person's right to it. Notwithstanding the
28 provisions of AS 34.45, an amount on deposit with the Department of
29 Revenue that is not claimed within six years after the discharge of

1 the receiver, is considered to be abandoned, and shall, without fur-
2 ther proceedings, be deposited in the general fund.

3 (b) All money retained for claims described in AS 21.78.280 and
4 not distributed, shall, upon discharge of the receiver, be deposited
5 with the Department of Revenue and paid in accordance with AS 21.78.-
6 260. Any amount remaining that, under AS 21.78.260, would revert to
7 the undistributed assets of the insurer, shall be transferred to the
8 Department of Revenue. Remaining amounts become the property of the
9 state under (a) of this section, unless the director, in the direc-
10 tor's discretion, petitions the court to reopen the liquidation under
11 AS 21.78.297.

12 Sec. 21.78.296. TERMINATION OF PROCEEDINGS. (a) When all
13 assets justifying the expense of collection and distribution have been
14 collected and distributed under this chapter, the receiver shall apply
15 to the court for discharge. The court may grant the discharge and
16 make additional orders the court considers appropriate.

17 (b) Any other person may apply to the court at any time for an
18 order under (a) of this section. If the application is denied, the
19 applicant shall pay the receiver's costs and expenses incurred in
20 resisting the application, including a reasonable attorney's fee.

21 Sec. 21.78.297. REOPENING LIQUIDATION. After the liquidation
22 proceeding has been terminated and the receiver discharged, the direc-
23 tor or an interested party may at any time petition the court to
24 reopen the proceedings for good cause, including the discovery of
25 additional assets. If the court is satisfied that there is justifi-
26 cation for reopening, it shall order the liquidation proceeding re-
27 opened.

28 Sec. 21.78.298. DISPOSITION OF RECORDS DURING AND AFTER TERMINA-
29 TION OF LIQUIDATION. If it appears to the director that the records

1 of an insurer that is in the process of liquidation, or is completely
2 liquidated, are no longer useful, the director may recommend to the
3 court, and the court shall direct, which records should be retained
4 for future reference and which should be destroyed.

5 * Sec. 81. AS 21.90.900 is amended by adding new paragraphs to read:

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

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

10 (B) an insurer is being operated in a manner that has
11 caused or might cause irreparable loss and injury to the insurer
12 or to the public;

13 (25) "insolvent" or "insolvency" means that an insurer's
14 policyholder surplus is less than or equal to zero;

15 (26) "policyholder surplus" means

16 (A) for a stock insurer, the sum of its capital, as
17 represented by the aggregate par value to its outstanding capital
18 stock, and its surplus, if any;

19 (B) for a mutual insurer, its surplus, both basic
20 guaranteed and additional, if any;

21 (C) for an insurer other than a stock or mutual insur-
22 er, the net worth of the insurer, calculated as its recorded
23 assets less its liabilities, as determined by the accounting
24 criteria set out in this title.

25 * Sec. 82. AS 21.09.080(b), 21.09.080(c); AS 21.21.020(b), 21.21.-
26 270(d); and AS 21.78.330(1) are repealed.

27 * Sec. 83. AS 21.78.090(f) added by sec. 63 of this Act, has the effect
28 of changing Alaska Rule of Civil Procedure 62(a), and Alaska Rules of
29 Appellate Procedure 205, 405, 603, and 611(d), by providing for an
CSSB 212(L&C)

1 automatic stay of action in a rehabilitation proceeding.

2 * Sec. 84. AS 21.78.030(c), as repealed and reenacted by sec. 60 of
3 this Act, has the effect of changing Alaska Rule of Civil Procedure 65(c),
4 by providing that a bond may not be required of the director of the divi-
5 sion of insurance as a prerequisite to the court's issuing an injunction or
6 restraining order.

7 * Sec. 85. AS 21.78.100(h), added by sec. 64 of this Act, has the
8 effect of changing Alaska Rule of Civil Procedure 41, and Alaska Rules of
9 Appellate Procedure 511 and 606, by providing that an action may not be
10 brought against the insurer or receiver, and existing actions may not be
11 litigated after a receiver is appointed by the court.

12 * Sec. 86. AS 21.78.130(j)(3), added by sec. 65 of this Act, has the
13 effect of changing Alaska Rule of Civil Procedure 19, by allowing a receiv-
14 er to intervene in a court proceeding.

15 * Sec. 87. AS 21.12.020, as repealed and reenacted in sec. 18 of this
16 Act, applies to all reinsurance transactions having an inception, anniver-
17 sary, or renewal date on or after July 1, 1990.

18 * Sec. 88. If, on the effective date of this Act, an insurer has in-
19 vested in a pooled investment that does not, within one year after the
20 effective date of this Act, appear on the list of eligible pooled invest-
21 ment companies maintained by the director of the division of insurance, or
22 if an insurer has invested in a pooled investment that is subsequently
23 removed from the list maintained by the director of the division of insur-
24 ance, the investment is treated as described in AS 21.21.310(a).

25 * Sec. 89. This Act takes effect immediately under AS 01.10.070(c).
26
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SB 212
AN ACT RELATING TO INSURER SOLVENCY

Sectional Analysis by the
Department of Commerce and Economic Development,
Division of Insurance

DIRECTOR OF INSURANCE

Sections 1 through 15 of this Act pertain primarily to the director's ability to examine insurers and surplus lines brokers. The director may contract with independent examiners and may order the insurer or surplus lines broker to make direct payment to the contract examiner for the cost of examination. Formerly licensed insurers and surplus lines brokers may also be examined.

The format for insurer's financial statements is established to conform with the format adopted by the National Association of Insurance Commissioners (NAIC). The director may require that an insurer, in addition to the required annual financial reporting, file quarterly financial statements. Participation is allowed by Alaska examiners in NAIC association examination of insurers that conduct the business of insurance in Alaska and other states. Civil immunity is provided to division personnel, agents of the division, regulators of other states, and NAIC staff in regard to the publication of and documentation of reports and in the exchange of regulatory information.

Foreign and alien admitted insurers are required to maintain the same financial requirements (capital and surplus) as Alaska domestic insurers. Minimum financial requirements (capital and surplus) for Alaska incorporated insurers are established if they wish to assume reinsurance (\$10,000,000 at 12/31/89, \$15,000,000 at 12/31/90, and \$20,000,000 at 12/31/91). Domestic property or casualty insurers are prohibited from issuing life insurance or annuity contracts.

Section 1. AS 21.06.120. Examination of Insurers. page 1.

Amendment to this section clarifies the director's ability to examine formerly licensed insurers and surplus lines brokers. Insurance contracts issued while the person was licensed many times continue to be in force after the person's licensure has ended.

Additionally, further amendment specifically allows the division to participate along with insurance regulators from other states in the examination of an insurer located outside of Alaska. The director is also permitted to utilize contract examiners.

Section 2. AS 21.06.140 (b). Conduct of Examination. page 2.

Amendment to this section clarifies the director's ability to require that photocopies of documents requested during an examination be produced.

Section 3. AS 21.06.150 (e). Examination Reports, page 2.

Amendment to this section is primarily editorial in nature and provides that the director may withhold from public inspection any materials gathered as part of an examination if necessary for the protection of any person from unwarranted injury or if it is in the public's best interest.

Section 4. AS 21.06.160. Examination Expense, page 2.

The provisions of this section are modified by amendatory language that makes it clear that insurers are required to bear all costs of examinations and that the director can order an insurer to pay a contract examiner directly for its examination charges.

Section 5. AS 21.06.165. Immunity for Director and Others, page 3.

This is a new subsection that provides civil immunity for all division staff and insurance regulators in other states in regards to information and reports which are shared. However, immunity is not provided if there is reckless, willful, or intentional misconduct.

Section 6. AS 21.09.020 (3). Exception. Certificate of Authority Requirement, page 4.

The amendment to this section is editorial in nature. It is to provide the correct cross reference, AS 21.34.

Section 7. AS 21.09.060. Combinations of Insuring Power in One Insurer, page 4.

Amendment to this section precludes property or casualty insurers from transacting life insurance or from issuing annuities.

Section 8. AS 21.09.070 (a). Capital Funds Required of Foreign Insurers and New Domestic Insurers, page 5.

The amendments to this section are intended to provide for more stringent financial criteria for an insurer to become and remain licensed. The additional surplus required to be maintained when first licensed is required to be maintained beyond initial licensure. Under existing law, the additional surplus could be siphoned off the day after the original certificate of authority was issued.

Section 9. AS 21.09.070 (c), page 5.

The repeal and reenactment of this section requires foreign or alien admitted insurers to maintain the currently required capital and surplus amounts. Under existing law, a foreign or alien admitted insurer need only maintain the amount required when first licensed even if that insurer was first licensed 25 years ago when the amounts required were substantially lower. Alaska domestic insurers have been required to meet the higher standards as adopted over the years. So, in effect, this amendment provides for equitable treatment both domestic and foreign or alien insurers.

Section 10. AS 21.09.070 (f), page 6.

This is a new section that establishes that a domestic insurer must possess policyholder surplus in adequate amounts in order to assume reinsurance. Policyholder surplus required is \$10,000,000 at 12/31/89, \$15,000,000 at 12/31/90, and \$20,000,000 at 12/31/91. This requirement does not apply to intracompany pooling arrangements between affiliated insurers. A stronger financial position is required for a domestic insurer to get into the reinsurance business.

Section 11. AS 21.09.110 (3). Application for Certificate of Authority, page 7.

This section is amended to include the requirement that quarterly financial statements as required by the director be attested to by at least two officers of the insurer or certified by the regulatory official of the insurer's state of domicile.

Section 12. AS 21.09.140 (a)(2). Mandatory Revocation, Suspension of Certificate, page 7.

Amendment to this section is necessary due to the change in AS 21.09.070(c) requiring foreign insurers to maintain the current levels of policyholder surplus. Also, the more correct terms of "impaired" and "insolvent" have been substituted for "deficiency of assets". (This section generally pertains to mandatory revocation or suspension of an insurer's license.)

Section 13. AS 21.09.200 (a). Annual Statement, page 7.

This section pertains to the format of the annual financial statement required by each licensed insurer. Amendment to this section provides for the adoption of the National Association of Insurance Commissioners (NAIC) format (which has been utilized historically). This promotes consistency in financial reporting in all states. Additionally, this section has been amended to allow the director to require that the financial statement be filed via electronic media (e.g. on computer disc).

Section 14. AS 21.09.200 (f), page 8.

This section requires all domestic insurers to also file their annual financial statements with the NAIC and to pay the appropriate fee to the NAIC. The purpose of this is that the NAIC has developed a data base for all insurers and provides analytical services to the various states. (Each state is linked by computer to the NAIC data base.) Eventually, it is expected that only one filing of the financial statement via electronic media will be filed with the NAIC. This would eliminate the need of a "hard copy" annual financial statement being filed in each state in which an insurer is licensed. This will be an expense savings. Also, it will provide for a more timely analysis of each financial statement.

Section 15. AS 21.09.205. Quarterly Statement, page 8.

This new section allows the director to require that quarterly financial statements be filed with the division. A means is provided for more closely monitoring the financial well being of an insurer. Quarterly statements, when required, are due to be filed within 60 days after the end of a calendar quarter and a penalty of \$100 per day for late filing is imposed.

KINDS OF INSURANCE, LIMITS OF RISK, AND REINSURANCE

In order to limit risk to meet with statutory requirements and sound business practices, insurers transfer risk to other insurers via reinsurance contracts. These sections provide the guidelines and parameters for an Alaska domestic insurer reinsuring its insurance contracts with reinsurers. Credit (reduced liabilities) is allowed in the financial statement for reinsurance ceded if done in accordance with the guidelines. The term "reinsurance" is defined.

Section 16. AS 21.12.020. Reinsurance Credit Allowed a Domestic Ceding Insurer, page 8.

In order to help protect their financial integrity and to meet the requirements that no more risk be retained in any one subject than 10% of its policyholders surplus, most insurers reinsure the insurance contracts they have underwritten. By appropriately passing this risk to a reinsurer, an insurer is allowed to reduce the liabilities for claim payments it is required to exhibit in its financial statement by an amount commensurate with the risk reinsured. If a reinsurer becomes insolvent, all of the risk previously transferred falls back to the insurer. For that reason, it is important that standards exist for reinsurers that domestic insurers may transfer risk to and receive credit for the risk transferred in the form of reduced claim liabilities. The repeal and reenactment of this section provides the criteria for the reinsurers that domestic insurers may use and receive credit for in their financial statements.

Generally credit is allowed for reinsurance ceded by a domestic insurer to a reinsurer if:

1. the reinsurer is licensed in this state as an insurer;
2. the reinsurer is an accredited reinsurer in the state;
3. the reinsurer is domiciled in a state that employs standards for reinsurance substantially the same as Alaska and submits to examination by the division;
4. the reinsurer is an alien reinsurer that trustees specified amounts of funds in the United States and the trustees provide an annual accounting of the funds trusteeed, and provides certification of its solvency by a independent auditor and the domestic regulator; or
5. the reinsurer does not meet any of the criterial in 1. through 4. above, then credit is allowed only if funds are trusteeed in a form (cash, approved securities, or acceptable letters of credit) and for amounts corresponding to only the amount of funds trusteeed.

This section also maintains the existing laws requirement that no credit for reinsurance is allowed if the reinsurance contract does not contain the classic "insolvency provision". The "insolvency provision" essentially provides that reinsurance will continue to be paid if due even if the ceding insurer were to become insolvent.

The director is also given the discretionary authority to require an insurer to provide information in regards to any material change in its reinsurance transactions.

Section 17. AS 21.12.120. Reinsurance Defined. page 14.

The term "reinsurance" is defined in this new section. This term was not previously defined in Title 21. The definition is intended to convey that a transfer of risk directly flowing from the underlying insurance contract is required to meet with this definition. It is necessary to define this term as other contractual arrangements between insurers have been reported as reinsurance when in fact the transactions are other financial arrangements having nothing to do with the transfer of the risk of the underlying insurance contract. Many such arrangements have been utilized due to recent changes in the federal income tax schema for insurers.

ASSETS AND LIABILITIES

These sections pertain to the basics in determining an insurer's solvency. It includes amended rules for determining which assets may be included and those which are specifically excluded in determining the asset base for an insurer. Requirements for the establishment of liabilities for the contractual obligations of an insurer are included. A material change requiring title insurers to establish an unearned premium reserve is included. Also, the director may require a surety insurer to establish a special reserve for bail bonds or other single premium bonds that do not have a definite expiration date.

Section 18. AS 21.18.010. Allowable Assets, page 18.

This section has a number of general changes in defining the types of assets allowed in the determination of the insurer's ability to pay its liabilities.

To Subsection (1) is added the allowance of deposits in solvent savings and loan associations. This adds alternative financial institutions to those already listed in the current law, such as banks and trust companies.

Subsections (2)(A)(B)(C) remain the same as the current law.

To Subsection (2)(D) is added the allowance of interest due or accrued on deposits in solvent savings and loan associations to complete its inclusion as an allowed depository above.

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

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

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

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

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

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

Subsection (4) has been renumbered (5).

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

Subsection (5)(A)(ii) exempts reinsurance premiums from reinsurers authorized to do business in this state from this three-month limitation.

Subsection (5)(A)(iii) allows as an asset more than three months of reinsurance premiums receivable from reinsurers when a corresponding liability is recorded by the reinsurance company but not when the amount due more than 90 days is more than 10% of the total assets reported in the last financial statement filed with the director. This helps to ensure the receivables are recognized by the reinsurer and the reinsurer has the ability to pay.

Subsection (5)(B) deals with premiums receivable less commissions payable from a person controlled by or controlling the insurer. This control is through ownership or by contract and when the person owes more than 50% of the insurer's premium in course of collection as reported in the financial statement. In (B)(i), the premiums collected by the controlled or controlling person must be held in a trust account at a bank approved by the division. These funds must be kept separate from all other funds and paid only to the insurer or the insured. The investment income from the account can be allocated as the parties wish. All premiums collected by the controlled or controlling person must be deposited in the trust account within 5 working days. This ensures the receipt of premiums receivable by the insurer and reinforces the person's fiduciary responsibilities. In (B)(ii), the controlled or controlling person must provide a clean, unexpired irrevocable and unconditional letter of credit or a financial guaranty bond payable to the insurer for a term of at least one year which meets or exceeds the amount of the premiums payable to the insurer at any time. The Letter of Credit must have an automatic extension for one year unless the insurer has received 30 days prior to expiration written notice that the letter will not be renewed. The guarantee bond must be of a continuous term and cancelable only when the insurer receives a 30 day written notice of termination with the bond continuing to cover any acts committed prior to the termination. The letter of credit must be issued by a Federal Reserve Bank and satisfactory to the division. The financial guaranty bond must be issued by an insurer authorized to transact business in Alaska, who is not related to the insurer or the purchaser of the bond and be satisfactory to the division. In (B)(iii), the premiums receivable from a controlled or controlling person can be allowed as an asset when a financial evaluation shows the person is solvent and able to pay. This financial evaluation can be called by the director and would be based on a review of books and records of the person. In (B)(iv), the director can disapprove a trust agreement or letter of credit which he feels does not assure the safety of the premiums collected. These subsections are meant to ensure that premiums collected by a person controlled by or controlling an insurer will be available and paid to the insurer when due and, therefore, can be reported as an asset.

Subsection (6) of the existing law, dealing with installment premiums, has been included in Subsection (4).

Subsections (7) and (8) remain the same as the current law.

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

Subsection (10) remains the same as the current law.

Subsection (11) defines the EDP equipment that is allowable as an asset. The asset can only be electronic data processing and related equipment and operating software that is a data processing, record keeping, or accounting system. The system must cost \$50,000 or more and the cost must be depreciated fully (periodically charged to expense) over ten calendar years or less. The current law allows a system of \$25,000 or more in cost, but the proposed law has increased this to \$50,000 to ensure only true data processing systems are allowed as assets. The ten-year period for depreciation has not changed.

The current Subsection (12) has been amended and renumbered (16) and a new Subsection (12) has been added to allow as an asset receivables which arise from income tax allocations between organizations. These assets must stem from a tax allocation agreement which meets IRS regulations, describes the method of allocation, and sets a reasonable time for settling the balances receivable after filing of the tax return. The receivable must be due from a solvent organization that is not in default on its obligations and must meet all other requirements for admitted assets. The receivable must also have a related liability established by other organizations participating in the agreement. This subsection defines the requirements which must be met before a receivable based on a tax allocation can be allowed as an asset.

Subsection (13) has been added to allow as an asset the effect of the excess of assets over liabilities on conversion to U.S. currency when the items are reported in foreign currencies. By way of explanation, if each of the asset and liability items is reported in foreign currency, this entry would convert the net total to U.S. dollars. If each individual line item is converted to U.S. dollars, the resultant gain or loss in foreign exchange rates is recorded on the statement of operations.

Subsection (14) is added to allow as an asset only the unsecured receivable from a solvent affiliate that is not more than six months past due and where a related liability has been reported by the affiliates. This ensures that the receivable is recognized as a payable by the affiliate and payment will be made within six months.

Subsection (15) allows as an asset a receivable from a wholly or partially uninsured accident and health plan. This would arise from a self-insurance plan of the insurer.

Subsection (12) of current law is renumbered (16) and removes the approval of the director as necessary for the reporting of assets not specifically listed herein and replaced it with allowing those assets included in the annual statement form and consistent with instructions published by the NAIC (as approved by the director).

Subsection (13) of the current law is renumbered (17) and allows the director's discretion in determining assets not inconsistent with the other provisions.

Section 19. AS 21.18.030. Assets Not Allowed. page 21.

Subsections (a) (1)(2)(3) remain the same as the current law.

Subsection (a) (4) is amended to specifically exclude from assets tangible personal property, including but not limited to that listed in the current law. This subsection is also amended to remove the broad exception that allows property permitted under Chapter 21 (Investments) but retains the exemption in 21.21.270 regarding acquisitions of property through the foreclosure of chattel mortgages. These amendments add a broad definition of the types of property that cannot be held and limits the exceptions included in the Investments Chapter.

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

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

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

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

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

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

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

Sections 20 and 21. AS 21.18.060 (a) and (b). Unearned Premium Reserve, pages 22 and 23.

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

Section 22. AS 21.18.073. Unearned Premium Reserve for Title Insurance, page 23.

This section is added to require reserves in addition to those required to pay losses for Title insurance. This is to take the form of a guaranty fund or unearned premium reserve and such funds cannot be used for general purposes. Investment of these funds is allowed and interest can be included in the insurer's general income. This reserve shall be calculated for: (1) policies issued after January 1, 1989 as 10% of premiums written in the calendar year which will be reduced by 5% for each of the next 20 years; and (2) policies issued before January 1, 1989 as \$.30 per \$1,000 face amount of all policies issued in the last ten years. No additional reserve of this type is required for policies issued more than ten years ago. This ensures sufficient assets to pay claims.

Section 22. AS 21.18.075. Bail Bond Reserve, page 25.

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

Section 23. AS 21.18.120. Valuation of Bonds, page 25.

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

Subsection (b) has been deleted and included in 21.18.160.

Section 24. AS 21.18.900. Definitions, page 26.

A new section has been added to define terms used in this chapter.

INVESTMENTS

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

Section 25, AS 21.21.020 (c). Eligible Investments, page 27.

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

Sections 26, and 27, AS 21.21.030 (c) and (d). General Qualifications, page 27.

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

Section 28, AS 21.21.050. Diversification of Investments, page 28.

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

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

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

Section 29. AS 21.21.080. State, County, Municipal and School Obligations. page 30.

The amendments to this section require that more conservative investment choices be made by insurers in respect to investment in the obligations of the political subdivisions of a state or province. They eliminate, as an eligible investment, the obligations secured by a pledge or assignment of specific revenues of a political subdivision. This parallels the recent tightening done by the federal government with respect to tax exemption for the interest from industrial revenue bonds. Bonds which are payable only from a specific revenue source may carry the patina of safety associated with the political subdivision by whom they are issued but, in fact, are not required to be paid should the source of revenue fail, as would be the case, with a subdivision's general obligation bond. Revenue bonds of states and provinces and political subdivisions thereof continue as eligible investments under this chapter.

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

- (1) solvent;
- (2) have the power to levy taxes for prompt payment; and
- (3) not be in default on its obligations.

Section 30. AS 21.21.130. Inter-American Development Bank. page 30.

This change adds the African and Asian Development Banks to the eligible list of development banks into which investments can be placed. Provisions regarding solvency and nondefault status are also added for eligibility.

Section 31. AS 21.21.140. Corporate Bond and Debentures. page 31.

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

Section 32. AS 21.21.150. Preferred or Guaranteed Stocks. page 32.

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

Section 33. AS 21.21.160. Common Stocks, page 33.

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

Section 34. AS 21.21.170. Insurance Stocks, page 34.

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

Section 35. AS 21.21.190. Equipment Trust Certificates, page 34.

These changes are editorial only.

Section 36. AS 21.21.245. Pooled Investments, page 34.

Prior statute language was written before the advent of mutual funds, investment trusts, unit investment trusts and similar popular investment vehicles. This new section provides a statutory method for allowing and controlling a domestic insurer's use of these investment mechanisms by establishing a category titled "Pooled Investments" into which investment will be authorized by an insurer only if the pooled investment appears on a list of eligible pooled investment entities to be maintained by the director. This approach is similar to the treatment used to manage pooled investments by credit union regulators and makes use of definitions established under the Investment Company Act of 1940 and the Internal Revenue Code of 1986.

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

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

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

Section 37. AS 21.21.250 (c). Miscellaneous Investments. page 35.

A new subsection is added that permits an insurer to invest in obligations of the life and disability guarantee fund when established.

Section 38. AS 21.21.270. Chattel Mortgages. page 35.

The changes provided in this section pertain to an insurer's chattel mortgages and accomplish the following:

- (1) requires that appraisers hired to value an insurer's interest in a property must be independent of the insurer; and
- (2) enhances an insurer's ability to place liens on personal property for the improvement of that insurer's collection efforts even when that lien is a property interest in what otherwise may be an ineligible investment.

Section 39. AS 21.21.280. Real Estate. page 36.

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

Other changes enhance and clarify an insurer's authority to own real estate in excess of that which was previously allowed. Ownership of excess space for rent to others is newly authorized if such space is reasonably anticipated to be required for future expansion or in order to have a building that will be an economic unit. A provision is also made for insurers, under certain conditions, to hold real estate for the production of income with the prior approval of the director and only up to a maximum limit of five percent of the insurer's assets.

Section 40. AS 21.21.310. Failure to Dispose of Real Estate, Property or Securities. page 39.

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

Section 41. AS 21.21.350. Investment Transactions with Affiliated or Controlling Persons, page 40.

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

Section 41. AS 21.21.355. Certain Deposits Not Prohibited, page 41.

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

Section 41. AS 21.21.360. Options and Futures Contracts, page 41.

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

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

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

CORRECTION

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

Section 41. AS 21.21.350. Investment Transactions with Affiliated or Controlling Persons, page 40.

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Section 42. AS 21.21.600, Definitions, page 45.

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

SURPLUS LINES INSURANCE

This section recognizes mutual protection and indemnity associations as nonadmitted insurers that may be classified as eligible surplus lines insurers. The financial requirements for an insurer to be included on the "white list" of eligible surplus lines insurers have been increased. The capital and surplus requirements are increased as well as the amount of assets required to be trusteed in the United States by alien insurers.

Section 43. AS 21.34.040 (c), Eligible Surplus Lines Insurers Required, page 47.

The changes in this section generally are for the purpose of strengthening the financial requirements for a nonadmitted insurer to be declared an eligible insurer for the purposes of the lawful underwriting of surplus lines insurance under AS 21.34. The policyholder surplus requirement for foreign insurers is increased to \$6,000,000 at 12/31/89, \$7,000,000 at 12/31/90, \$8,000,000 at 12/31/91, \$9,000,000 at 12/31/92 and \$10,000,000 at 12/31/93. The policyholder surplus requirements for alien insurers is the same as those above for foreign insurers. The amount of trusteed assets required in the United States for an alien stock or mutual insurer has been increased from \$1,500,000 to \$5,000,000, and for Lloyd's has been increased from \$50,000,000 to \$100,000,000. Additionally, the policyholder surplus requirement for an "insurance exchange" domiciled in another state has been increased from \$15,000,000 to \$20,000,000.

TRADE PRACTICES AND FRAUDS

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

Section 44. AS 21.36.360 (r), Fraudulent or Criminal Insurance Acts, page 49.

The new subsection defines and clarifies insurance related events that constitute criminal activity. This type of definition is necessary to facilitate prosecution of insurance fraud.

The amendments found in these sections are to provide for the same treatment of title insurers as for other types of insurers in financial reporting and examination by the director. (The amendments mirror those found in Sections 1 through 15 of the Act which pertains to insurers other than title insurers.)

Section 45. AS 21.36.430. Immunity for Reports on Fraud. page 50.

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

TITLE INSURANCE COMPANIES

The amendments found in these sections are to provide for the same treatment of title insurers as for other types of insurers in financial reporting and examination by the director. (The amendments mirror those found in Sections 1 through 15 of this Act which pertains to insurers other than title insurers.)

Section 46. AS 21.66.080. Annual Statement. page 50.

Amendments to this section prescribe that title insurers file the required annual financial statement in the format consistent with that adopted by the NAIC and approved by the director. Title insurers are also required to file their annual financial statements with NAIC. The director may require that the annual financial statement be filed via electronic media. These amendments place the title insurers on the same financial reporting basis as other types of insurers.

Section 47. AS 21.66.085. Quarterly Statement. page 51.

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

Section 48. AS 21.66.090 (b). Application for Certificate of Authority. page 51.

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

Section 49. AS 21.66.130. Expenses of Examination. page 52.

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

ORGANIZATION AND CORPORATE PROCEDURES

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

Section 50. AS 21.69.530 (a). Impairment of Capital or Assets, page 52.

Amendment to this section is editorial in nature. The full description for what impairment of an insurer means is removed and replaced by the term "impaired" which is defined elsewhere in Title 21 but also applies to this chapter.

The following is a description of the substantial amendment to AS 21.78, which pertains to the rehabilitation and liquidation of insurers.

REHABILITATION AND LIQUIDATION

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

Section 51. AS 21.78.020. Commencement of Delinquency Proceedings, page 52.

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

Section 52. AS 21.78.030. Injunctions and Orders, page 54.

The intent of this amended section remains the same in allowing the director to seek, without bond, orders or injunctions to prevent hypothecation, waste, dissipation or other inappropriate transfer of assets of a bankrupt insurer. Amendment to this section further describes those situations in which these types of court orders may be sought. This amended section also provides for both criminal and civil penalties for a person that obstructs or interferes with the conduct of a delinquency proceeding or an investigation which leads to it.

Sections 53 and 54. AS 21.78.040. Grounds for Rehabilitation. pages 56 and 57.

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

1. the occurrence of fraud which endangers the insurer's assets;
2. an insurer fails to remove an officer found, after hearing, to be dishonest or untrustworthy;
3. control of an insurer is by a person found, after hearing, to be untrustworthy;
4. if an officer has refused to be examined under oath concerning an examination of the insurer;
5. if the insurer fails to make available records of its transactions for examination;
6. if an insurer has within four years willfully violated its charter or bylaws, any Alaska insurance law, or any valid order from the director; and
7. if an insurer has failed to file any required financial statement or report.

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

Section 55. AS 21.78.090. Order of Rehabilitation. page 57.

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

Section 56, AS 21.78.100. Order of Liquidation, Domestic Insurers, page 58.

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

Section 57, AS 21.78.130. Conduct of Delinquency Proceedings Against Domestic and Alien Insurers, page 61.

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

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

If an insolvent insurer's estate does not possess sufficient cash or other liquid assets to cover the costs of rehabilitation or liquidation, funds may be advanced by the Division of Insurance for that purpose. However, these funds are required to be repaid out of the first available money and take priority over all other claims against the estate.

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

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

Sections 58, 59 and 60. AS 21.78.170. Form of Claim, pages 62 and 63.

This section contains the provisions pertaining to claims filed against the estate of an insolvent insurer. Subsection (c) has been amended to require the receiver to notify a claimant if the claim has been denied in part or in whole in writing by first class mail. The claimant must raise any objection with this determination within 60 days of when the notice was mailed or is barred from any objection. If the receiver receives an objection, the amendments to subsection (d) provide that the receiver request the court to conduct a hearing on the matter if the receiver does not change the original determination after such objection is made.

New subsections (e) through (h) have been added to provide further guidelines for claims made against an insurer in liquidation. A claim does not have to be considered or allowed if not all the required supporting documentation is provided or if the prescribed (and court ordered) claim form is not used. The receiver may at any time request that additional information be provided by any claimant and may take testimony under oath to obtain supplementary information. A judgement or an order against an insured or an insurer entered after the date of a liquidation order or a judgement or an order entered at any time by default or collusion need not be considered as support of evidence of liability or amount of damages in connection with a claim. A claim by any guarantee association against the estate of an insurer in liquidation must be in a form and contain support agreed to by the receiver and the guarantee association.

Sections 61 and 62. AS 21.78.180. Priority of Certain Claims, page 64.

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

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

Sections 63 and 64. AS 21.78.250. Fraudulent Transfers Before Petition. AS 21.78.251. Fraudulent Transfer After Petition. AS 21.78.252. Voidable Preferences and Liens. AS 21.78.253. Claims of Holders of Void or Voidable Rights, pages 65-74.

Currently AS 21.78.250 gives a broad outline as to how transfers of property made by or on behalf of an insurer before an order of rehabilitation or liquidation are treated when the transfer was accomplished with the intent to gain a preference or a greater percentage of the insurer's assets in a delinquency proceeding. In essence, the receiver may avoid or reverse these transactions unless the insurer received fair value for the asset transferred. This broad outline is repealed and replaced with a more detailed description of the acceptable transfers and unacceptable transactions which may be voided. The essential intent of current AS 21.78.250 is retained.

The reenacted AS 21.78.250 pertains to transfers occurring prior to a petition for rehabilitation or liquidation. This new section specifically recognizes transactions involving reinsurance contracts. New section AS 21.78.251 pertains to transfers and transactions occurring after a delinquency proceeding has been undertaken but before an order of rehabilitation or liquidation has been entered or before the receiver takes possession of the insurer's property. AS 21.78.252 provides the detailed guidelines for the voiding or reversing improper transfers of property. This section maintains the personal liability of any person, (including insurer employees, officers, or shareholders), acting on behalf of an insurer that knowingly participates in giving of a preference who knows or has a reasonable cause to believe that an insurer is or is about to become insolvent. AS 21.78.253 outlines how claims of person who received a preference are to be treated. In general such claims are to be disallowed and not allowed to participate in any distribution of the insolvent insurers estate. However, a claim by such a creditor will be allowed as an "excused late claim" only if the transfer which provided for the preference is reversed.

Section 65. AS 21.78.260. Priority of Distribution, page 74.

The current law governing liquidations does not provide for a statutory priority for distribution of an insolvent insurer's estate. By interpretation, the administrative expenses to liquidate an insurer receive priority treatment. Currently, AS 21.78.260 provides a priority for wages owed employees up to \$500. The new version of AS 21.78.260 provides for a specific priority for the distribution of an insolvent insurer's estate. Additionally, a methodology is defined that calls for all claims in each class to be paid or sufficient funds set aside before any claims in the next lower priority class are paid. The order of distribution is as follows:

1. Class 1. The expenses and costs administration for the rehabilitation or liquidation;
2. Class 2. Wages for employees for up to two months pay but principal officers and directors are not allowed to benefit by this priority;
3. Class 3. All claims for losses incurred under insurance policies including third party liability claims and claims of any guarantee association;

4. Class 4. Claims for unearned premiums under nonaccessible insurance policies, other premium refunds, and claims of general creditors including claims made by ceding or assessing reinsurers under contracts of reinsurance;
5. Class 5. Claims of federal, state, or local government other than claims made under Class 3;
6. Class 6. Claims filed late or any other claims other than those claims under Class 7 or Class 8;
7. Class 7. Surplus notes, contribution notes, or similar obligations, and premium refunds under assessable insurance policies; and
8. Class 8. Claims of shareholders or other owners in their capacity as shareholders or owners.

Section 66. AS 21.78.270. Setoffs and Counterclaims, page 76.

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

Section 67. AS 21.78.271. Recovery of Premiums Owed, page 77.

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

Section 67. AS 21.78.272. Reinsurers Liability, page 77.

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

Sections 68 and 69. AS 21.78.280. Special Claims. AS 21.78.281. Special Provisions for Third-Party Claims, pages 68-80.

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

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

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

Section 70. AS 21.78.290. Notice to Creditors and Others, page 80.

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

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

Section 71. AS 21.78.291. Duties of Agents, page 81.

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

Section 71. AS 21.78.292. Filing of Claims, page 82.

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

Section 71. AS 21.78.293. Receiver's Recommendation to the Court, page 83.

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

Section 71. AS 21.78.294. Distribution of Assets, page 84.

This new section requires the receiver to accomplish the final distribution of funds to claimants under the court's supervision. The distribution plan must recognize the statutory priorities and provide for a reasonable balance of expediency with the protection of unliquidated and undetermined claims including third party claims.

Section 71. AS 21.78.295. Unclaimed and Withheld Money, page 84.

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

Section 71. AS 21.78.296. Termination of Proceedings, page 85.

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

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

Section 71. AS 21.78.297. Reopening Liquidation, page 85.

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

Section 71. AS 21.78.298. Disposition of Records During and After Termination of Liquidation, page 86.

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

Section 72. AS 21.90.900. Definitions for Title, page 86.

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

Section 73. AS 21.78.330 (6). Definitions, page 86.

This subsection contains the definition of the terms "impairment" or "insolvency" and is repealed. These terms are now redefined in AS 21.90.900 as these terms are also used in other chapters of Title 21.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

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February 26, 1990

Honorable Richard Eliason
Chairman
Senate Labor & Commerce Committee
P.O. Box V
Juneau, AK 99811

Dear Senator Eliason:

RE: Amendments to Draft CSSB 212 (L&C), Insurer Solvency

As a result of the February 6, 1990 memorandum to you from Michael Ford and our own review of the draft CSSB 212 (L&C), both internally and with industry representatives, I offer the following technical amendments:

Page 2, line 21: After "spent": Delete [relating] and insert directly or indirectly related.

Page 6, line 20: After "Any": Delete [two] and insert three.

Page 9, line 3: After "instructions": Delete [approved by the director].

Page 12, line 10: After "than": Delete [\$100,000,000] and insert \$50,000,000.

Page 15, lines 26 - 27: After "company": Delete [as defined in AS 21.21].

Page 22, line 4: "good will" should read "goodwill".

Page 35, lines 17 - 22: Delete Section 44 (will add this to SB 259).

Page 50, lines 2 - 3: After "STATEMENT": Delete [Except as provided in (b) of this section, every [EVERY]] and insert (a) Every.

Page 50, line 13: After "instructions": Delete [approved by the director].

Page 85, line 15: After "sec.": Delete [18] and insert 20.

Cross-reference should be revised to reference entire section AS 21.12.020 in AS 21.88.050(a)(3). (M. Ford item #3).

Revise the cross-reference in AS 21.21.290(b) from "AS 21.21.280(2)-(4) to read "AS 21.21.280(3)-(5). (M. Ford item #5).

Substantive changes which came out of discussions with industry representatives include:

1. Add a new effective date clause: AS 21.09.070(a), as amended in Section 10 of this Act, is applicable to an insurer admitted prior to the effective date of this Act, on January 1, 1992.

The bill raises the capital and surplus requirements for insurers and requires them to maintain additional surplus. So that this requirement will not be a burden to the small insurer, this amendment provides a grandfather clause for existing admitted insurers.

2. Page 9, line 27: Delete [the statements must follow the format specified in AS 21.09.200(a)] and insert the reporting format for a given quarter is the most recently approved National Association of Insurance Commissioners' quarterly financial statement blank form and instructions.

This amendment relates to the new requirement for filing of quarterly reports and substantially tracks current practice in all other states. The report is uniform in all states since it is designed by NAIC. The quarterly report is substantially less burdensome than the required annual statement and is an important tool in the detection of troubled insurers. Although the typical time following the quarter for filing the report is 45 days, we have selected 60 days to give insurers more time and to use a period comparable to that for the annual statement. To satisfy ACLI's concern that the format be as uniform as possible, the amended language clarifies our intent to utilize the NAIC quarterly form.

3. Page 35, lines 9 - 13: Delete subsection (b).

Page 85, lines 18 - 24: Delete Section 88.

The department is persuaded that maintenance of a list of eligible pooled investments is not necessary. Eligible investments would be constantly changing, and it would be

burdensome for staff to keep the list up to date and for the industry to know which investments were eligible. In addition, a list of eligible investments is not required for other types of investments.

4. Page 85, line 17: After "January 1,": Delete [1990] and insert 1991.

This amendment satisfies a concern on the part of ACLI that an insurer with reinsurance agreements have adequate time to comply with any new requirements under the law.

5. Page 10, line 6: After "reinsurance": Insert transactions.

Page 15, line 16: After "DEFINED": Insert A.

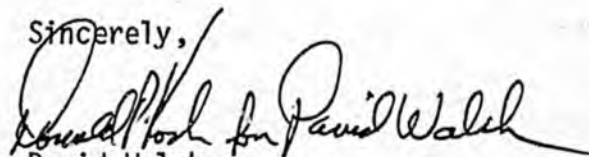
Page 15, line 16: After "Reinsurance": Delete [is] and insert transaction as referred to in AS 21.21.020 is a transaction stemming from.

Page 15, line 18: After "liability": Insert or losses.

These amendments clarify the definition of reinsurance.

Thank you for your consideration of the proposed amendments to the draft CSSB 212 (L&C) of February 6, 1990.

Sincerely,


David Walsh
Director

DW/LW/jc2146q
022690b

Numbers Game

More than a few life insurers are running low on capital, a situation many try disguising with fancy bookkeeping.

Liabilities dangereuses

By Dana Wechsler

RALPH WANTS TO GET RID of a bond that might default. He sells it to a friend. The friend sells it to his sister, who sells it to her hairdresser, who sells it to Ralph's wife, who puts it in the family safe.

So did Ralph get rid of the bond?

The commonsense answer is no. But the answer as life insurance accounting goes is yes. Clever insurance men are having a field day coming up with new ways to bend the rules on valuing their assets and liabilities. They have found ways for Ralph to seem to shed the bad bond without really selling it. State insurance regulators can scarcely keep up.

At issue here is capital surplus, an insurer's lifeblood. In their reports to the regulators, insurers follow "statutory accounting" rules that compare their assets with their liabilities (future claims); assets are supposed to exceed liabilities by a generous amount. The difference is called "capital surplus." It is the difference between solvency and insolvency. Capital is also something that rapidly growing—or simply reckless—insurers are usually short of, and will go to great lengths to exaggerate.

Take a look, for example, at Executive Life Insurance

Co. of California, the state's largest life insurer (assets, \$12.8 billion). Between 1980 and 1987 Executive Life told regulators in states where it does business that it had nice surpluses.

By 1988 the California insurance department found that in at least four of those years First Executive overstated its surpluses. In 1986, for exam-

ple, the insurance department knocked \$180 million out of Executive Life's surplus, deflating it by a lull 67%.

First Executive's main vehicle for exaggerating its surplus was reinsurance. Think of reinsurance as renting someone else's balance sheet. Suppose an insurance company wants to add \$100 million to its capital surplus. Surplus, remember, is assets minus liabilities. Reduce liabilities and you've increased surplus. To do this, the insurer simply transfers—or reinsures—\$100 million of its liabilities to a reinsurance company with extra surplus. The insurer pays the reinsurer about \$2 million in fees for \$100 million of reinsurance. Those fees are rent, as it were, for a piece of the reinsurer's surplus. The insurance company's statutory net worth jumps by \$98 million.

All this is perfectly fine with the regulators, as long as the liabilities really are transferred to the reinsurer, and the reinsurer has enough capital surplus to meet any claims arising from the reinsured policies. To know if a reinsurer's capital base is strong enough, the regulators have an authorized list of reinsurers that they examine regularly.

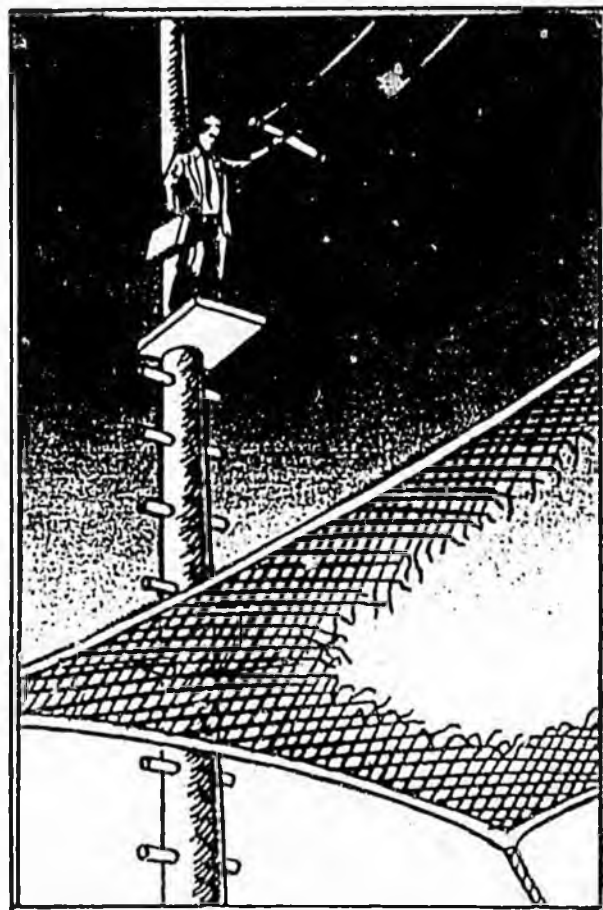
Ah, but what about all those reinsurers in places like Bermuda and the

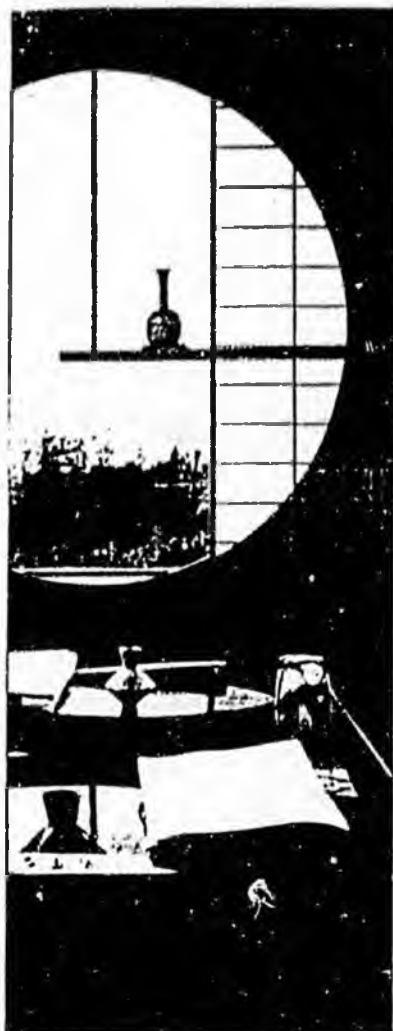
Cayman islands, where capital requirements for insurance companies are much more relaxed than in the U.S.? They have become increasingly popular with U.S. insurers. Since these foreign reinsurers aren't preauthorized, state insurance regulators require them to obtain a letter of credit from a bank. This guarantees that the bank will pick up the liabilities if the reinsurer fails.

Thus the liability has essentially been shifted twice: first, from the insurer to the reinsurer, then to a bank.

Still with us? Good, because it is with that letter of credit that a lot of funny business comes in.

Back to First Executive. As of Dec. 31, 1986, Executive Life of California took \$180 million of surplus credit for reinsurance with Italy's Assicurazioni Generali, a large but unauthorized reinsurer—meaning Executive Life needed a letter of credit to take surplus credit for Generali's reinsurance. Unfortunately, on subsequent exami-





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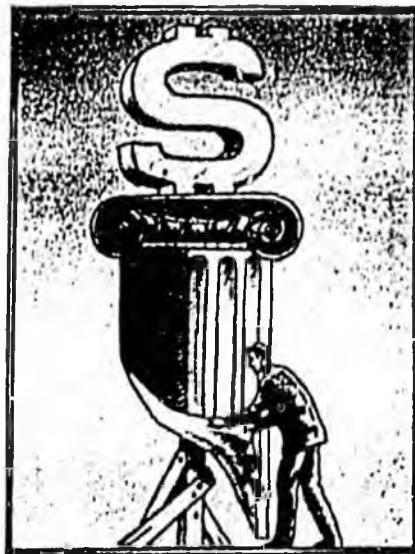
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nation, the California insurance department discovered that the necessary letters of credit were not issued for the Italian reinsurer until nearly a year later. In other words, there was no assurance that Assicurazioni Generali could honor its obligation. As a result, the California regulators disallowed the \$180 million of surplus credit that Executive Life had taken in 1986. First Executive's response? "It was just a bookkeeping problem."

Executive Life of California's sister company, Executive Life of New York, also played fast and loose with reinsurance rules. In one case, according to the New York regulators, Executive Life of New York tried to pledge its own assets to get a bank's letter of credit. That means if the reinsurer



failed and the bank was saddled with its liabilities, the bank would turn around and ask Executive Life for the money. The liabilities came full circle. Not acceptable, said the New York regulators, who disallowed the surplus credit that Executive Life had taken for the reinsurance.

For these and a variety of other reinsurance abuses, the New York insurance department fined Executive Life of New York \$250,000 in 1987.

First Executive, Executive Life of New York's parent company, is selling its New York subsidiary. Industry rumor has it that First Executive can't stand the heat from the New York regulators.

Officials at First Executive defend their practices by implying the New York regulators were nitpicking. Nitpicking? Come on, fellows.

Cases in which a life insurer's parent company pledges its own assets as collateral for a reinsurance letter of credit are not uncommon. According to a First Executive official, the New

York insurance department (the most stringent in the country) informed the company privately that this practice is unacceptable. But regulators in most states let it pass.

A few years ago Lincoln National Life Insurance Corp. (assets, \$4.9 billion) devised a neat scheme for plumping up its capital surplus. It set up its own reinsurance subsidiary in Bermuda, and transferred some of its liabilities there. The subsidiary was insuring the parent but with reduced reserves!

In December Terence Lennon, New York's chief life insurance regulator, issued a regulation closing this loophole in New York. Other states have looked the other way.

Unraveling an insurer's web of assets and liabilities is hard enough. Then you have to figure out what the assets are really worth. Junk bonds, for example, are not kept on insurers' books at market value but at cost less amortization. Almost half of Executive Life of California's assets were invested in junk bonds at the end of last year. According to Hartford-based insurance consultants Townsend & Schupp, a 20% writedown in junk bond values would completely wipe out the company's \$1 billion surplus. While not likely, a decline of this magnitude is not impossible.

Statutory accounting rules require insurers to set aside special reserves for high-risk bonds: 2% of the face value every year for ten years, over and above capital surplus. That doesn't remove all risk, but it helps.

What about "junk real estate"? Statutory accounting requires no special reserves for real estate or mortgage holdings, which make up fully one-fourth of life insurers' invested assets. But isn't much real estate at least as risky as junk bonds?

Mutual Benefit Life Insurance Co. (assets, \$10.6 billion) puts many of its foreclosed properties in its "investment real estate" account rather than its "foreclosed real estate" account. Nearly all of the \$90 million worth of real estate that Mutual Benefit added to "investment real estate" in 1988 were properties acquired through foreclosures—including several apartment buildings in Dallas and Houston. Isn't it stretching things a bit to call bad debts "investments"?

It all comes down to this: After a decade of selling low-margin products like universal life policies and annuities, the life insurance industry's capital base is deteriorating. The worst part of it is that it's nearly impossible to tell from their books which insurers will make it and which won't. ■

HENRY LANCASTER, INC.

550 West Seventh Avenue • Suite 920 • P.O. Box 10-3461 • Anchorage, Alaska 99510 • (907) 278-4729

April 12, 1989

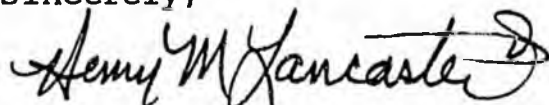
Senator Dick Eliason, Chair
Senate Labor & Commerce Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

Dear Senator Eliason:

Thank you for taking a few moments in Juneau to discuss S.B. 212, "An act relating to insurer solvency..." The section of the legislation which is under consideration for amendment is AS 21.21.130. The amendment would allow Alaskan insurers to invest in the African Development Bank or the Asian Development Bank. I have enclosed a memorandum explaining the history of the requested amendment.

It is my understanding that S.B. 212 has not been scheduled for a hearing to date. Please advise me when a hearing is scheduled. I would like to be available to the committee to address any concerns.

Sincerely,



Henry M. Lancaster, II
President

HML:bgm

Enclosure

MEMORANDUM

AFRICAN DEVELOPMENT BANK STATE LEGISLATIVE PROGRAM - ALASKA

I. Background

The African Development Bank ("the Bank") is currently seeking the enactment of legislation, where necessary, which would permit state-regulated banks, insurance companies, fiduciaries and public employee retirement systems to invest in Bank obligations if they choose to do so. Several years ago, largely through the joint efforts of the Congressional Black Caucus and the Reagan Administration, Congress enacted Title XIII of P.L. 97-35 authorizing United States membership and financial participation in the Bank, which was initially created in 1964 and until 1982 limited its membership to African countries. Today, the Bank's membership includes all African nations except for South Africa, plus the Governments of the United States, Canada, Japan and Western Europe.

The Bank, a principal source of financing for economic development projects on the African continent, funds these projects through the sale of its obligations in the world's capital markets. As with the International Bank for Reconstruction and Development (World Bank), the Inter-American Development Bank and the Asian Development Bank, investments in African Development Bank securities by the state-regulated institutions described above generally require either state legislation or administrative agency rulings prior to the time such securities can be marketed in a particular state. P.L. 97-35 referred to above authorized federally regulated financial institutions to invest in such securities.

Since initiating state legislation activities several years ago, the Bank has obtained passage of legislation or secured comparable administrative agency public rules to qualify its securities for investment in forty-two states.^{1/}

^{1/} These include Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Tennessee, Texas, Virginia, Washington, West Virginia and Wisconsin. In addition, Alaska state-chartered banks obtained such investment authorization through legislation enacted in the 1988 session.

Bills are also pending in several additional states, while others have either issued private administrative rulings or have laws which already permit such investments under a "prudent investor" standard. It should be noted that each state has its own particular laws applicable to state-regulated institutional investors and no two states are alike in this regard.

The Bank entered the United States capital market for the first time in the Fall of 1985 and most recently in early November 1987 with highly successful bond issues. The three principal American bond rating services have given its bonds AAA, AA and AA ratings, which makes this type of investment quite attractive once a regulated investor receives appropriate legal authorization. In order to assure a successful United States market presence, the Bank is seeking enactment of legislation in a number of additional states, including Alaska, to obtain this authorization.

II. Specific Legislation Needs in Alaska

A review of the applicable Alaska laws indicates a need for amending only one section of the Alaska Statutes to gain investment authorization for state-regulated insurance companies. This involves merely adding the name of the African Development Bank to those of the World and already eligible for such investments. Alaska state banks recently gained this investment authorization in similar legislation, while other regulated investors apparently already have the necessary authority without the need for statutory change.

Based upon experience to date in other states, this legislation should be completely noncontroversial. President Reagan and the U.S. Treasury Department have actively supported efforts to get this legislation enacted, as have many Black political leaders around the country. Because of the high Bank securities ratings, prospective investors also support it since this increases their high-yield, low-risk portfolio options and provides them an opportunity to make both profitable and socially worthwhile investments. Finally, since the Bank is the major source of foreign exchange financing for transactions in or with Africa, American exporters and technical assistance providers to that continent have ample incentive to support the Bank's financial success.

Prepared November 1988 by:

Lavid Aronofsky, Esq.
U.S. Legal Counsel, African Development Bank
Arent, Fox, Kintner, Plotkin & Kahn
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
202-857-6054

P.O. Box 6352
Ketchikan, Alaska 99901
November 25, 1989

Govenor Steve Cowper
Box A
Juneau, Alaska 99811-0101

Re: Alaska Chapter 80 Title 21

Dear Govenor Cowper:

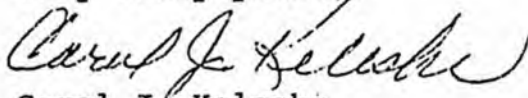
While in Seattle last month I spoke with John Wydahl, office of insurance Commissioner, State of Washington, concerning Chapter 48.32 ARCW, short title; Washington Life and Disability Insurance Guaranty Association Act. He mailed a copy of the "Act" to me.

As a recipient of annuities, I am very concerned that we, in the State of Alaska, do not have access to this sort of protection in the event of insolvency of a carrier. Also, this state is in the minority, one of eleven in the nation without such a state law covering life insurance annuities and disability insurance. I have spoken with several of my former co-workers and find they have similar concerns and would like to see a law implemented.

Our problem is; what needs to be done? Where do we start? And what avenues are available? Further, I'm a retired State employee with annuities available through S.B.S. and Northwest Marine Trust, both of which I have not applied for at this point. However, I am receiving PERS and the Unlicenses Vessel Personnel Annuities Retirement Fund. (Monies set aside between the Northwest Marine Trust and our entry into PERS.) This fund was sold to First Executive Life (Executive Life Unit) The enclosed article confirms my concerns. I feel fortunate that my S.B.S. is still deferred; some of my co-workers are receiving the "UVPARF" and S.B.S. from Executive Life.

I would appreciate some input and suggestions from you concerning this very troubling issue.

Very truly yours,



Carol J. Keleske
I.B.U. of Pacific retired

cc: Senator Richard I. Ellison
Representative Dave Donley
Senator James Duncan
I.B.U.
M.E.B.A.
M.M. & P.

Enclosure

years of service (page 164). The trend is toward defined-contribution (DC) plans, where only the amounts that employees and employers put into a pool are fixed. With unlucky or unwise investments, a DC payout can fall way short of a retiree's needs. Despite that uncertainty, DC plans such as the 401(k) have one clear virtue for employees: When they change jobs, they get the money in a lump sum.

Lamentably, only 30% of the job jumpers put it into another retirement kitty. Typically, DC plans are found in newer ventures, and DB plans or DC-DB blends in established companies. Why is the number of DB plans no longer growing? Because they cost more and government DB rules are a hassle. While an aging work force eventually may clamor for employers to start DB plans, too many

disincentives exist for that to happen. Retirement is something few people think about until it is within hailing distance. So the tug-of-wars over pension largesse are, to many, an abstraction. But with the graying of America, these battles are going to seem more and more relevant.

By Larry Light in New York, with bureau reports

WHEN THE SAFETY NET IS FRAYED

For Lester Reynolds, retirement means finally getting time to refurbish the 1936 Ford coupé that sits rusting in his backyard in rural Fortuna, Calif. He thought about retiring early to get started. No such luck. When Charles E. Hurwitz took over his employer, Pacific Lumber Co., in 1985, the Houston financier scrapped Pacific's pension plan and used its surplus to help pay down his debt. In its place, Hurwitz bought annuities from First Executive Corp., known for its heavy reliance on income from junk bonds.

There's no reason to believe First Executive is in trouble. But if its risky bonds were to cause its collapse, Reynolds and others fear their retirement security will go down with it. Now, the 57-year-old mechanic will work at the mill in nearby Scotia until he's 62 to build up a second nest egg—just in case.

"You work all your life thinking you've got security at the end," says Reynolds, who has put in 33 years with Pacific. To make sure it'll be there, he and six co-workers filed suit on Sept. 25 in U.S. District Court in San Francisco to force Hurwitz and First Executive to buy a

bond guaranteeing the annuities or to rebid them to another insurer. The companies won't comment on the suit, saying they haven't seen it.

JUICY TARGET. The nearly \$60 million of overfunding in Pacific's pension plan made a juicy target for Hurwitz. But his predecessors had more benign uses for surpluses: They boosted the pension payouts every few years, which kept Pacific's 2,700 employees and retirees apace with inflation. With no increase since 1978, the plan was about to be considered for another jump when Hurwitz showed up. The

annuities that replaced it offer no hope of future hikes. And a new plan set up for current workers has barely enough in it to meet current obligations.

The bigger concern, however, is whether the annuities will survive. Executive Life Insurance Co., the First Executive unit that sold the annuities to Hurwitz' holding company, Maxxam Group Inc., has had run-ins with regulators in recent years. The California Insurance Dept. found that the unit overstated its net worth by \$180 million in 1986 and by \$69 million in 1987.

First Executive insists that Pacific's annuities are secure, and they point to the company's AAA claims-paying rating from Standard & Poor's Corp., which stems from strong capitalization and high earnings, partly from its junk holdings. Plus, the insurer's chairman, Fred Carr, has taken more conservative measures to boost capital.

But First Executive has an apparent conflict of interest with Maxxam that doesn't inspire confidence. Over the objections of Pacific's managers and outside consultants, Maxxam selected Executive Life through what the employees' suit says was a suspicious bidding process. Reynolds and his colleagues charge that Maxxam did so to pay back First Executive for being the biggest buyer of the \$450 million in junk bonds it floated, through Drexel Burnham Lambert Inc., to take over Pacific. A congressional committee asked the Labor Dept. in a 1987 letter to look into the matter for possible violations of federal law. Sources say that Labor investigators have urged that action be taken against Maxxam, but nothing has been filed. Maxxam and First Execu-

tive deny the charge, saying no other insurer came close to Executive's bid.

Lester Reynolds now has \$55,000 in Pacific's savings plan. If he works until age 62, he expects to more than double that as a cushion to supplement—or, if necessary, replace—the \$900 monthly annuity check he's due. Failing that, he figures he could raise cash by logging the Douglas fir on 40 acres he owns or helping his build houses. His retirement may be something he never expected—a scramble.

By Jonathan B. Levine in Fortuna, Calif., with bureau reports



MECHANIC REYNOLDS: A TAKEOVER ENDED HIS HOPE TO RETIRE EARLY

Worse, Pacific workers worry because 51% of First Executive's \$17 billion bond portfolio, which earns the interest for their annuities, is in the troubled junk-bond market; on average, large insurers are roughly 15% in junk. First Executive has boosted its reserves this year by 28%, to \$250 million, so it can cover \$329 million in nonperforming issues. California has no state fund to protect annuitants whose insurers fail, so "if that junk collapses, there goes my pension," says Wiley J. Lacey, 61, Pacific's tax manager until he retired four years ago.

PHOTOS

**FIRST BANCORPORATION OF OHIO****HOWARD L. FLOOD***Akron, Ohio 216-384-8000*

SALES: \$254 mil. PROFITS: \$34 mil.

MARKET VALUE: \$408 mil.

► Born 10/28/34, New York, N. Y. Career path—finance/accounting; tenure—26 years, CEO 6 years. Compensation: 1988 salary & bonus, \$291,000; ownership, 9,000 direct, 1,000 indirect shares. ► Building a regional powerhouse. Buys local banks with middling returns and makes them top performers, dangling early retirement offers to shrink staff, chopping health benefits to cut costs. Gives a lot of freedom to local managers to run their banks. Expanded automatic-teller network, and more acquisitions should provide more growth.

**FIRST BANK SYSTEM****DARRELL G. KNUDSON***Minneapolis, Minn. 612-370-5100*

SALES: \$1.9 bil. LOSS: \$310 mil.

MARKET VALUE: \$1.6 bil.

► Born 7/10/37, Centerville, S. D.; attended Southern St. Coll., Augustana. Career path—banking; tenure—31 years, CEO 1 month. Compensation: 1988 salary & bonus, \$368,000; ownership, 05,000 shares. ► Took over troubled regional bank as acting boss when predecessor Pete Ankeny resigned. Bank had suffered through two years of increasingly bad news. Latest crisis is the prospect of \$83 million in losses from LBO loans that have gone sour. Popular vice-chairman likely to put restructuring on hold pending permanent replacement.

**FIRST CAPITAL HOLDINGS****ROBERT I. WEINGARTEN***Los Angeles, Calif. 213-551-1000*

SALES: \$736 mil. PROFITS: \$53 mil.

MARKET VALUE: \$429 mil.

► Born 12/26/41, New York, N. Y.; BBA, City Coll. of N. Y., 1962. Career path—investment banking; tenure—17 years, CEO 17 years. Compensation: 1988 salary & bonus, \$1,438,000; ownership, none. ► Ex-magazine publisher (*Financial World*) built insurer, fund group aggressively. Offers high rate on annuities, delivers by junk-bond investing. Sold Pilgrim funds group to its manager, wife Palomba. Also sold 43% of company to Shearson Lehman, which now virtually controls board. Some takeover rumors. Active in West Coast culture-social act.

**FIRST CHICAGO****BARRY F. SULLIVAN***Chicago, Ill. 312-732-4000*

SALES: \$4.8 bil. PROFITS: \$513 mil.

MARKET VALUE: \$3 bil.

► Born 12/21/30, Bronx, N. Y.; BA, Columbia, 1956; MPA, U. of Chicago, 1957. Career path—banking; tenure—9 years, CEO 9 years. Compensation: 1988 salary & bonus, \$1,514,000; ownership, 178,000 direct, 6,000 indirect shares. ► Lanky chairman's strategy is working, so may be able to hold off takeover or restructuring. Earning money again after big Third World loan write-off last year. But foreign currency operations still a problem. Betting on new commercial-paper subsidiary. Wall Street seems pleased with his progress.

**FIRST CITY BANCORPORATION OF TEXAS****A. ROBERT ABBODD***Houston, Tex. 713-658-6011*

SALES: \$1.2 bil. PROFITS: \$14 mil.

MARKET VALUE: \$555 mil.

► Born 5/29/29, Boston, Mass.; BA (1951), MBA (1953), Harvard; JD, Harvard Law, 1969. Career path—finance, banking; tenure—1 year, CEO 1 year. Compensation: 1988 salary & bonus, \$316,000; ownership, 131,000 direct, 597,000 indirect shares. ► He vowed he'd turn this troubled Texas bank around fast—and he has. Unloaded bad loans, slashed costs. Now he's aiming to grow, not just survive. Looks to expand to Dallas, bolster weak consumer business. With out-of-state BankOne and NCNB breathing down his neck, he'll need to move fast.

**FIRST EMPIRE STATE****ROBERT G. WILMERS***Buffalo, N. Y. 716-842-5445*

SALES: \$537 mil. PROFITS: \$44 mil.

MARKET VALUE: \$480 mil.

► Born 4/20/34, New York, N. Y.; AB (business), Harvard, 1956. Career path—banking; tenure—7 years, CEO 6 years. Compensation: 1988 salary & bonus, \$448,000; ownership, 500,000 direct, 2,000 indirect shares. ► Turned around ailing bank after he and New York investor group bought controlling interest six years ago. Targeting local mortgage market. Downshifting international to emphasize regional business. One hitch: Charges from absorbing East New York Savings Bank, acquired in 1988, slowed earnings growth. Expects quick recovery.

**FIRST EXECUTIVE****FRED CARR***Los Angeles, Calif. 213-312-1000*

SALES: \$3 bil. PROFITS: \$197 mil.

MARKET VALUE: \$1.1 bil.

► Born 3/24/81, Los Angeles. Career path—finance/accounting; tenure—15 years, CEO 15 years. Compensation: 1988 salary & bonus, \$1,805,000; ownership, 922,000 shares. ► He holds the insurance company's annual meeting in its cafeteria—shareholders have had plenty of food for thought. A portfolio full of junk debt and an investigation into dealings with Drexel make investors and customers uneasy. Troubles with big shareholders also roil stock. Another hitch: Selling his New York insurance subsidiary resulted in a big loss. Takeover talk persists.

**FIRST FIDELITY BANCORPORATION****ROBERT R. FERGUSON JR.***Lawrenceville, N. J. 201-565-3200*

SALES: \$2.8 bil. PROFITS: \$34 mil.

MARKET VALUE: \$1.9 bil.

► Born 12/31/23, Savannah, Ga.; BS (business admin.), Lehigh, 1947. Career path—financial services; tenure—40 years, CEO 17 years. Compensation: 1988 salary & bonus, \$792,000; ownership, 15,000 direct, 15,000 indirect shares. ► Under fire. Expected to retire, but took over when predecessor Harold Pote resigned after surprise fourth-quarter-1988 loss on bad Philadelphia real estate loans. Recovery may be rocky: First-half earnings are off.irate investors prompted SEC look into the way loss was announced. Bank is searching for a successor.



Alaska National
INSURANCE COMPANY

A policy of service and protection

January 22, 1990

The Honorable Richard Eliason
Chairman, Senate Labor and Commerce Committee
Alaska State Legislature
Room No. 417, Capitol
P. O. Box V
Juneau, AK 99811

Re: Senate Bills 212 and 259

Dear Senator Eliason:

We had a report last week that a member of the Division of Insurance had communicated to your staff that these two bills are acceptable to Alaska National Insurance Company.

Whether or not such a communication took place, we want to be sure there is no misunderstanding regarding our position.

We still have some concerns with SB212 and some serious concerns with SB259. These concerns were communicated to Acting Director Jim Jordan on December 12, 1989.

Sincerely,

James E. Pfeifer
President

JEP:lp

cc Acting Director Jim Jordan
Alex Miller

Proposed Amendments to SB 212: Insurer Solvency

Sections Amended:

Section 8

AS 21.09.070(a), p. 5, lines 23 through 29, p. 6, lines 1 through 14

New Section: AS 21.09.070(b)

Section 9

AS 21.09.070(c), p. 6, lines 18 and 19

Section 10

AS 21.09.070(f), p. 6, lines 23, 28, and 29

New Section: AS 21.09.080(a)

Section 43

p. 48, lines 8 through 10
p. 48, line 24
p. 49, lines 9, 20 and 21

Section 44

Delete entire section: p. 55, line 13 through p. 56, line 12

Section 52

Delete entire section: p. 55, line 13 through p. 56, line 12

Section 67

p. 77, line 4 and lines 6 through 10

Section 73

p. 86, line 27

SB 212, Insurer Solvency

Section 8:

Delete Section 8 and Insert:

* Sec. 8. AS 21.09.070(a) is repealed and reenacted 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 after having withdrawn from this state for any cause, shall possess and after that maintain unimpaired basic paid-in capital stock (if a stock insurer) or unimpaired basic guaranty 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 in surplus, as follows:

Kind or Kinds Insurance	Basic Capital or Basic Guaranty Surplus	Additional Surplus when First so Authorized	Additional Surplus Following Authorized
Life	\$1,000,000	\$1,000,000	\$ 750,000
Disability	1,000,000	1,000,000	750,000
Life and Disability	1,250,000	1,250,000	1,000,000
Property	1,000,000	1,000,000	750,000
Casualty excluding vehicle	1,000,000	1,000,000	750,000
Vehicle	1,000,000	1,000,000	750,000
Marine and Transportation	1,000,000	1,000,000	750,000
Surety	1,000,000	1,000,000	750,000
Title	500,000	500,000	250,000
All of the following kinds of insurance: property, marine and transportation, vehicle, casualty excluding vehicle, surety and disability	3,000,000	3,000,000	2,250,000
Legal Expenses	1,000,000	1,000,000	750,000
Mortgage Guarantee	1,000,000	1,000,000	750,000

New Section:

1840W
12290b

Page 6, after line 15 Insert new section to read: 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. Following a hearing, the director may require an insurer to maintain funds in excess of basic capital, basic guaranty surplus, additional surplus when first so authorized, or additional surplus following authorization for the protection of the public due to the amount, kind, or combination of kinds of insurance considered prudent. Failure of an insurer to maintain such excess funds as ordered by the director is grounds for suspension or revocation of the insurer's certificate of authority.

Renumber remaining sections accordingly.

Section 9:

Page 6, line 18 after "June 30,": Delete [1990] and Insert 1991

Section 10:

Page 6, line 28, after the first "December 31,": Delete [1989] and Insert 1990

Page 6, line 28 after the second "December 31,": Delete [1990] and Insert 1991

Page 6, line 29 after "December 31,": Delete [1991] and Insert 1992

New Section:

Page 7, after line 3 add a new section to read:

AS 21.09.080(a) is repealed and reenacted to read:

(a) In order for a domestic insurer to renew and continue its certificate of authority beyond June 30, 1991, it must possess at least the basic capital or basic guaranty surplus and additional surplus following authorization required under AS 21.09.070.

Renumber remaining sections accordingly.

Section 43:

Page 48, line 8 after "1989,": Delete [\$7,000,000] and Insert \$10,000,000

Page 48, line 9 after "1990,": Delete [\$8,000,000] and Insert \$12,500,000

Page 48, line 9 after "1991": Delete [\$9,000,000 AS OF DECEMBER 31, 1992]

Page 48, line 9 after "and": Delete: [\$10,000,000] and Insert \$15,000,000

Page 48, line 9 after the second "December 31,": Delete [1993] and Insert 1992

Page 48, line 17 before "as of": Delete [\$7,000,000] and Insert \$10,000,000

Page 48, line 17 after "1990": Delete [\$8,000,000] and Insert \$12,500,000

Page 48, line 18 after "1991": Delete [\$9,000,000 AS OF DECEMBER 31, 1992,]

Page 48, line 18 after "and": Delete [\$10,000,000] and Insert \$15,000,000

Page 48, line 19 after "31,": Delete [1993] and Insert 1992

Page 48, line 24 after "less than": Delete [\$5,000,000] and Insert \$2,500,000

Page 49, line 9 after "than": Delete [\$100,000,000] and Insert \$50,000,000

Page 49, line 20 after "less than": Delete [\$20,000,000] and Insert \$50,000,000

Page 49, line 21 after "aggregate;": Delete [IN] and Insert for insurance exchanges which maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent, of not less than \$3,000,000. In

Section 44:

Page 49, line 25 through page 50, line 14: Delete entire section

Renumber remaining sections accordingly

Section 53:

Page 55, line 13 through page 56, line 12: Delete all material

Section 67:

Page 77, line 4 after "premium": Delete [,]

Page 77, line 6 after "to pay": Delete [AN] and Insert any

Page 77, line 6 after "unpaid": Insert earned

Page 77, line 6 after "premium": Delete [FOR THE FULL POLICY TERM]

Page 77, line 7 after "insolvency": Delete [, WHETHER EARNED OR UNEARNED]

Page 77, lines 8 through 10 after "insurer;": Delete [THE RECEIVER HAS THE RIGHT TO RECOVER FROM SUCH A PERSON ANY PART OF AN UNEARNED PREMIUM THAT REPRESENTS A COMMISSION OF THE PERSON;]

Section 73:

Page 86, line 27 before "AS 21.21.020(b)": Insert: AS 21.09.080(b) & (c).

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April 10, 1989

HAND DELIVERED

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

Dear Senator Eliason:

On behalf of the American Council of Life Insurance (ACLI), I wish to bring to your attention the following concerns with regard to SB 212, "An Act Relating to Insurer Solvency . . ."

Section 4, Pages 2 and 3:

ACLI endorses reasonable regulation of the insurance industry by the State of Alaska and agrees in concept with the examination provisions now included in Alaska law; however, we believe it is unnecessary and unreasonable for the state to step up regulation of the insurance industry and to require the examined companies to pay all of the associated additional expenses. To require insurers to assume the salary and benefit costs in addition to actual expenses is simply too excessive, and we must object to such a proposal.

Section 8, Pages 5 and 6:

This section doubles the amount of capital and surplus required to do business in Alaska by June 30, 1990. For some insurers this time-line will be unduly burdensome. We believe the state should modify this provision and extend the compliance deadline to three years from the effective date of the bill.

Section 15, Page 8:

We are concerned that the statute does not specify the conditions under which a quarterly report will be required. We recommend that this section be expanded to provide such guidelines. We also believe that a fine of \$100 per day for late filing is totally unnecessary; however, if a fine is deemed appropriate, it should be at a more reasonable level.

Section 16(g), Page 14:

This section apparently is intended to be a grandfather clause, but it is inconsistent with the reinsurance system. It attempts to require all reinsurance treaties which existed prior to the adoption of the Act, and which are subsequently renewed, to comply with any new requirements provided under the law. In the area of reinsurance, it is customary for an insurer to take reserve credit under non-complying treaties. Subsection (g) would conflict with this practice. We suggest the following amendment:

(g) Subsections (a) - (f) shall apply to all cessions after the effective date of this act under reinsurance agreements which have had an inception, anniversary or renewal date not less than six months after the effective date of this statute.

Section 17, Page 14:

The definition of reinsurance is inaccurate. Reinsurance is the indemnification, not the contract stipulating the terms and conditions of indemnification. In addition, there exists a type of reinsurance called assumption or "bulk" reinsurance, which is different from indemnification reinsurance. In assumption reinsurance, which is used in the sale of companies or books of business, the assuming insurer becomes directly obligated to the policy-holder.

We do not believe that the Division of Insurance desires to prohibit assumption reinsurance and for this reason we suggest correcting this problem with the approach used in the New York statutes. Instead of defining reinsurance, New York defines "assuming insurer" as "an insurer which, under a contract of reinsurance, incurs to another insurer, called the ceding insurer, an obligation the performance of which is contingent upon the ceding insurer's incurring liability or loss under its contract or contract of insurance, guaranty or suretyship made with third persons." It also defines a ceding insurer as "the insurer to which an assuming insurer is obligated."

The remaining sections are drawn essentially from the provision of the NAIC Model Insurers Supervision, Rehabilitation and Liquidation Act, "Model Act," which the ACLI supports. There are some differences, however, that should be addressed.

Section 57, Page 61:

Proposed subsection (h) appears to constitute an inappropriate effort by the Division to combine NAIC guaranty

association language with rehabilitation and liquidation language. We point out that life guaranty association legislation has been introduced and is now pending before your committee and recommend that provisions such as this one should be covered by that legislation rather than SB 212.

Sections 67, Pages 77 and 78:

This section would adopt verbatim the language contained in Section 32 of the Model Act. Section 32 has never been coordinated with the standard reinsurance law provision prohibiting any diminution of reinsurance proceeds because of the ceding company's insolvency.

The ACLI's Reinsurance Subcommittee has drafted language which we believe would solve any potential conflict and benefit all parties concerned.

Section 32. Liability Under Reinsurance Agreements.

Amounts owed under a reinsurance agreement to an insurer subject to delinquency proceedings are payable by the assuming insurers on the basis of the claims allowed against the ceding insurer in the delinquency proceedings under the contract or contracts reinsured without diminution because of the insolvency of of the ceding insurer. These amounts must be paid directly to the ceding insurer or to its domiciliary liquidator or receiver except:

(a) where the contract specifically provides another payee of these amounts in the event of the insolvency of the ceding insurer; or

(b) where the assuming insurer has assumed the policy obligations of the ceding insurer as direct obligations of the assuming insurer to the payees under such policies and in substitution for the obligations of the ceding insurer to such payees.

Section 68, Page 78:

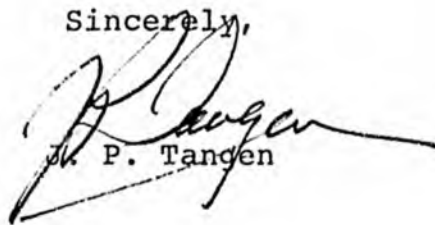
Subsection (b) should be redrafted to mirror Section 37.A of the Model Act.

37.A. The claim of the third party which is contingent only on his first obtaining judgment against the insured shall be considered and allowed as if there were no such contingency.

The Honorable Dick Eliason, Chairman
April 10, 1989
Page 4

We look forward to working with the Committee on this proposed legislation and would appreciate being notified when consideration of this measure is to be scheduled.

Sincerely,



J. P. Tangen

JPT:lyn

0331INS.DOC
April 10, 1989

cc: Julie Spiezio
American Council of Life Insurance

CSSB 212 (L&C)
AN ACT RELATING TO INSURANCE

Sectional Analysis by the
Department of Commerce and Economic Development,
Division of Insurance

OVERVIEW

The business of insurance is a dynamic, constantly changing business. The business of insurance is interstate commerce, however, unlike other forms of interstate commerce, it is regulated by the individual states. The most important concern of the individual states is that the consumer, both individual and business, be protected from an insolvency or impairment of an insurer. The concern with solvency is critical because insurance is an intangible product. It is concerned with whether the insurance company will be able to meet its obligations.

The statutes in the Alaska Insurance Code that provide this public protection mechanism were adopted in 1966 and are basically unchanged since that time. Events have occurred in this state and others which highlight the need to update, to upgrade and to clarify those laws. SB 212 is intended to accomplish that aim. The proposed changes have been substantially developed and adopted by the National Association of Insurance Commissioners.

In the Governor's transmittal letter for SB 212, six main points were listed. These were:

1. The minimum amount of capital and surplus required of an insurer wishing to do business has been increased. Capital and surplus provide the minimum amount of capitalization required to be an insurance company. This appears in several places throughout the bill and applies to admitted as well as non-admitted insurers. Minimum capital and surplus provides a tangible minimum floor on which to base solvency. When that floor is too low, it is considerably more difficult to detect problems in time to avoid loss to the public.
2. Reserving and reinsurance manipulations are a serious concern. The proposed changes strengthen our ability to determine whether adequate reinsurance or some other financial arrangement exists.
3. The investment chapter has been modernized to assure that the insurer's capital is not placed in weak or fraudulent investments.
4. Reporting requirements are strengthened. Quarterly reports and electronic media reporting is enabled. The examination expense recovery provisions have been clarified, which will make it possible to examine more companies and more often.

5. Some insurers and licensee have used civil lawsuits as a means to deter insurance regulators from carrying out their duties. The bill extends immunity for civil liability to division of insurance personnel for carrying out their duties.
6. During a recent insurer insolvency, Alaska's delinquency proceeding statutes proved inadequate. This has been remedied in SB 212.

SB 212 is very lengthy and in some areas it is complex. It is very important that our regulatory mechanism be kept as up to date as possible. SB 212 does that.

DIRECTOR OF INSURANCE. (Sections 1-7)

These sections 1 pertain primarily to the director's ability to examine insurers and surplus lines brokers. The director may contract with independent examiners and may order the insurer or surplus lines broker to make direct payment to the contract examiner for the cost of examination. Formerly licensed insurers and surplus lines brokers may also be examined.

Participation is allowed by Alaska examiners in NAIC association examination of insurers that conduct the business of insurance in Alaska and other states. Civil immunity is provided to division personnel, agents of the division, regulators of other states, and NAIC staff in regard to the publication of and documentation of reports and in the exchange of regulatory information.

Section 1. AS 21.06.120(a). Examination of Insurers
Page 1, lines 12-22.

This section clarifies the director's ability to examine formerly licensed insurers and surplus lines brokers. Insurance contracts issued while the person was licensed many times continue to be in force after the person's license has terminated.

Section 2. AS 21.06.120. Examination of Insurers
Page 1, lines 23-29.

These new subsections specifically allow the division to participate along with insurance regulators from other states in the examination of an insurer located outside of Alaska. The director is also permitted to utilize contract examiners. Both of these functions have been assumed to exist under current statute but the clarification will avoid conflict with a differing opinion.

Section 3. AS 21.06.140(b). Conduct of Examination
Page 2, lines 1-9.

This section clarifies the director's ability to require that photocopies of documents requested during an examination be produced.

Section 4. AS 21.06.150(e). Examination Reports
Page 2, lines 10-16.

Changes in this section are primarily editorial in nature and provide that the director may withhold from public inspection any materials gathered as part of an examination if necessary for the protection of any person from unwarranted injury or if it is in the public's best interest.

Section 5. AS 21.06.160. Examination Expense
Page 2, line 17 to page 3 line 19.

Changes in this section make it clear that insurers are required to bear all costs of examinations and that the director can order an insurer to pay a contract examiner directly for its examination charges.

Section 6. AS 21.06.165. Immunity for Director and Others
Page 3, line 20 to page 4, line 2.

This is a new subsection that provides civil immunity for all division staff and insurance regulators in other states in regards to information and reports which are shared. However, immunity is not provided if there is reckless, willful, or intentional misconduct. This new section follows a National Association of Insurance Commissioners Model Immunity Act.

Section 7. AS 21.06.250. Fees and Licenses
Page 4, lines 3-12.

This change is editorial in nature. It is intended to avoid conflict with AS 21.06.160 which has been modified in Section 5.

AUTHORIZATION OF INSURERS. (Sections 8-19)

The format for insurer's financial statements is established to conform with the format adopted by the National Association of Insurance Commissioners (NAIC). The director may require that an insurer, in addition to the required annual financial reporting, file quarterly financial statements.

Foreign and alien admitted insurers are required to maintain the same financial requirements (capital and surplus) as Alaska domestic insurers. Minimum financial requirements (capital and surplus) for Alaska incorporated insurers are established if they wish to assume reinsurance (\$10,000,000 at 12/31/90, \$15,000,000 at 12/31/91, and \$20,000,000 at 12/31/92). Domestic property or casualty insurers are prohibited from issuing life insurance or annuity contracts.

Section 8. AS 21.09.020(3). Exception, Certificate of Authority Requirement
Page 4. lines 13-28.

This change is editorial in nature. It is to provide the correct cross reference, AS 21.34.

Section 9. AS 21.09.060. Combinations of Insuring Power in One Insurer
Page 4, line 29 to page 5, line 14.

A life and annuity insurer is barred from transacting a property or casualty business. The changes in this section clarify the reverse situation, that a property or casualty insurer is precluded from transacting life insurance or from issuing annuities.

Section 10. AS 21.09.070(a). Capital Funds Required of Foreign Insurers and New Domestic Insurers
Page 5, line 15 to page 7, line 5.

The amendments to this section are intended to provide for more stringent financial criteria for an insurer to become and remain licensed. The additional surplus required to be maintained when first licensed is required to be maintained beyond initial licensure. Under existing law, the additional surplus could be siphoned off the day after the original certificate of authority was issued. The minimum amounts of capital and surplus have been increased.

Section 11. AS 21.09.070(b).
Page 7, lines 6-16.

This section allows the director to issue an order following a hearing, requiring an insurer to maintain funds required in AS 21.09.070(a) (see Section 10). Failure to maintain the ordered funds would be grounds for suspension or revocation of the certificate of authority.

Section 12. AS 21.09.070 (c).

Page 7, lines 17-21.

The repeal and reenactment of this section requires foreign or alien admitted insurers to maintain the currently required capital and surplus amounts. Under existing law, a foreign or alien admitted insurer need only maintain the amount required when first licensed even if that insurer was first licensed 25 years ago when the amounts required were substantially lower. Alaska domestic insurers have been required to meet the higher standards as adopted over the years. So, in effect, this amendment provides for equitable treatment both domestic and foreign or alien insurers.

Section 13. AS 21.09.070(f)

Page 6, line 22 to page 7, line 4.

This is a new section that establishes that a domestic insurer must possess policyholder surplus in adequate amounts in order to assume reinsurance. Policyholder surplus required is \$10,000,000 at 12/31/90, \$15,000,000 at 12/31/91 and \$20,000,000 at 12/31/92. This requirement does not apply to intracompany pooling arrangements between affiliated insurers. A stronger financial position is required for a domestic insurer to get into the reinsurance business.

Section 14. AS 21.09.080 (a).

Page 8 lines 5-9.

The repeal and reenactment of this section requires domestic insurers to maintain the currently required capital and surplus amounts.

Section 15. AS 21.09.110(3). Application for Certificate of Authority

Page 7, lines 10-15.

This section is amended to include the requirement that quarterly financial statements as required by the director be attested to by at least two officers of the insurer or certified by the regulatory official of the insurer's state of domicile.

Section 16. AS 21.09.140(a). Mandatory Revocation, Suspension of Certificate

Page 8, lines 16-25.

Amendment to this section is necessary due to the change in AS 21.09.070(c) (see Section 12) requiring foreign insurers to maintain the current levels of policyholder surplus. Also, the more correct terms of "impaired" and "insolvent" have been substituted for "deficiency of assets". This section