

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672
6400 SENATE LABOR & COMMERCE

804

adopted

PROPOSED AMENDMENT TO SB 259(L&C)

AMEND SECTION 21.79.070 by adding a new subsection (f) as follows:

"(f) (1) The total of all assessments upon a member insurer for the life and annuity account and for each subaccount thereunder shall not in any one calendar year exceed two percent and for the health account shall not in any one calendar year exceed two percent of such insurer's average premiums received in this state on the policies and contracts covered by the account during the three calendar years preceding the year in which the insurer became an impaired or insolvent insurer. If the maximum assessment, together with the other assets of the Association in any account, does not provide in any one year in either account an amount sufficient to carry out the responsibilities of the Association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

"(2) The board may provide in the plan of operation a method of allocating funds among claims, whether relating to one or more impaired or insolvent insurers, when the maximum assessment will be insufficient to cover anticipated claims.

"(3) If a one percent assessment for any subaccount of the life and annuity account in any one year does not provide an amount sufficient to carry out the responsibilities of the Association, then pursuant to subsection (d), the board shall assess all subaccounts of the life and annuity account for the necessary additional amount, subject to the maximum stated in subsection (f)(1)."

adopted

PROPOSED AMENDMENT TO SB 259(L&C)

AMEND SECTION 21.79.040(a) to read:

Page 5, Line 27,

"(2) the life insurance and annuity account which includes the following subaccounts:

- (a) Life Insurance Account
- (b) Annuity Account
- (c) Unallocated Annuity Account which shall include contracts qualified under Section 403(b) of the United States Internal Revenue Code."

not adopted

PROPOSED AMENDMENT TO SB 259 (L&C)

ADD A NEW SECTION 21.79.110 to read as follows:

"Sec. 21.79.110. Credits for Assessments Paid (Tax Offsets) A member insurer may offset against its premium tax liability to this state an assessment described in Section 21.79.070(2) to the extent of ten percent of the amount of such assessment for each of the ten calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its premium tax liability for the year it ceases doing business."

and renumber the subsequent sections accordingly.

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

SECTION 1

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

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

SECTION 2

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

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

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

Enforcement mechanisms for this section already exist in current statute.

SECTION 3

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

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

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

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

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

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

This section outlines what ALDIGA does and does not cover.

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

This subsection lists persons covered by ALDIGA.

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

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

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

This subsection lists items not covered by ALDIGA.

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

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

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

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

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

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

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

Subsection (d)

(Page 4, Lines 20 to 25.)

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

Sec. 21.79.025 Liability Limits

(Page 4, Line 26 to Page 5, Line 13.)

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

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

Sec. 21.79.030 Construction

(Page 5, Lines 14 to 15.)

This section provides for liberal construction.

Sec. 21.79.040 Creation of Association

(Page 5, Line 16 to Page 6, Line 4.)

Subsection (a)

(Page 5, Lines 16 to 28.)

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

Subsection (b)

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

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

Sec. 21.79.050 Board of Governors

(Page 6, Lines 5 to 19.)

Subsection (a)

(Page 6, Lines 5 to 12.)

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

Subsection (b)

(Page 6, Lines 13 to 15.)

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

Subsection (c)

(Page 6, Lines 16 to 19.)

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

Sec. 21.79.060 Powers and Duties of the Association

(Page 6, Line 20 to Page 14, Line 1.)

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

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

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

Subsection (a)

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

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

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

Subsection (b)

(Page 7, Lines 2 to 14.)

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

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

Subsection (c)

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

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

Subsection (d)

(Page 8, Lines 14 to 26.)

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

Subsection (e)

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

Subsection (e)(1)

(Page 8, Line 27 to Page 9, Line 12.)

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

Subsection (e)(2)

(Page 9, Lines 13 to 15.)

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

Subsection (e)(3)

(Page 9, Lines 16 to 26.)

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

Subsection (f)

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

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

Subsection (g)

(Page 10, Lines 8 to 22.)

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

Subsection (h)

(Page 10, Lines 23 to 28.)

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

Subsection (i)

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

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

Subsection (j)

(Page 11, Lines 4 to 7.)

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

Subsection (k)

(Page 11, Lines 9 to 14.)

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

Subsection (l)

(Page 11, Lines 15 to 19.)

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

Subsection (m)

(Page 11, Lines 20 to 23.)

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

Subsection (n)

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

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

Subsection (o)

(Page 12, Lines 6 to 11.)

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

Subsection (p)

(Page 12, Lines 12 to 15.)

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

Subsection (q)

(Page 12, Lines 16 to 19.)

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

Subsection (r)

(Page 12 Lines 20 to 25.)

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

Subsection (s)

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

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

Subsection (t)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subsection (b)

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

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

Subsection (c)

(Page 18, Lines 4 to 6.)

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

Subsection (d)

(Page 18, Lines 7 to 12.)

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

Subsection (e)

(Page 18, Lines 13 to 15.)

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

Subsection (f)

(Page 18, Lines 16 to 23.)

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

Subsection (g)

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

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

Subsection (h)

(Page 19, Lines 9 to 10.)

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

Subsection (l)

(Page 19, Lines 11 to 17.)

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

Sec. 21.79.110 Miscellaneous Provisions

(Page 19, Line 18 to Page 21, Line 26.)

Subsection (a)

(Page 19, Lines 18 to 21.)

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

Subsection (b)

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

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

Subsection (c)

(Page 20, Lines 2 to 17.)

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

Subsection (d)

(Page 20, Lines 18 to 29.)

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

Subsection (e)

(Page 21, Lines 1 to 26.)

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

Sec. 21.79.120 Examination of the Association, Annual Report

(Page 21, Line 27 to Page 22, Line 4.)

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

Sec. 21.79.130 Tax Exemptions

(Page 22, Lines 5 to 7.)

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

Sec. 21.79.140 Immunity

(Page 22, Lines 8 to 11.)

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

Sec. 21.79.150 Stay of Proceeding, Reopening Default Judgements

(Page 22, Lines 12 to 16.)

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

Sec. 21.79.900 Definitions

(Page 22, Line 17 to Page 24, Line 2.)

Sec. 21.79.990 Title

(Page 24, Lines 3 to 4.)

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

SECTION 4

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

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

SECTION 5

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

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

SECTION 6

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

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

SECTION 7

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

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

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

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

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

SECTION 8

Sec. 21.80.070(a)

(Page 27, Line 26 to Page 28, Line 9.)

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

SECTION 9

Sec. 21.80.080(b)

(Page 28, Line 10 to Page 29, Line 3.)

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

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

SECTION 10

Sec. 21.80.120 Examination of Association

(Page 29, Lines 4 to 9.)

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

SECTION 11

Sec. 21.80.140 Recognition of Assessments in Rates

(Page 29, Lines 10 to 24.)

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

SECTION 12

Sec. 21.90.900(24)-(25)

(Page 29, Line 25 to Page 30, Line 5.)

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

SECTION 13

Repealed

(Page 30, Lines 6 to 7.)

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

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

SECTION 14

Rule 62(a) Rules of Civil Procedure

(Page 30, Lines 8 to 11.)

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

SECTION 15

Rule 24(a) Rules of Civil Procedure

(Page 30, Lines 12 to 15.)

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

SECTION 16

Initial Organization of Association

(Page 30, Lines 16 to 24.)

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

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

SECTION 17

Effective Date
(Page 30, Line 25.)

This proposal is effective January 1, 1991.

**CSSB 259 (L&C) Ford 3/16/90
Technical Ammendments**

3/19/90

On Page 9, Line 13.

Change word "insurer" to read "insured"

This is a typographical error that has not been noted in several drafts.

On Page 30, Line 6.

Remove the reference "AS 21.80.060(b)(6)"

This was an oversight with the latest draft committee substitute. The section should not be repealed since the guaranty fund will remain a post insolvency plan.

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

STEVE COWPER, GOVERNOR

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May 9, 1989

Honorable Ted Stevens
Alaska State Senate
P.O. Box V
Juneau, AK 99811

Dear Senator Stevens:

Re: Group Health Insurance Defaults

Thank you for your letter of April 18, 1989 and the enclosed correspondence from Lois J. Covlasky of Wasilla. Enclosed is a copy of my letter to her based upon the records of this division.

Enclosed please find a copy of the legislation which this division has proposed in order to create a guaranty fund to protect Alaskans from health insurer insolvencies. I have been disappointed that insurance companies have opposed this legislation.

I wish to call to your attention a serious issue raised by Ms. Covlasky. She has asked if you could come up with a law which would require that claims be paid before anything else is paid in the case of insurer insolvency. I had assumed that the purpose of a receivership of an insolvent or impaired insurer would be to provide just such claim payments on a priority basis. Unfortunately, the Federal Priority statute has created certain unintended problems. Not only are unpaid taxes collected first by the Internal Revenue Service, but the federal government has priority for any current or future claims that it may have from the proceeds and assets of the estate of the insurer. I am sure that Congress never intended that citizens suffer unpaid claims because the federal government is claiming priority. Certainly, the federal government would be less severely impacted than hundreds and thousands of individual citizens who have relied upon insurance for their protection.

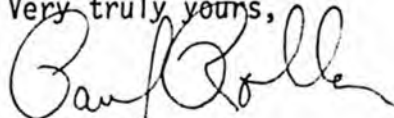
The National Association of Insurance Commissioners is seeking to work with the federal government to cure this problem. I would solicit your assistance and that of the entire Alaska Congressional Delegation in these matters.

May 9, 1989

Alaska is one of ten states which does not have a life/health guaranty fund. Our legislation is intended to remedy this situation. Presently, the legislation is in the Senate Labor and Commerce Committee whose members are Senator Eliason, Senator Rodey, Senator Faiks, Senator Kerttula and Senator Coghill.

I look forward to your support of a guaranty fund for life/health insurance here in Alaska as well as making sure that Alaskan's claims get paid first.

Very truly yours,



Paul A. Roller
Director

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Enclosure

cc: Senator Dick Eliason
Senator Pat Rodey
Senator Jan Faiks
Senator Jay Kerttula
Senator Jack Coghill

STATE OF ALASKA

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

DIVISION OF INSURANCE

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March 12, 1990

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

Dear Senator Eliason:

Re: SB 259, Insurance Guaranty Funds

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

Substantive changes to the bill include:

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

Honorable Richard I. Eliason

-2-

March 12, 1990

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

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

Sincerely,

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

David Walsh
Director

DW/lw/mst0067Q
031290a
Enclosure

Proposed Amendments to SB 259: Insurance Guaranty Funds

New Section

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

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

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

Section 2

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

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

(b) There shall be two assessments as follows:

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

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

(c) (1) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or nonpro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A nonpro rata assessment shall not exceed \$250.00 per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or by any other standard deemed by the board as being fair and reasonable under the circumstances.

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

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

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

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

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

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

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

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

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

Section 3:

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

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

Section 4:

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

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

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

Section 6:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 7:

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

Section 9:

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

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

Section 11:

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

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

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

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

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

Page 30, line 3, after "policy": Insert A rating organization may make a provision in its filing of rates to recover an assessment under this chapter for its member and subscriber insurers. The assessment charge is not considered to be premium and is not subject to premium tax under AS 21.09.21.

Section 16:

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

Section 17:

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

**DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT
DIVISION OF INSURANCE**

Senate Bill 259 - Sectional Analysis

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

SECTION 1

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

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

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

Enforcement mechanisms for this section already exist in current statute.

SECTION 2

Sec. 21.79 Alaska Life and Disability Insurance Guaranty Association
(Page 1, Line 5 to Page 24, Line 11.)

This Section creates the Alaska Life and Disability Insurance Guaranty Association (ALDIGA) which will address the problem of providing funds for the payment of claims when an insurance company becomes insolvent. The proposal creates a funding mechanism to guarantee life insurance, disability insurance and annuity writings of admitted insurers. These kinds of insurance are not presently covered by any form of protection. The proposal is based on a model drafted by the National Association of Insurance Commissioners but does depart from that model on some issues.

Senate Bill 259
Sectional Analysis

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

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

Sec. 21.79.020 Scope
(Page 2, Line 5 to Page 4, Line 16.)

This section outlines what ALDIGA does and does not cover.

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

This subsection lists persons covered by ALDIGA.

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

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

Subsection (c)
(Page 3, Line 1 to Page 4, Line 10.)

This subsection lists items not covered by ALDIGA.

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

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

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

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

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

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

Senate Bill 259
Sectional Analysis

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

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

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

Sec. 21.79.025 Liability Limits
(Page 4, Line 17 to Page 5, Line 4.)

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

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

Sec. 21.79.030 Construction
(Page 5, Lines 5 to 6.)

This section provides for liberal construction.

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

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

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

Subsection (b)
(Page 5, Lines 20 to 24.)

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

Senate Bill 259
Sectional Analysis

Sec. 21.79.050 Board of Governors
(Page 5, Line 25 to Page 6, Line 13.)

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

This subsection provides for the number and term of the members of the Board of Governors of ALDIGA to be determined in the plan of operation. To avoid problems in initially selecting the board, this subsection provides for an organizational meeting to be called by the Director of Insurance. A voting process is described. If no board members are selected within 60 days the Director may appoint the initial board.

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

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

Subsection (c)
(Page 6, Lines 13 to 16.)

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

Sec. 21.79.060 Powers and Duties of the Association
(Page 6, Line 17 to Page 14, Line 2.)

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

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

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

Subsection (a)
(Page 6, Lines 17 to 27.)

This subsection allows the ALDIGA to act to guarantee, assume or reinsure any or all policies of an impaired domestic insurer. ALDIGA would presumably do so in those situations where early action would prevent a more costly insolvency of later liquidation. Action under this subsection is not limited to resident policyholders.

Senate Bill 259
Sectional Analysis

Subsection (b)

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

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

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

Subsection (c)

(Page 7, Line 13 to Page 8, Line 11.)

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

Subsection (d)

(Page 8, Lines 12 to 23.)

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

Senate Bill 259
Sectional Analysis

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

Subsection (e)(1)
(Page 8, Line 24 to Page 9, Line 11.)

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

Subsection (e)(2)
(Page 9, Lines 12 to 14.)

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

Subsection (e)(3)
(Page 9, Lines 15 to 25.)

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

Subsection (f)
(Page 9, Line 26 to Page 10, Line 6.)

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

Subsection (g)
(Page 10, Lines 7 to 22.)

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

Subsection (h)
(Page 10, Lines 23 to 27.)

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

Senate Bill 259
Sectional Analysis

Subsection (i)

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

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

Subsection (j)

(Page 11, Lines 4 to 7.)

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

Subsection (k)

(Page 11, Lines 8 to 14.)

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

Subsection (l)

(Page 11, Lines 15 to 19.)

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

Subsection (m)

(Page 11, Lines 20 to 23.)

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

Subsection (n)

(Page 11, Line 24 to Page 12, Line 6.)

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

Senate Bill 259
Sectional Analysis

Subsection (o)

(Page 12, Lines 7 to 12.)

This subsection permits ALDIGA to seek court imposed temporary stays on the payment of cash values and policy loans. This is intended to avoid a run on the assets of the impaired or insolvent insurer.

Subsection (p)

(Page 12, Lines 13 to 16.)

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

Subsection (q)

(Page 12, Lines 17 to 20.)

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

Subsection (r)

(Page 12 Lines 21 to 27.)

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

Subsection (s)

(Page 12, Line 28 to Page 13, Line 8.)

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

Subsection (t)

(Page 13, Line 9 to Page 14, Line 2.)

This subsection allows ALDIGA to contract, sue or be sued, borrow money, employ persons, negotiate, act as a domestic life or disability insurer, take legal action to avoid payment of improper claims, to join an association of similar organizations, and perform other acts that are proper or necessary to implement this Act.

Senate Bill 259
Sectional Analysis

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

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

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

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

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

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

Subsection (c)
(Page 14, Lines 19 to 22.)

This subsection allows ALDIGA to reduce or defer payment of the assessment if such would endanger the ability of the insurer to meet its obligations. This is unlikely to occur since it is expected that this assessment will routinely be built into the rate. An insurer needing such protection is a prime candidate for insolvency.

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

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

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

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

Senate Bill 259
Sectional Analysis

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

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

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

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

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

This section requires the adoption of a plan of operation by ALDIGA to provide for the administration of ALDIGA. This plan would be subject to review and approval by the Director of Insurance. The National Association of Insurance Commissioners has adopted a model plan of operation which is available in the office of the Division of Insurance. It is anticipated that ALDIGA, upon passage of this Act would substantially adopt the provisions contained in the model plan.

Sec. 21.79.090 Powers and Duties of the Director
(Page 16, Line 20 to Page 17, Line 14.)

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

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

Subsection (b)
(Page 16, Line 24 to Page 17, Line 6.)

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

Subsection (c)
(Page 17, Lines 7 to 11.)

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

Senate Bill 259
Sectional Analysis

Subsection (d)

(Page 17, Lines 12 to 14.)

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

Sec. 21.79.100 Prevention of Insolvencies

(Page 17, Line 15 to Page 19, Line 19.)

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

Subsection (a)

(Page 17, Lines 15 to 26.)

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

Subsection (b)

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

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

Subsection (c)

(Page 18, Lines 4 to 6.)

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

Subsection (d)

(Page 18, Lines 7 to 12.)

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

Subsection (e)

(Page 18, Lines 13 to 15.)

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

Senate Bill 259
Sectional Analysis

Subsection (f)

(Page 18, Lines 16 to 21.)

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

Subsection (g)

(Page 18, Lines 22 to 24.)

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

Subsection (h)

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

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

Subsection (i)

(Page 19, Lines 11 to 12.)

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

Subsection (j)

(Page 19, Lines 13 to 19.)

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

Sec. 21.79.110 Miscellaneous Provisions

(Page 19, Line 20 to Page 21, Line 26.)

Subsection (a)

(Page 19, Lines 20 to 23.)

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

Senate Bill 259
Sectional Analysis

Subsection (b)

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

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

Subsection (c)

(Page 20, Lines 4 to 18.)

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

Subsection (d)

(Page 20, Line 19 to Page 21, Line 1.)

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

Subsection (e)

(Page 21, Lines 2 to 26.)

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

Sec. 21.79.120 Examination of the Association, Annual Report

(Page 21, Line 27 to Page 22, Line 4.)

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

Senate Bill 259
Sectional Analysis

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

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

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

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

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

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

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

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

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

SECTION 3

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

This amendment expands the existing Alaska Insurance Guaranty Association (AIGA) to include marine coverage for vessels under 100 feet in length. Presently no marine coverage is provided under AIGA.

SECTION 4

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

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

Senate Bill 259
Sectional Analysis

SECTION 5

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

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

SECTION 6

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

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

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

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

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

SECTION 7

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

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

SECTION 8

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

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

Senate Bill 259
Sectional Analysis

SECTION 9

Sec. 21.80.080(b)
(Page 28, Line 24 to Page 29, Line 17.)

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

SECTION 10

Sec. 21.80.120 Examination of Association
(Page 29, Lines 19 to 23.)

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

SECTION 11

Sec. 21.80.140 Recognition of Assessments in Rates
(Page 29, Line 24 to Page 30, Line 5.)

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

SECTION 12

Sec. 21.80.180(1)
(Page 30, Lines 6 to 8.)

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

SECTION 13

Sec. 21.90.900(24)-(25)
(Page 30, Lines 9 to 18.)

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

Senate Bill 259
Sectional Analysis

SECTION 14

Repealed

(Page 30, Lines 19 to 20.)

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

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

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

SECTION 15

Rule 62(a), Rules of Civil Procedure

(Page 30, Lines 21 to 24.)

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

SECTION 16

Sec. 21.87.340

(Page 30, Lines 25 to 26.)

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

SECTION 17

Effective Date

(Page 30, Line 27.)

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

Senate Bill 259
Sectional Analysis

CORRECTIONS

(Page 6, Line 29.)

Change the word "may" to read "shall"

(Page 9, Line 12.)

Change the word "insurers" to read "insureds"

(Page 11, Line 7.)

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

J. P. Tangen

Attorney at Law
217 2nd Street, suite 206
P. O. Box 21808
Juneau, AK 99802-1808

Telephone (907) 586-2286

Telecopier (907) 586-2317

April 26, 1990

Senator Dick Eliason
Alaska State Legislature
P. O. Box V (MS 3100)
Juneau, AK 99811

Re: SB 259

Dear Senator Eliason:

I am writing on behalf of the American Council of Life Insurance (ACLI). This is to request you to vote against the adoption of SB 259 unless it is amended to include a premium tax offset for life insurance carriers.

The premium tax offset is necessary so that life insurers can recoup the added cost of the proposed guaranty fund.

Unlike other kinds of insurers, life insurance companies cannot simply adjust the premium to recapture the added cost of a guaranty fund. This is due to the customary practice in the life insurance industry of guaranteeing that the premium will remain the same over the life of the policy.

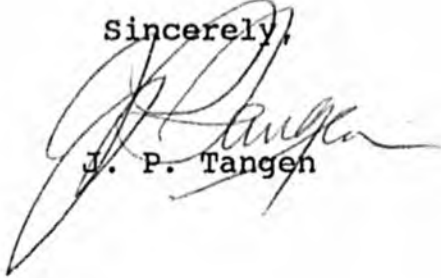
Although the ACLI supports the concept of a Guaranty Fund, and endorses every other aspect of SB 259 (Labor & Commerce), which is virtually identical with the language recommended by the National Association of Insurance Commissioners, and which has been adopted in 46 other jurisdictions, ACLI cannot support this bill without provision for a premium tax offset. It is noted that 37 of the 46 jurisdictions which have adopted guaranty fund legislation have adopted the premium tax offset language.

Senator Dick Eliason
April 26, 1990
Page -2-

I enclose an extract of a statement by Jana Lee Pruitt of the ACLI which she delivered to the Senate Labor and Commerce Committee earlier this Spring. This statement sets forth the details of the reasons for the ACLI position.

If I may answer any questions with regard to this bill, please let me know.

Sincerely,



J. P. Tangen

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

We support the enactment of life and health insurance guaranty associations in all states, the District of Columbia, and Puerto Rico. Currently, such associations exist in 45 of the 52 jurisdictions. The seven jurisdictions without guaranty associations for the life and health insurance industry are Alaska, California, Colorado, the District of Columbia, Louisiana, New Jersey, and Wyoming. Enabling legislation passed the Wyoming Legislature last week and is on the Governor's desk for signature.

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

1) Premium Tax Offset

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

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

This provision has been adopted in some form by 36 of the 45 jurisdictions which have operational life/health guaranty associations. We strongly believe it should be incorporated into the language of Senate Bill 259.

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

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

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

Senator Richard Eliason
March 23, 1990
Page -2-

HUGHES THORSNESS GANTZ POWELL & BRUNDIN
ATTORNEYS AT LAW

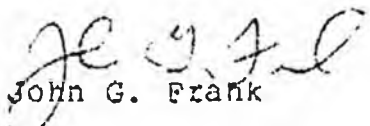
only with allocated annuities. The net result of the scheme contemplated by SB251 would be to have allocated annuities contributing to the failures associated with unallocated annuities. This would effectively place the allocated annuities in a position where they were insuring the investment risks of certain banks and other institutions. For these reasons, it would be our preference to see unallocated annuities out of the fund created for allocated annuities. This is similar to the NAIC model, a copy of which is attached.

Another issue that concerns State Farm in the Committee Substitute for SB259 is the absence of any provision for the premium tax offset. It is absolutely critical that any guaranty fund legislation allow for such a premium tax offset. Again, State Farm would refer the Committee to the NAIC model language that we have attached.

State Farm objects to the inclusion of unallocated annuities in any fund with allocated annuities and strongly supports the allowance of a premium tax offset for fund contributions. Again, I apologize for not being present before the Committee in person this afternoon. I will be back in my office on Monday and would be happy to respond to any questions that the Committee might have at that time. Thank you for your consideration.

Very truly yours,

HUGHES, THORSNESS, GANTZ,
POWELL & BRUNDIN

BY: 
John G. Frank

jet/0728q
Enclosure

Model Regulation Service - July 1986

Subsection O explicitly recognizes that prompt and efficient discharge of the Association's obligations will be greatly facilitated, especially in multistate insolvencies by acting in concert through the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) to develop and, where appropriate, carry out coordinated plans.

Section 8. Assessments

- A. For the purpose of providing the funds necessary to carry out the powers and duties of the Association, the board of directors shall assess the member insurers, separately for each account, at such time and for such amounts as the board finds necessary. Assessments shall be due not less than thirty days after prior written notice to the member insurers and shall accrue interest at [insert amount] percent per annum on and after the due date.
- B. There shall be two assessments, as follows:
- (1) Class A assessments shall be made for the purpose of meeting administrative and legal costs and other expenses and examinations conducted under the authority of Section 12E. Class A assessments may be made whether or not related to a particular impaired or insolvent insurer.
 - (2) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the Association under Section 3 with regard to an impaired or an insolvent insurer.
- C. (1) The amount of any Class A assessment shall be determined by the board and may be made on a pro rata or non-pro rata basis. If pro rata, the board may provide that it be credited against future Class B assessments. A non-pro rata assessment shall not exceed \$150 per member insurer in any one calendar year. The amount of any Class B assessment shall be allocated for assessment purposes among the accounts pursuant to an allocation formula which may be based on the premiums or reserves of the impaired or insolvent insurer or any other standard deemed by the board in its sole discretion as being fair and reasonable under the circumstances.
- * (2) Class B assessments against member insurers for each account and subaccount shall be in the proportion that the premiums received on business in this state by each assessed member insurer or policies or contracts covered by each account for the three most recent calendar years for which information is available preceding the year in which the insurer became impaired or insolvent, as the case may be, bears to such premiums received on business in this state for such calendar years by all assessed member insurers.
- (3) Assessments for funds to meet the requirements of the Association with respect to an impaired or insolvent insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under Subsection B and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.
- D. The Association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. In the event an assessment against a member insurer is abated, or deferred in whole or in part, the amount by which such assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this section.

Guaranty Funds - Life and Health

- E. The board of directors may, upon majority vote, request that the Commissioner order an examination of any member insurer which the board in good faith believes may be an impaired or insolvent insurer. Within thirty days of the receipt of such request, the Commissioner shall begin such examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by such persons as the Commissioner designates. The cost of such examination shall be paid by the Association and the examination report shall be treated as are other examination reports. In no event shall such examination report be released to the board of directors prior to its release to the public, but this shall not preclude the Commissioner from complying with Subsection A.

The Commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the Commissioner but it shall not be open to public inspection prior to the release of the examination report to the public.

- F. The board of directors may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of insurer insolvencies.
- G. The board of directors shall, at the conclusion of any insurer insolvency in which the Association was obligated to pay covered claims, prepare a report to the Commissioner containing such information as it may have in its possession bearing on the history and causes of such insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by such other associations.

* Section 18. Credits for Assessments Paid (Tax Offsets) - OPTIONAL

- A. A member insurer may offset against its (premium, franchise or income) tax liability (or liabilities) to this state an assessment described in Section 9H to the extent of twenty percent of the amount of such assessment for each of the five calendar years following the year in which such assessment was paid. In the event a member insurer should cease doing business, all uncredited assessments may be credited against its (premium, franchise, or income) tax liability (or liabilities) for the year it ceases doing business.
- B. Any sums which are acquired by refund, pursuant to Section 9F, from the Association by member insurers, and which have theretofore been offset against (premium, franchise or income) taxes as provided in Subsection A above, shall be paid by such insurers to this state in such manner as the tax authorities may require. The Association shall notify the Commissioner that such refunds have been made.

Comment: Subsection A provides an offset against future premium, franchise or income taxes of assessments, over a five-year period. The timing of the credit is dependent on the year the assessment is paid. It also allows the member insurer to select the applicable tax (premium, franchise or income) against which the credit may be applied and it permits member insurers going out of business to make use of the credit in their final year of operations.

The N.A. model insolvency guaranty bill for property and casualty insurance provides, in Section 18, that rates "of all include amounts sufficient to recover a sum equal to the amounts paid to the Association..." It is obvious that life insurance premiums, and premiums for certain forms of health insurance, cannot be charged or existing policyholders. Thus, reimbursement is virtually unattainable through existing policy premium rates and building such assessments into rates for future policyholders is not only impractical but unfair to all policyholders. The only equitable and practical method of reimbursement available to companies writing life and health insurance lies in offsets against premium or other taxes on such companies. The method suggested in this section is not only equitable to the companies involved but also reduces the impact on state revenues by the partial offset over a period of years. To the extent the recovery from the insolvent company exceeds the tax credit received, the state would be the ultimate beneficiary. Such equitable treatment of assessments for tax purposes would have additional positive effects. (1) the state legislature would have an additional incentive for providing adequate funds for insurance department personnel and administration, and (2) participation in the economic base would be shared, to some

JAMES J. DALY
2051 SEALEVEL DR. #301
KETCHIKAN, ALASKA 99901
(907) 225-4461

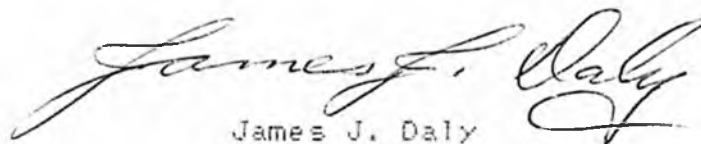
February 1, 1990

Dear Senator Eliason:

I would like to express my support for Senate Bill 259 which is currently in the Senate Labor Committee and the Senate Commerce Committee. This bill which provides a protection of people in Alaska for life, health, and annuity insurance is badly needed, particularly in the light of recent developments with First Executive Life Co.

I hope you will give this bill your full support.

Sincerely,


James J. Daly

cc: Sen. Lloyd Jones
Sen. Jim Duncan

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:

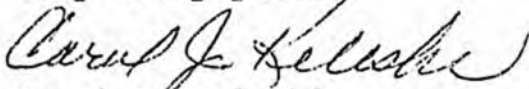
While in Seattle last month I spoke with John Wydahl, office of insurance Commissioner, State of Washington, concerning Chapter 48.32 ARCW, short title; Washington Life and Disability Insurance Guaranty Association Act. He mailed a copy of the "Act" to me.

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

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 payout very 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 Executive 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 son 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 Willey J. Lacey, 61, Pacific's tax manager until he retired four years ago.



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 5 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, 66,000 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. 813-551-1000
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 set.



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; MBA, 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 ABBOUD
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, 600,000 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. 213-912-1000
SALES: \$3 bil. PROFITS: \$197 mil.
MARKET VALUE: \$1.1 bil.

► Born 3/24/31, 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

April 17, 1989

The Honorable Dick Eliason
Chairman
Senate Labor & Commerce Committee
Pouch 5
Juneau, AK 99811

Dear Senator Eliason:

Thank you for the opportunity for me to testify before your committee last week. As promised, I enclose a copy of my testimony.

If I can provide further information, please advise.

Yours truly,

James E. Pfeifer
President

JP:klb

Encl.

cc: Senator Jack Coghill
Senator Jan Faiks
Senator Jay Kertula
Senator Pat Rodey

TESTIMONY TO
SENATE LABOR & COMMERCE COMMITTEE
APRIL 14, 1989

My name is Jim Pfeifer and I am President of Alaska National Insurance Company. Chairman Eliason asked that I testify today to present our position on SB 259 - an act relating to insurance guaranty funds.

SB 259 would establish a brand new guaranty fund for life, annuity and disability coverage and provide substantive changes to the existing guaranty fund for certain property and casualty coverages.

Except for consideration of provisions common to the property and casualty fund which are of concern to us, we will not take a position on the life, annuity and disability fund since we are not in that business.

I will be surprised if you do not receive substantial opposition from others in the insurance industry as to the pre-funding assessment provision. The recent problem with New York state's pre-funded guaranty fund is a vivid example in support of historical arguments that have been made against pre-funding. I do not have all the details but I believe that the New York Guaranty fund accumulated over 150 million dollars of which 87 million was confiscated by the legislature to solve budget problems. Subsequently, further assessments were made against the industry to restore the 87 million to the fund. Law suits have been filed and are in progress.

The Alaskan insurance-buying public may also resist this bill, particularly if the assessment rates and fund caps are not set at sensible levels. After all, it is our Alaskan insureds that this bill would tax to establish and maintain this fund.

One of the arguments advanced to support pre-funding is that insurance companies that ultimately go broke will at least have contributed something to the fund. But, again, keep in mind that it is not these companies but the insurance buying public that is asked to pay up for these funds.

Alaska National is opposed to the pre-funding provision contained in SB 259. However, we are not opposed to pre-funding per se and we would reconsider our position if certain concerns which we have are resolved. Our principal recommendations are outlined below but first I would like to be very candid with this Committee about why Alaska National Insurance Company would support sensible pre-funded Guaranty Association legislation. There are two reasons.

First, under Alaska's existing post-assessment fund statute, we and others in our industry are the guaranty fund's bankers. We pay guaranty fund assessments. These assessments then go into the rate making base. Subsequently, insurance rates are increased for the assessments and, in theory, we recover our payouts out of future premiums. I say "in theory," because, in spite of what many of our natural adversaries maintain, we live in a competitive marketplace, and that competitive marketplace may not allow us to charge the increased premiums to recover past assessments. This particularly would be the case when we compete with new entrants in the marketplace who were not subject to prior years' assessments.

Second, when an insurance company fails and is placed in rehabilitation (as is presently the situation with Pacific Marine Insurance Company), we incur a contingent liability for future guaranty fund assessments which is not quantifiable. Under existing accounting and tax rules, we cannot reserve for these contingent liabilities, but there they sit like huge rain clouds overhead threatening our policyholders' surplus.

A pre-funded guaranty association would nicely solve both of these problems for Alaska National.

Now, I'd like to submit our recommendations for amending this bill:

1. Set a reasonable limit on the size of the fund.
2. Reduce the assessment rates.
3. Require the Director of Insurance to have a court order to assume emergency powers.
4. Establish investment guidelines for the fund.
5. Clearly provide for subrogation rights of the Guaranty Association.

FUND LIMIT

The bill before you today provides for a limit in the fund which is astronomical. The limit is defined as "the total of the net direct written premiums for the previous year." Based upon 1987 premiums, such a limit would total over 600 million dollars. Allowing this fund to potentially build up to even 10% of that amount is unwise, unnecessary and unduly tempting.

Since the late 1970's, Guaranty Fund assessments in Alaska totalled 11,848,842 dollars. So, you can see that the proposed limit in this bill is a little over-kill.

As I understand it, New York established its fund at 150,000,000 dollars. However, total property/casualty premiums for 1987 for New York were over 17 billion dollars. Thus, this amount represents less than 9/10th's of 1% of the written premium. If you applied the same percentage to Alaska's premium, the comparable amount would be \$5,361,000.

I suggest that the following schedule would be more reasonable as well as adequate except for an insurer insolvency of a catastrophic nature.

Workers' Compensation - 4% of prior year written premium
(\$6,000,000 based on 1987 premiums)

All Other Lines - 2% of prior year written premium
(\$9,000,000 based on 1987 premiums)

ASSESSMENT RATES

I also believe that the annual assessment rates are excessive. Consistent with the limits suggested above, I suggest that the assessment rates be set at 1% with a provision to increase the rate by an additional 1% if the fund is in a deficit position.

It should be pointed out that the fund, which currently is subject to a post-assessment limit of 2% has never been in a deficit position. Much to-do has been made about the Guaranty Association's lack of capacity to handle large liquidations - with specific reference being made to the potential impact of the Pacific Marine companies. To my knowledge, no one has bothered to ask the Guaranty Association about its own capacity.

While obtaining precise numbers on the deficit of the Pacific Marine group is elusive, some conjecture has surfaced that the potential shortfall which would impact the Guaranty Association could be in the 10-15 million dollar range. While I am not speaking on behalf of the Guaranty Association, it is my personal opinion that such a deficit could be handled under the current post-assessment plan.

First of all, the cash requirement would be significantly less in any given year as claims, particularly workers' compensation, are paid out over time. Secondly, the Guaranty Association has the ability to borrow funds to meet cash needs. In fact, borrowings have taken place in the past to cover temporary shortfalls pending receipt of assessments.

POWERS OF DIRECTOR OF INSURANCE

Another provision of this bill, which I believe is inappropriate and unnecessary, is Section AS 21.80.080(b)(4). This section states that the Director may declare a state of emergency and assume the powers of the Board of Directors of the Guaranty Association.

I believe this language developed under the notion perceived by Director Roller that the Board of Directors was not responsive to his interpretation of their responsibilities relating to the Pacific Marine debacle. I can say, without qualification, that as a member of the Board of Directors, I view the responsibilities most seriously and believe the Board acted responsibly and correctly in all of its actions. Had this provision been in effect at that time, Director Roller could have set a "state of emergency" action in motion with particularly disastrous results.

It is interesting to note that this provision has not been included in the life guaranty section of the bill.

INVESTMENT GUIDELINES

The bill does not specify any guidelines regarding the investment of funds which would accumulate to a sizeable sum over time. Currently, any excess funds are invested in very short term securities such as bank certificates of deposit.

While it would still be appropriate to keep any investments relatively short term, it may be appropriate to invest for a time period up to three years to maximize yields. As to the type of investments, the bill could reference AS 21.21 which codifies the authorized investments for insurance companies. Certain exclusions would be needed such as real estate and, perhaps, equity investments.

SUBROGATION RIGHTS

In order to prevent an insolvent insurer from impairing the Guaranty Association's subrogation rights (as provided under AS 21.80.90) by continuing to pay uncovered claims after covered claims have been assumed by the Association, I propose the following amendment:

"The Guaranty Association's obligation to pay the covered claims of an insolvent insurer shall begin when the insurer is declared insolvent by a court of competent jurisdiction and ceases to pay all claims pursuant to preparing and adopting a plan of liquidation or having entered into a plan of liquidation."

OTHER ITEMS

Alaska National has no objection to extending Guaranty Association protection to marine insurance. The original draft bill excluded vessels over 60 gross tons. The bill as introduced dropped that language and now includes vessels at least 100 feet long. In conversations with Director Roller I had thought the intent was to protect the small boat owner. This latest change seems to do the reverse. Actually, it is not clear to me why any size limitation should exist.

The primary problem here is jurisdiction and assessment. For example, if a Seattle-based insured employs Seattle and Alaskan employees to operate in Alaskan waters, would Alaska have jurisdiction to assess and on what basis. Perhaps coverage should be limited to those instances where it can be demonstrated that the Alaskan admitted insurance carrier actually reported premiums and paid premium taxes to the State of Alaska. Otherwise, coverage would be denied.

We have no objection to assessments on a quarterly basis, but the bill should also provide that the Guaranty Association shall obtain annual premium data from all admitted companies and reconcile the annual numbers to the four quarterly reports submitted by the companies for that year.

We agree that the amount charged for the assessment should be shown as a special item separate from the premium. As such, it would appear to be unnecessary to include any provision in the premium rates for this item (Section 21.80.140). We do believe, however, that the assessment charge should not be subject to any premium tax.

The bill indicates a due date for payment of 30 days after the end of the quarter for the property/casualty fund. However, payment for the life fund assessments has a due date of 60 days after the end of the quarter. I suggest that the payment terms be the same for both funds and that 60 days is the more reasonable choice.

Thank you for the opportunity to testify here today. I will be happy to try to answer any questions.

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April 14, 1989

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D ELIZABETH CUADRA**
ROBERT P BLASCO
MARY A NORDALE
THOMAS J SLAGLE

ADMITTED IN WASHINGTON, D.C.
AND ALASKA

ALL OTHERS ADMITTED
IN ALASKA

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

RE: Senate Bill 259 - Insurance Guaranty Fund

Dear Senator Eliason:

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

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

April 14, 1989

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

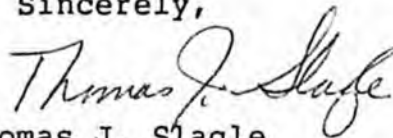
The AIA is opposed to the prefunded plan. The assessments would be passed directly on to the consuming public. New York is the only other state with a pre-assessment plan and it requires a \$150 million minimum assessment. The New York Legislature "borrowed" \$87 million from the pre-assessed guaranty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

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

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

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

Sincerely,



Thomas J. Slagle
Alaska Counsel

American Insurance Association

cc: Senate Labor & Commerce Committee Members

J. P. TANGEN

ATTORNEY AT LAW

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April 11, 1989

HAND DELIVERED

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

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

Dear Senator Eliason:

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

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

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

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

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

Sincerely,


J. P. Tangen

Enclosure

c:: ACLI

0411acli

J. P. TANGEN

ATTORNEY AT LAW

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February 16, 1989

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

Re: Proposed Life and Disability Insurance Guaranty
Association

Dear Paul:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Paul Roller, Director
February 16, 1989
Page 6

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

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

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

Very truly yours,

J. P. Tangen

JPT:lyn
2-2-1

John L. George And Associates
9515 Moraine Way
Juneau, Alaska 99801
(907) 789-0172

April 13, 1989

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

RE: SB 259 - Insurance Guaranty Funds

Dear Senator Ellason:

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

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

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

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

The Honorable Dick Ellason -2-

April 12, 1989

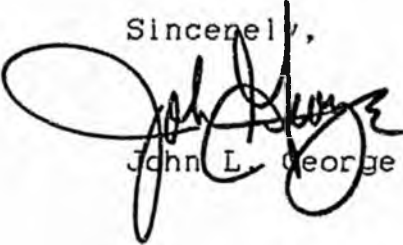
policyholders be pleased with the rate increase to pre-fund the guaranty.

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

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

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

Sincerely,



John L. George

S B

268

SENATE COMMITTEE REPORT

FURTHER FIN

4/14/89

DATE TURNED INTO OFFICE

4/20/89

Mr. President:

LABOR & COMMERCE

Committee considered

SB 268

municipal financing and municipal joint insurance arrangements; the Alaska Municipal Bond Bank Authority; efd

and recommended

- replace with _____ CS _____) same title
- or adopt _____ CS SB 268 (L+C)) new title
- attached amendment(s) and technical title change (HB only)
- _____ letter of intent adopted

do pass

do not pass

no recommendation

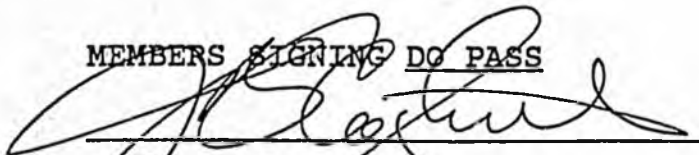
individual recommendations

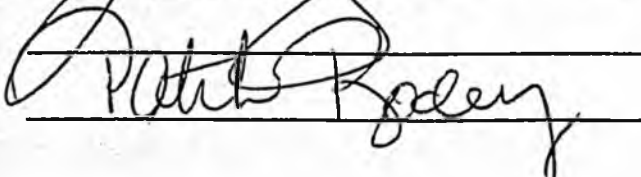
further referral to _____

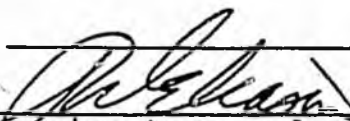
^{Commerce + Econ Dev 4/11/89}
FISCAL NOTE(S) zero fiscal impact appropriation no FN
 new updated previous
 same as previous fiscal note(s) published _____

MEMBERS SIGNING DO PASS

OTHER RECOMMENDATIONS





 Do Pass

 Chairman signature and recommendation

Committee Backup attached

Original sponsors: Frank, Sturgulewski,
Adams, et al.

BY THE LABOR AND
COMMERCE COMMITTEE

1 IN THE SENATE

2 CS FOR SENATE BILL NO. 268 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 A BILL *slight change in title*

6 For an Act entitled: "An Act relating to joint insurance arrangements,
7 municipal financing, and the Alaska Municipal Bond
8 Bank Authority; and providing for an effective date."

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

10 * Section 1. FINDING AND PURPOSE. (a) The legislature finds that
11 dramatic increases in the cost of liability and other insurance coverage
12 for municipalities has adversely affected municipal budgets, and that even
13 at increased premiums, insurance coverage is often not available to cover
14 important liability exposure.

15 (b) The purpose of this Act is to allow municipalities and municipal
16 joint insurance arrangements organized under AS 21.76 to utilize debt
17 financing to establish reserves to self-insure against liability, when the
18 cost of excess insurance or reinsurance is too high.

19 * Sec. 2. AS 21.76.020 is repealed and reenacted to read:

20 Sec. 21.76.020. REGULATION BY DIVISION OF INSURANCE AND ANNUAL
21 REPORT. (a) A joint insurance arrangement may not be considered
22 insurance for the purpose of any other law of the state and is not
23 subject to regulations adopted by the director.

24 (b) By October 1 of each year the administrator of a joint
25 insurance arrangement shall prepare and deliver to the Legislative
26 Budget and Audit Committee a report showing the true and correct
27 financial condition of the joint insurance arrangement. The report
28 must

29 (1) be attested to by the administrator and the board of

1 directors;

2 (2) include an analysis certified by a member of the Ameri-
3 can Academy of Actuaries, of the sufficiency of the loss reserves; and

4 (3) be certified by a certified public accountant.

5 * Sec. 3. AS 21.76.080(b) is amended to read:

6 (b) An expenditure may be made from a joint insurance fund only
7 to

8 (1) pay claims, losses, or benefits, including interest on
9 them, and the administrative and adjustment expenses incurred in
10 connection with them, involving the types of protection for which the
11 fund provides coverage as specified in the joint insurance agreement;

12 (2) pay contractual obligations of a joint insurance fund
13 established by a municipal joint insurance arrangement to the Alaska
14 Municipal Bond Bank Authority or other lender; and

15 (3) purchase insurance coverage for members of a municipal
16 joint insurance arrangement on a group basis.

17 * Sec. 4. AS 21.76 is amended by adding a new section to read:

18 Sec. 21.76.120. DEBT FINANCING. (a) A municipality or a munic-
19 ipal joint insurance arrangement may authorize the issuance of nego-
20 tiable or nonnegotiable notes or certificates of participation to
21 establish reserves and to self-insure against liability not covered by
22 excess insurance or reinsurance. A note or certificate issued under
23 this subsection by a municipal joint insurance arrangement shall be
24 secured and payable from participating members of the municipal joint
25 insurance arrangement as provided in the cooperative agreement.

26 (b) A municipality that has entered into a municipal joint
27 insurance arrangement may enter into contracts and agreements concern-
28 ing debt issued under (a) of this section and provide for matters that
29 affect the security of the debt. Notes and certificates of

1 participation issued under (a) of this section may be sold at either
2 public or private sale as provided by the participants in the municipi-
3 pal joint insurance arrangement in the manner and at the price the
4 participants determine.

5 * Sec. 5. AS 37.10.085 is amended by adding a new subsection to read:

6 (b) This section does not apply to debt issued by a municipality
7 or a municipal joint insurance arrangement under AS 21.76.120.

8 * Sec. 6. AS 44.85.010(a) is amended to read:

9 (a) It is the policy of the state

10 (1) to foster and promote by all reasonable means the
11 provision of adequate capital markets and facilities for borrowing
12 money by municipalities in the state to finance capital improvements
13 or for other authorized purposes, to assist these municipalities in
14 fulfilling their capital needs and requirements by use of borrowed
15 money within statutory interest rate or cost of borrowing limitations,
16 to the greatest extent possible to reduce costs of borrowed money to
17 taxpayers and residents of the state, and equally to encourage contin-
18 ued investor interest in the purchase of bonds or notes of municipal-
19 ities as sound and preferred securities for investment;

20 (2) to encourage municipalities to continue their indepen-
21 dent undertakings and financing of capital improvements and other
22 authorized purposes and to assist them by making capital funds avail-
23 able at reduced interest costs for orderly financing of capital im-
24 provements and other purposes especially during periods of restricted
25 credit or money supply, particularly for those municipalities not
26 otherwise able to borrow for capital needs;

27 (3) to assist municipalities to provide for adequate insur-
28 ance coverage by authorizing the Alaska Municipal Bond Bank Authority
29 to issue negotiable or nonnegotiable revenue bonds, notes, or

1 certificates of participation either directly or through an entity it
2 may create for the purpose of providing a self-insurance program for
3 municipalities or municipal joint insurance arrangements organized
4 under AS 21.76.

5 * Sec. 7. AS 44.85.080 is amended by adding a new paragraph to read:

6 (21) ^{was resolution} by regulation, create a new entity for the purpose of
7 issuing negotiable or nonnegotiable revenue bonds, notes, or certifi-
8 cates of participation to finance a self-insurance program for munic-
9 ipalities or municipal joint insurance arrangements organized under
10 AS 21.76; the powers, duties, and membership of the new entity shall
11 be limited to the powers, duties, and membership of the authority and
12 stated in the ^{was resolution} regulation; the new entity shall be a public corporation
13 and an instrumentality of the state with the same legal existence and
14 continuing succession as the bond bank authority.

15 * Sec. 8. AS 44.85.170 is amended to read:

16 Sec. 44.85.170. LOANS TO POLITICAL SUBDIVISIONS AND JOINT INSUR-
17 ANCE ARRANGEMENTS. (a) The bond bank authority, to carry out the
18 purposes and policies of this chapter, may lend money to municipal-
19 ities through the purchase by the bond bank authority of municipal
20 bonds of municipalities and if the purpose of the loan is to provide
21 financing for a municipal self-insurance program and the loan meets
22 the credit standards of the bond bank authority, may lend money to
23 municipalities, or municipal joint insurance arrangements organized
24 under AS 21.76. Notwithstanding a home rule charter provision re-
25 quiring public sale by a municipality of its municipal bonds, a munic-
26 ipality may sell its municipal bonds to the bond bank authority at a
27 negotiated, private sale. The bond bank authority, for this purpose,
28 may issue its bonds and notes payable solely from the revenues or
29 funds available to the bond bank authority for such payment and may