

ALASKA LEGISLATURE COMMITTEE FILES, 1989-1990 8672

6407 SENATE LABOR & COMMERCE

81

PROPOSED LABOR AND COMMERCE COMMITTEE

LETTER OF INTENT TO SENATE BILL 307

It is the intent of the Labor and Commerce Committee that a municipality is not to charge a greater interest under section 1(a)(1) than is necessary to sustain the costs of administering foreclosure activities and warehousing property documents until the time of repurchase.

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: "An Act relating to property fore-  
 closed upon by a municipality."  
 Sponsor: Senator Pearce  
 Requestor: \_\_\_\_\_

Agency Affected: Community & Regional Affairs  
 BRU: \_\_\_\_\_  
 Components: \_\_\_\_\_

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

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

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

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

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

There is no fiscal effect for FY 90.

Prepared by: *Jim Plasman*  
 Division: Municipal & Regional Assistance Phone: 465-4750  
 Date: 2-7-90

Approved by Commissioner: *Archie Hall* Date: 2-4-90  
 Agency: Community & Regional Affairs

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: Repurchase from Municipality of  
Foreclosed Property  
Sponsor: Pearce  
Requestor: Senate Community & Regional  
Affairs

Agency Affected: Department of Revenue  
BRU: Treasury  
Components: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

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

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: attach a separate page for analysis.

Fiscal year 1990 effect is zero.

Prepared By: Milt Barker MB  
Division: Treasury

Phone: 465-2350  
Date: February 16, 1990

Approved by Commissioner: [Signature]  
Agency: Department of Revenue

Date: 2/16/90

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

Impacted Agency(ies)

# Alaska State Legislature

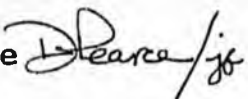
3111 C Street, Suite 150  
Anchorage, Alaska 99503  
(907) 561-2038

During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4993

## Senator Drue Pearce District G

### SPONSOR STATEMENT

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

FROM: Senator Drue Pearce 

RE: Senate Bill 307

DATE: March 5, 1990

Current statutes provide that the previous owner may repurchase a tax foreclosed property for 10 years after foreclosure but before the property is sold. To redeem the property, the previous owner must pay the full amount owed to a municipality under the judgment and decree plus interest not to exceed 15 percent a year from the date of entry of the judgment to the date of repurchase PLUS delinquent taxes and levied as though the property had remained in private ownership PLUS costs of foreclosure and sale. If a municipality sells the property during the 10 year period, the previous owner is entitled to the proceeds beyond the costs mentioned above.

No provision is made for a municipality to recover "holding costs" that include insurance, maintenance and repair, association dues, reasonable management fees and such other costs that a prudent property owner would incur.

The Alaska Municipal League and the Municipality of Anchorage support passage of this legislation.

DP:jf

STEVE COWPER, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

February 14, 1990

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 465-4700
- 949 E. 36TH AVENUE, SUITE 403  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

POSITION PAPER

RE: Senate Bill 307

SPONSOR: Senator Drue Pearce

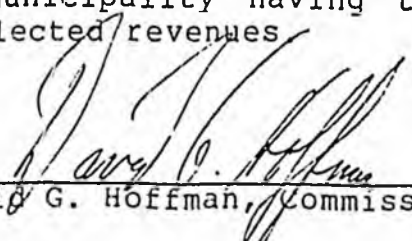
Program Effects

Senate Bill 307 provides for reimbursement to municipalities for certain costs incurred as a result of maintaining and managing property which has been foreclosed on because of non-payment of local property taxes. The bill adds to the existing list of costs those expenditures by a municipality for insurance, repairs, association dues (condominium), and management fees.

Comments

Over the past few years, as municipal economies have been negatively impacted by reduced revenues, the subsequent reductions in populations have magnified problems related to property foreclosure. Municipalities typically must foreclose on properties which are less desirable and, therefore difficult to sell. Those types of property are likely to be in need of costly repair before they can be marketed. These problems, combined with a glut of available property on the market, cause the holding period to be extended, thereby increasing the costs to municipalities for maintenance and management of the properties.

The department supports the passage of SB 307. The bill provides for fair and reasonable reimbursement of maintenance and management expenses, and only to the extent that those expenses exceed any income to the municipality through rental or other payments made during the holding period. The recovery of these costs through the sale of the property would eliminate the present necessity of the municipality having to pay the costs by using other locally-collected revenues.

  
David G. Hoffman, Commissioner

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

February 14, 1990

- P.O. BOX B  
JUNEAU, ALASKA 99811-2100  
PHONE: (907) 465-4700
- 949 E. 38TH AVENUE, SUITE 400  
ANCHORAGE, ALASKA 99508-4302  
PHONE: (907) 563-1073

POSITION PAPER

RE: Senate Bill 307

SPONSOR: Senator Drue Pearce

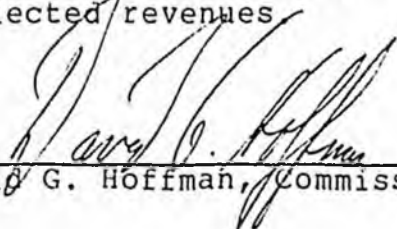
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\_\_\_\_\_  
David G. Hoffman, Commissioner



# Fairbanks North Star Borough

25th Silver Anniversary

March 13, 1990

The Honorable Dick Eliason, Chairman  
Senate Labor and Commerce Committee  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Dear Senator Eliason:

The Fairbanks North Star Borough is concerned about any proposal to change the provisions of Senate Bill No. 307 that affects interest rates which can be charged on delinquent taxes (Section I.A.1). The original language of the bill perpetuates the current provisions in AS 29.45.250 and AS 29.45.470 relating to interest on delinquent taxes, and is appropriate in its present form.

Our opposition to changing the interest rate provision on delinquent property taxes is based on experience. The Fairbanks North Star Borough charges only 8% interest on delinquent taxes. Our observations are as follows:

Some individuals are willing to let their taxes go unpaid because the interest rate we were charging is less than could be obtained from any lending institution. In some cases, individuals who have the funds to pay the Borough taxes refuse to do so because they have their money in investments which were yielding higher rates of return than the Borough was charging. The Borough in effect has been an involuntary lending institution.

The low rate of interest on delinquent taxes provides an incentive for people not to pay delinquent taxes once they became delinquent. This results in unnecessarily high rates of delinquency and more difficult foreclosure processes. The overall affect of this situation is to penalize those members of the community who pay their taxes timely as a matter of civic pride, or respect for the intent of the law. This occurs because it becomes necessary to raise our mill rate to compensate for the unnecessarily high rate of delinquency; thus, those who pay timely also have to pay more because of a few individuals who take advantage of the situation.

The situations described above were much more serious a few years ago when interest rates were generally much higher than they are presently.

Letter to Senator Dick Eliason  
March 13, 1990  
Page Two

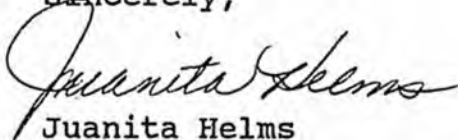
Our experience points out that it is desirable to have the rate of interest charged by the Borough to be similar to what is being charged in the financial community. If the municipalities interest rates become much less than the market rate, serious collection problems result, and the timely taxpayer is ultimately harmed.

I would also like to point out that the State law only sets a maximum which the taxing authorities may charge. In our case the Assembly has kept the actual rate charged well below the maximum allowed. It is appropriate for some latitude in this decision to be left to the individual municipalities in order that they might address their specific situations appropriately.

Senate Bill No. 307 clarifies the municipality's ability to be reimbursed for costs incurred incidental to the enforcement of property tax liens, and is appropriate in its present form. The Fairbanks North Star Borough Administration supports its passage as currently worded.

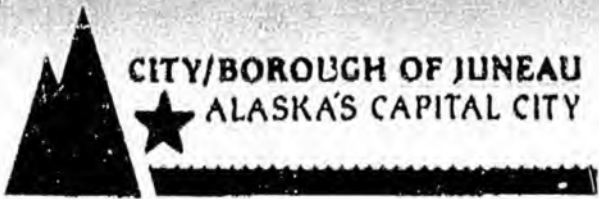
Thank you for considering our concerns relating to this bill.

Sincerely,



Juanita Helms  
Mayor

cc: Senator Drue Pearce  
Alaska Municipal League



CITY/BOROUGH OF JUNEAU  
★ ALASKA'S CAPITAL CITY

March 13, 1990

The Honorable Dick Eliason  
The State Senate  
Chair, Senate Labor and Commerce Committee  
Juneau, Alaska 99801

Dear Honorable Eliason:

SUBJECT: SB307 - Relating to Property Foreclosures

The City and Borough of Juneau supports the intent of SB307, which allows municipalities to "recover costs incurred in maintaining and managing foreclosed property". We also support the interest rate cap provision of 15%.

We are concerned that the committee would consider an interest rate cap inconsistent with other parts of Title 29. We recommend, at minimum, the interest rate be consistent at 15% through the redemption period. We support our position for the following reasons:

1. Rates should be consistent throughout the foreclosure process. This reduces municipal work loads and confusion.
2. Property tax is the main source of revenue for our general operating budget. Interest rates should be high enough to act as an incentive. Our experience has shown taxpayers tend to use tax delinquencies as a method of financing when interest rates are high.

The City and Borough currently charges 10% interest on delinquent accounts. We consider that rate reasonable and would like to retain the flexibility of adopting highest rates if the need arises.

If you have additional questions please feel free to contact me at 586-5215.

Sincerely yours,

*Mary A. Cook*  
Mary A. Cook  
Finance Director

*By [Signature]*  
Treasurer

MAC:bp

cc: Senator Drue Pearce

**Municipality  
of  
Anchorage**



P.O. BOX 196850  
ANCHORAGE, ALASKA 99519-6850  
(907) 343-6661

TOM FINK,  
MAYOR

DEPARTMENT OF FINANCE  
Treasury Division

March 13, 1990

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

Dear Senator Eliason:

Subject: Senate Bill 307 "An Act Relating to property foreclosed upon by a Municipality"

We have been informed that the Senate Labor & Commerce Committee heard testimony on Senate Bill 307 that proposed reducing the interest rate specified in section 1.a.1. of the Bill.

The interest rate cap should not be changed. The 15% maximum rate under the current law allows municipalities the flexibility necessary to tailor delinquent tax interest rates to local conditions, community opinion and market conditions.

The Municipality strongly supports Senate Bill 307 as it was introduced; to permit municipalities to effectively maintain foreclosed property for the benefit of the neighborhood and the community without imposing the cost of holding these properties on other taxpayers.

Sincerely,

Ellen B. Braden  
Treasurer

EBB:svj

cc: Senator Drue Pearce

By: Hank Hove  
Introduced: 03/08/90  
Adopted: 03/08/90

RESOLUTION NO. 90-029

A RESOLUTION URGING PASSAGE OF SENATE BILL 307 RELATING TO  
PROPERTY FORECLOSED UPON BY A MUNICIPALITY

WHEREAS, if a municipality forecloses on property when costs such as management fees, association dues or rent is due, there are no provisions for a municipality to recover those costs; and

WHEREAS, if repair is necessary on a foreclosed piece of property or if there exists a hazardous situation on foreclosed property which a municipality is responsible for, there are no provisions for recovering those costs; and

WHEREAS, Senate Bill 307 provides that a municipality may recover expenses for insurance, repairs, maintenance costs, association dues, and management fees that exceed amounts received by the municipality for use of the facility.

NOW, THEREFORE, BE IT RESOLVED that the Fairbanks North Star Borough Assembly urges the passage of Senate Bill 307.

BE IT FURTHER RESOLVED that copies of this resolution shall be sent to the Honorable Steve Cowper, Governor, State of Alaska, Larry Mercurieff, Commissioner, Department of Commerce and Economic Development, David Hoffman, Commissioner, Department of Community and Regional Affairs, the Honorable Mike Szymanski, Chairman, Senate Community and Regional Affairs Committee, the Honorable Richard "Dick" Eliason, Chairman Senate Labor and Commerce Committee, and all members of the Interior Delegation

**TITLE:** Holding Costs on Foreclosed Property A.S. 29.45.480(a)&(b)

**SPECIAL LEGISLATION REQUEST:**

Amend A.S. Sec. 29.45.470(a) by adding after "costs of foreclosure and sale" the following: "...and holding costs including insurance, maintenance and repair, association dues, reasonable management fees and such other costs that a prudent property owner would incur.

Likewise, amend A.S. Sec. 29.45.480(b) by adding the same phrase as above to the first sentence. Also add the words "and holding costs" to sentence two after the words "interest and costs".

**BACKGROUND/JUSTIFICATION:**

The current statutes provide that the previous owner may repurchase a tax foreclosed property for 10 years after foreclosure but before the property is sold. To do so, he must pay the full amount applicable to the property under the judgment and decree, with interest not to exceed 15 percent a year from the date of entry of the judgment of foreclosure to the date of repurchase, and delinquent taxes assessed and levied as though it had continued in private ownership, and costs of foreclosure and sale. In addition, if the municipality sells the property during the 10 year period, the previous owner is entitled to the proceeds beyond the costs mentioned above. No provision is made for the Municipality to recover "holding costs".

AGENCIES OF THE STATE AND FEDERAL GOVERNMENT ARE NOT TO BE ADVISED OF THIS LEGISLATION

**STAFF CONTACT:** Bob Nelson, Chief Fiscal Officer, 343-6610



# **CORRECTION**

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

By: Hank Hove  
Introduced: 03/08/90  
Adopted: 03/08/90

RESOLUTION NO. 90-029

A RESOLUTION URGING PASSAGE OF SENATE BILL 307 RELATING TO  
PROPERTY FORECLOSED UPON BY A MUNICIPALITY

WHEREAS, if a municipality forecloses on property when costs such as management fees, association dues or rent is due, there are no provisions for a municipality to recover those costs; and

WHEREAS, if repair is necessary on a foreclosed piece of property or if there exists a hazardous situation on foreclosed property which a municipality is responsible for, there are no provisions for recovering those costs; and

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PASSED AND APPROVED THIS 8TH DAY OF MARCH, 1990.

  
\_\_\_\_\_  
Presiding Officer

ATTEST:

  
\_\_\_\_\_  
Clerk of the Assembly

**TITLE:** Holding Costs on Foreclosed Property A.S. 29.45.480(a)&(b)

**SPECIAL LEGISLATION REQUEST:**

Amend A.S. Sec. 29.45.470(a) by adding after "costs of foreclosure and sale" the following: ...and holding costs including insurance, maintenance and repair, association dues, reasonable management fees and such other costs that a prudent property owner would incur.

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Approved by the State and Federal Governments on 11/11/89

**STAFF CONTACT:** Bob Nelson, Chief Fiscal Officer, 343-6610



**S B**

**308**

DATE: 4/7/90

FURTHER: Finance

DATE TURNED INTO OFFICE: 4/12/90

Labor & Commerce

Committee considered

SB 308

"An Act relating to taxation of certain state property by municipalities; and providing for an effective date."

and recommended:

- replace with \_\_\_\_\_ CS \_\_\_\_\_
- or adopt \_\_\_\_\_ CS SB 308 (C+EA)
- attached amendment(s)
- \_\_\_\_\_ letter of intent adopted

- same title
- new title
- technical title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

Dept/Date:

fiscal note(s) \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_

appropriation-no fiscal note

APPROVES PREVIOUS:

Dept/Date:

fiscal note(s) Dept of Comm 4/6/90

zero fiscal note(s) \_\_\_\_\_

Governor's bill w/fiscal note

SIGNING DO PASS:

Jan Fair

John Bodery

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

OTHER RECOMMENDATIONS:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Chair Signature

Recommendation

Chair: Signature and Recommendation

# Alaska State Legislature

3111 C Street, Suite 150  
Anchorage, Alaska 99503  
(907) 561-2038



During Session:  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4993

**Senator Drue Pearce**  
District G

## MEMORANDUM

TO: Dick Eliason, Chairman  
Senate Labor & Commerce Committee

FROM: Drue Pearce *Drue Pearce*

RE: SB 308

DATE: April 6, 1990

Please schedule a hearing as soon as possible for SB 308 which concerns the taxation of state and federal properties by municipalities. This Bill makes taxable real property acquired by state or federal government agencies through foreclosure or deed in lieu of foreclosure and retained for investment purposes.

The legislation was requested by the Alaska Municipal League because millions of dollars of assessed values are being removed from assessment rolls across the state by certain governmental agencies which have foreclosed on property in which they have a security interest. Some state agencies have been exempted from taxation while others have been required to pay them. Inequities are also created because exempt properties bear no tax burden but receive the same services they did while in private ownership.

The Bill corrects this situation and extends to federal properties similarly held and not otherwise exempt from taxation by federal law.

This legislation is obviously important to the municipalities and for this reason I am requesting that you expedite its scheduling so we can have passage by this legislature.

DP:pc

# Alaska State Legislature

3111 C Street, Suite 150  
Anchorage, Alaska 99503  
(907) 561-2038



*During Session:*  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-4993

**Senator Drue Pearce**  
District G

## MEMORANDUM

**TO:** Dick Eliason, Chairman  
Senate Labor & Commerce Committee

**FROM:** Drue Pearce

**RE:** SB 308

**DATE:** April 11, 1990

SB 308 relates to the taxation of state and federal properties by municipalities. The Bill makes taxable real property acquired by state or federal governmental agencies through foreclosure or deed in lieu of foreclosure and retained for investment purposes.

Under current state law some agencies of the State are treated differently from others in regards to local property taxes on properties obtained through default or foreclosure. Alaska Housing Finance Corporation (AHFC) pays local property taxes realizing that local services contribute to the value of its property. However, the Public Employees Retirement System (PERS), the Teachers Retirement System (TRS), and the Alaska Industrial Development and Export Authority (AIDEA), which hold the majority of foreclosed property in the State and also receive municipal services, do not pay taxes on properties they have obtained through foreclosure because local property tax exemptions have been provided by statute. Certain federal agencies have also claimed they are exempted by state law because of the general nature of present statutory language.

This legislation was requested by the Alaska Municipal League in order to recover the millions of dollars in assessed values being removed from assessment rolls across the state by these exemptions. The Bill also corrects exemption inequities and equalizes the tax burden for properties receiving the same services they did while in private ownership. SB 308 extends to federal properties similarly held and not otherwise exempt from taxation by federal law.

Passage of this legislation is supported by the Municipality of Anchorage and the Alaska Association of Assessing Officers.

DP:pc

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
 Title: An Act relating to taxation of BRU: Alaska Industrial Development &  
 certain state property by municipalities Export Authority  
 Sponsor: Pearce Components: \_\_\_\_\_  
 Requestor: Senate C&RA

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	400.0	400.0	400.0	400.0	400.0	400.0
<b>TOTAL OPERATING</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>

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

GENERAL FUND						
FEDERAL FUNDS						
OTHER	400.0	400.0	400.0	400.0	400.0	400.0
<b>TOTAL</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>	<b>400.0</b>

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

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

SEE ATTACHED

Prepared by: Bertram L. Wagnon, Executive Director Phone: (907) 561-8051  
 Division: Alaska Industrial Development & Export Authority Date: 4/6/90  
 Approved by Commissioner: Larry Merculieff Date: 4/6/90  
 Agency: Department of Commerce & Economic Development

Distribution (by preparer):

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

LW/dg16692D/040690a

**ANALYSIS  
CSSB 308 (C&RA)**

The tax on \$27 million of defaulted loans at an average of 15 mills would equate to approximately \$400,000. Over the years, property acquired through foreclosures should decrease while the value of property will increase. No property owned by the authority under its development program is included (DeLong Mountain) as CSSB 308 (C&RA) would not put them on the tax rolls.

<u>LOCAL GOVERNMENT</u>	<u>NUMBER OF PROPERTIES</u>	<u>ASSESSED VALUE</u>	<u>AIDEA PAYMENT (Excluding Bank Owned Portion)</u>
Municipality of Anchorage	39	\$17,434,400	\$292,001
Fairbanks North Star Borough	6	2,088,620	32,392
Kenai Peninsula Borough	5	2,602,900	27,418
Matanuska-Susitna Borough	7	2,148,800	26,592
City & Borough of Juneau	2	565,000	6,905
City & Borough of Sitka	1	825,730	3,606
City of Valdez	1	817,400	12,220
North Slope Borough	<u>1</u>	<u>482,900</u>	<u>8,871</u>
Total	<u>62</u>	<u>\$26,965,750</u>	<u>\$410,005</u>

### FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_  
 Title: An Act relating to taxation of certain state property by municipalities  
 Sponsor: Pearce  
 Requestor: Senate C & RA

Dept. of Commerce  
 Agency Affected: & Economic Development  
 BRU: AK Industrial Development and Export Authority  
 Components: \_\_\_\_\_

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

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS	1,000.0	1,000.0	1,100.0	1,200.0	1,200.0	1,200.0
<b>TOTAL OPERATING</b>	1,000.0	1,000.0	1,100.0	1,200.0	1,200.0	1,200.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE						
---------	--	--	--	--	--	--

**FUNDING (Thousands of Dollars)**

GENERAL FUND						
FEDERAL FUNDS						
OTHER	1,000.0	1,000.0	1,100.0	1,200.0	1,200.0	1,200.0
<b>TOTAL</b>	1,000.0	1,000.0	1,100.0	1,200.0	1,200.0	1,200.0

**POSITIONS:**

FULL-TIME						
PART-TIME						
TEMPORARY						

**ANALYSIS :** (Attach a separate page if necessary) No fiscal impact for FY 90.  
 The tax on \$27 million of defaulted loans at an average of 15 mills would equate to approximately \$400,000. The DeLong Mtns. Transportation Project at \$150 million at 4 mills would equate to approximately \$600,000. Over the years, property acquired thru foreclosure should decrease while development projects (Red Dog, Dutch Harbor, et.al.) should increase.

Prepared by: Bertram L. Wagon, AIDEA Phone: (907) 561-8050  
 Division: A I D E A Date: \_\_\_\_\_

Approved by Commissioner: [Signature] Date: 25/1/90  
 Agency: Commerce and Economic Development

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



# Matanuska-Susitna Borough

P.O. BOX 1808, PALMER, ALASKA 99345-1808 • PHONE 745-9842

ASSESSMENT DEPARTMENT

January 23, 1990

Senator Druce Pearce  
State of Alaska  
Senate Office Building  
Juneau, AK. 99811

Dear Senator Pearce:

I am sorry that your bill SB303 has become so confused and sincerely wish we could have had discussion earlier. I introduced the issue to the Alaska Association of Assessing Officers and, on their behalf, to the Legislative Committee of AML in 1987. My awareness came as a result of a very close friend who defaulted on a mortgage secured by TRS and has since lived in his former home on a month to month rental with no liability for taxes as the property belong to the Department of Revenue, an exempt agency. Further research requested through DCRA revealed a number of residential and commercial properties in various municipalities and rented to occupants, yet exempt from taxes. Inquiries to obtain copies of lease agreements were unsuccessful as these month to month arrangements are not described in documents nor precisely known by DOR as they are negotiated by agencies and renters change on a month to month basis.

This is the reason PERFS, TRS and AIDA were mentioned in AML Policy as examples compared to HUD and AHFC which do pay for maintenance of public services through local property tax, presuming that failure to provide services would harm future value of surplus properties.

Since that time (1988) it has come to light that there are a number of State and Federal investment entities which pledge public faith and funds to secure various mortgage instruments subject to foreclosure, or deed in lieu of foreclosure reversion to the entity. The list has grown to include: Farm Home Administration, SRA, various Federal Retirement Funds, PERFS, TRS, AIDA, Agricultural Revolving Loan Fund, Permanent Fund, and the unique one I have dealt with, the U.S. Coast Guard Widows Retirement Fund. The list is very extensive considering that any federal or state fiduciaries of funds could hold mortgage or security interest in property in the state that could be subject of foreclosure or deed in lieu of foreclosure.

HAD loans

With this background it is probably more direct to first review what was not intended originally:

It was not intended that a state or federal agency be taxed on fact that it has "invested" in a mortgage instrument. The agency should be no more responsible for taxes levied on the property than any other mortgagor (bank). The mortgagor is the owner of record and is specified in Title 29 as the recipient of tax notices and bills. Failure of the mortgagor to settle lien for taxes results in foreclosure by the municipality. At that time the mortgagor may act to preserve their security interest but in doing

so they assume responsibility to satisfy present and future liens assessed during their possession.

It was not intended that property of the state or federal government be taxed by virtue of security interest holding any more than a bank.

What was intended is that where a state or federal agency invests in mortgages or other security interest in property and only when foreclosure or deed in lieu of foreclosure occurs, the agency (mortgagor) be required to assume responsibility to pay for public services which contribute to the future resale value of the property (i.e. fire protection, police, utilities, schools, etc.) for only that period they are in possession in attempt to resale. Federal law recognizes this responsibility (HUD) and State Statute recognizes this in case of AHFC.

Hopefully, this frames the larger policy issues your bill addresses:

1. Should state agencies benefit from exemption from tax act available to other mortgage investors or property managers.
2. Should exemption from taxes be permitted where it impacts municipal services which, in turn, affect the future value of foreclosed properties.
3. Should different state agencies be treated differently as regards property taxation.
4. Should certain federal agencies be permitted to claim federal exemption even where USC is permissive to local taxation but for lack of specific mention in Alaska statute.

The amendments submitted 2/15/90 were prepared in conjunction with ALE, via State Assessor, and Mr. Gatti, MSE Attorney, to address issues greater than just PERE, TRS and AIDA. the following is a brief analysis:

AS29.34.030 (B) (1)

A. This is current statute which provides that an assigned interest in public property is taxable to the recipient of interest. In these cases the state retains full title to the property but creates a determinable possessory interest assigned to a private party. The possessory interest is regularly taxed where there are determinable terms and conditions of assignment. This is not the case with property managed by the Department of Revenue as previously discussed.

B. This section specifies the only two conditions in which property owned by a state or federal agency may become liable for property tax, foreclosure and deed in lieu of foreclosure. It does not permit taxation in cases of relinquishment of rights or default on contracts where there is no deed of trust. Aside from concern about Red Dog Mine Road, this specific omission is to preclude taxation of property subject of state land disposal programs. These lands are expected to return to the public domain when private interest expires. Generally deeds of trust are not recorded by Department of Revenue for these transactions.

Finally addressed is the situation wherein a state or federal agency may elect to use and occupy surplus property for administrative purposes. This is an option normally reserved in federal code and in statutes of other states.

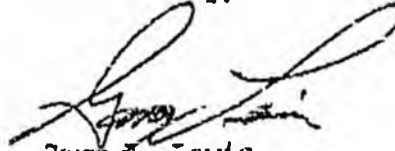
C. This section is specific to federal property and is taken from statutes of the State of Oregon. It is the enabling language which unequivocally permits taxation of federal property where waiver of sovereign immunity is contained in federal code.

AS29.45.295

This section adds penalty, interest and collection cost recovery in cases of delinquent payment of taxes similar to subject of bill SB307. Because of inclusion of federal property it substitutes "appropriate court" rather than "superior court" as proper proceeding. Note also that AS29.45.490 deals w/ payment of taxes upon public utilization, between municipalities. This is not part of the foreclosure process as prescribed by Title 29 nor would it be prudent that other municipalities are not granted what they are due in actions regarding state and federal property.

It is my hope that this local view is helpful to you. I very much look forward to a work session suggested by Senator Szymanski. Meanwhile, however, if there are questions that I might answer, please feel free to contact me.

Yours truly,



Gary A. Lewis  
Borough Assessor

ys



FEB 2 1990

Office of the City Clerk  
832-5441  
Incorporated November 17, 1921

# City of Nenana

P.O. Box 70  
Nenana, AK 99760  
FAX 832-5503

State of Alaska

February 18, 1990

Senator Drue Pearce  
Alaska State Legislature  
Pouch V, (Mail Stop 3100)  
Juneau, AK 99811

Dear Senator Pearce,

The shared revenue/municipal assistance program is in need of a massive infusion of funding. The City of Nenana is in a position of having to discontinue one or more basic services as we are launched into a "death spiral."

Contributing factors to this death spiral include:

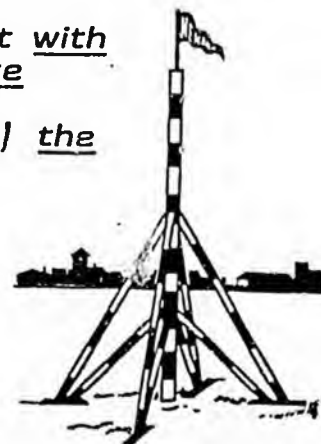
1) A 53 % decrease in shared revenue/ municipal assistance revenues from FY 86 to FY 90

2) A 50% decrease in the per mile funding of road maintenance money. The current funding level for municipal road maintenance is approximately \$1200 per mile, while the maintenance of State roads is funded at \$12,000 per mile!

3) State Statutes dictate that Municipalities exempt the property of senior citizens from the local tax roles, and then the State elects to reimburse municipalities for only 33% of this lost revenue.

4) HUD housing, which is currently assessed at over 3 million in Nenana, pays taxes at a rate with amounts to 10% of the total taxes due (payment in lieu of taxes) Sec 8 Housing

The City of Nenana is doing its best to generate local revenue (with a 9 mil tax rate and a 3% sales tax), but with the simultaneous decrease in assessed values and state funded programs (such as shared revenue, municipal assistance, and senior citizen exemption reimbursement) the future looks bleak.



Senator Pearce, February 18, 1990  
Page 2

*I am sure that other municipalities are in this same position.  
We need your help!*

*Sincerely,*

A handwritten signature in black ink, appearing to read "Steve Bainbridge", with a horizontal line drawn through it.

**Steve Bainbridge  
City Administrator**

ALASKA ASSOCIATION OF ASSESSING OFFICERS

February 23, 1990

Senate Community and Regional Affairs Committee  
Senators Symanski, Frank, Pearce, Porchot and Adams  
Mail Stop 2100  
Juneau, Alaska 99811

RE: Alaska Association of Assessing Officers Position on  
SB 308 - Taxation of Certain State Agencies

Dear Senators:

The purpose of this letter is to clarify to the Committee why the Alaska Association of Assessing Officers and several municipalities have taken a supportive position on SB 308. We do believe, however, that the bill as introduced, does not accurately reflect the intent of our Association or the AAO Policy Statement and should be amended. We will offer an amendment in this letter.

This legislation was requested due to the fact that there are millions of dollars of assessed values being removed from assessment rolls across the State by certain government agencies which have foreclosed on property in which they have a security interest. Some of the State agencies are exempted by the statutes which created the agency, while others, like Alaska Housing Finance Corporation, are required to pay taxes.

There are three agencies which constitute the majority of the property described above: Alaska Industrial Development and Export Authority (AIDEA), Public Employees Retirement System (PERS), and the Teachers Retirement System (TRS). These agencies participate in the financing of commercial properties and when a foreclosure occurs, the agencies are listed on the documents as owner and consequently, are automatically exempted.

In many cases, the properties are leased and the agencies collect the rents. The rents obtained by the agency should approximate market rents, which will have a built in factor for taxes. If the agency rents at below market rents, they have an unfair advantage over the private sector in that they are not responsible for payment of property taxes. This creates an inequity not only for the private sector which competes with the agencies, but also shifts the tax burden away from these properties while they receive the same services they did while in private ownership.

We realize that not all properties owned by these agencies may be rented or if so, may not command a positive cash flow, however, they are

competing with the private sector, receiving comparable services and yet still maintain a distinct advantage over comparable property within the same jurisdiction.

We have recently encountered a situation whereby certain federal agencies, which are taxable pursuant to federal law, insist that they are exempted by our own state statutes. AS 29.45.030(a)(1) states:

"29.45.030. Required exemptions. (a) The following property is exempt from general taxation:

- (1) municipal, state, or federally owned property, except that a private leasehold, contract, or other interest in the property is taxable to the extent of the interest."

This language seems to exempt all federal property regardless of any permissive taxing language which may be contained in federal law. We believe that by changing the current statute to allow for taxation of these properties, if permissive federal law exists, this problem will be solved. Currently, several large federal agencies, such as FDIC, FSLIC, HUD and VA, pay municipalities taxes for property which they have taken title to under a foreclosure proceeding. Farmers Home Administration has chosen not to make tax payments, citing as part of their argument, AS 29.45.030(a)(1).

Therefore, we request that the committee recommend passage of SB 308 with the following amendments:

Page 1

Line 6 - For an Act entitled: "An Act relating to taxation of certain state and federal properties by municipalities; and providing for an effective date."

Page 1

Line 11 - Except as provided in AS 29.45.030(a)(1), .....

Page 1

Line 23 - AS 29.45.030(a) is amended to read:

(a) The following property is exempt from general taxation:  
except that  
(1) municipal, state, or federally owned property,

(A) a private leasehold, contract, or other interest in the property is taxable to the extent of the interest;

(B) property held by state entities as a result of foreclosure or accepted through a deed in lieu of foreclosure and not used for administrative purposes by an exempt entity shall be taxable to the extent provided in other provisions of law.

(C) property of the United States, its agencies, or instrumentalities is exempt from taxation only to the extent that taxation thereof is forbidden by federal law.

Page 2

Line 22 - Sec. 29.45.295 Collection of Delinquent Taxes on Certain State and Federal Property.

(a) Property taxable under AS 29.45.030 (a) (1) (B) and (C) is exempt from provisions of AS 29.45.300 through 29.45.480.

(b) A municipality may bring action in the superior court to compel payment of property taxes, including penalties, collection costs, and interest due from a state or federal agency if the agency is delinquent in payment after the date that the taxes are due.

Page 3

Line 5 - Except as provided in AS 29.45.030(a) (1)

Page 3

Line 18 - Except as provided in AS 29.45.030(a) (1)

We would like to express our appreciation to each member of this Committee for the dedication shown in attempting to cure the inequities found in our tax laws. We remain available to you for questions and hope that you will take advantage of the vast amount of information and expertise which exist within our Association.

Sincerely,

ALASKA ASSOCIATION OF ASSESSING OFFICERS

Mickey Keller  
President

Steve Van Sant  
Vice President

**S B**

**309**

SENATE COMMITTEE REPORT

FIRST COMMITTEE OF REFERRAL

Date of 5-DAY NOTICE 2/8/90  
IN ACCORDANCE WITH UNIFORM RULE 23

FURTHER

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

DATE TURNED INTO OFFICE 3/15/90

4/28/89

Mr. President:

Labor and Commerce Committee considered SB 309

Excluding a named driver from a motor vehicle insurance policy; efd.

and recommended:

replace with CS SB 309 (L+C)  same title  
 attached amendment(s) and  new title

letter of intent adopted

letter of intent adopted

do pass

do not pass

no recommendation

individual recommendations

further referral to

Dept of Commerce 1/19/90  
FISCAL NOTE(S) attached  zero  fiscal impact  
 appropriation no FN attached  Gov. FN introduced w/ bill

MEMBERS SIGNING DO PASS for SB 309 + CS SB 309 (L+C) OTHER RECOMMENDATIONS

[Signature]  
[Signature]  
[Signature]  
[Signature]  
[Signature]

[Signature]  
Chair : signature and recommendation

Committee backup attached

STATE OF ALASKA  
THE LEGISLATURE

POUCHY STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

M E M O R A N D U M

January 22, 1990

SUBJECT: Excluding a named driver from  
automobile insurance (SB 309)

TO: Senator Steve Frank

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

You have asked if it is possible that an exclusion from insurance coverage, as provided in SB 309, could be rejected by the courts. While it is certainly possible to create a fact situation under which an apparent exclusion from coverage as contemplated by SB 309 is found by the court not to have occurred, this would be the exception and not the rule. Assuming that there was a clear and unambiguous exclusion of a named person by the insured, the court should uphold the exclusion.

Please contact me if you have further questions.

MFF:gc  
G13/052

## FISCAL NOTE

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
 Title: An Act relating to excluding a name BRU: Insurance  
driver from a motor vehicle insurance policy; and providing for an effective date.  
 Sponsor: Frank, et al. Components: \_\_\_\_\_  
 Requestor: Senate Labor & Commerce

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

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

**FUNDING:** (Thousands of Dollars)

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

**POSITIONS:**

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

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

This legislation will have no fiscal impact on the department in FY 90.

Prepared by: Bob Sims, Insurance Market Analyst Phone: 465-2517  
 Division: Insurance Date: 7-18-89  
 Approved by Commissioner: Larry McKelvieff Date: 8/1/90  
 Agency: Department of Commerce & Economic Development

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

STEVE FRANK  
DISTRICT K  
SEAT A

119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701

*While in Juneau*  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3709  
Capitol Rm. 514

# Alaska State Legislature



Senate

MEMBER  
Finance Committee  
Resources Committee  
Legislative Council  
Special Committee on Banking &  
Economic Development

VICE-CHAIR  
Community & Regional  
Affairs Committee

## MEMORANDUM

TO: Senate Labor & Commerce Committee

FROM: Senator Steve Frank

RE: CS SB 309 - Auto Insurance Exclusions

DATE: March 5, 1990

During the last hearing on SB 309 in this committee, questions arose about what would happen to insurance rates if this legislation were passed and whether the courts would uphold the exclusionary provision. In your packet are some hypothetical rate quotes from a local Insurance Agent and also a letter from the Department of Law reviewing other state's experience.

The rate information shows a savings of about \$400 per year, over what would be paid without the exclusion benefits if the bad driver is excluded from the policy, but continues to drive under a second policy.

An even larger savings, approximately \$1,000. would result if the bad driver chose not to drive and were excluded. Without this legislation, most companies will not exclude someone even when they choose not to drive if they reside in the same household.

The Assistant Attorney General summarizes a number of states that have exclusions laws now in effect. In those states with laws on the books "the courts in those states have generally upheld the exclusions." In all of the court cases relating to exclusions, the courts placed a tremendous weight on their perception of the Legislature's intent.

The New Mexico Legislature even put the language necessary to exclude an individual right in the statute. We have followed that approach in the proposed CS by adopting the same language in hopes to make Legislative intent very clear.

STEVE FRANK  
DISTRICT K  
SEAT A

119 N. Cushman, Rm. 213  
Fairbanks, Alaska 99701

*While in Juneau*  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3709  
Capitol Rm. 514

# Alaska State Legislature

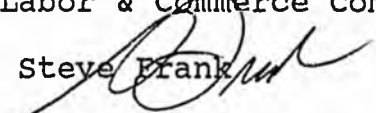


## Senate

MEMBER  
Finance Committee  
Resources Committee  
Legislative Council  
Special Committee on Banking &  
Economic Development

VICE-CHAIR  
Community & Regional  
Affairs Committee

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

FROM: Senator Steve Frank 

RE: SB 309 - excluding named drivers from auto  
insurance policies

DATE: January 8, 1990

---

Senate Bill 309 would require an automobile insurance company to offer an exclusion to named drivers on an auto insurance policy.

Initially, this idea was brought to my attention by an insurance agent who felt that having the ability to exclude individuals from a policy would enhance his ability to serve his customers. This reasoning is best illustrated in the case of a spouse who has had a number of drunk driving convictions. In the absence of this legislation, an insurance company would either cancel the family's policy or raise the rates through the roof instead of offering to exclude the individual with the poor driving record.

Another area of concern that has surfaced involves parents who are required to carry their child or children (of driving age) on their policy even though they are not driving the vehicle that is insured. This bill would allow them to be excluded as well.

The subject of this bill came up during a Senate Finance Committee hearing last session and enjoys the co-sponsorship of all Senate Finance members present at that meeting.

I respectfully request that you schedule a hearing on SB 309 in the Labor & Commerce Committee at your earliest convenience.

Thank you for your consideration.

STATE OF ALASKA

STEVE COWPER, GOVERNOR

**DEPARTMENT OF COMMERCE &  
ECONOMIC DEVELOPMENT**

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

*DIVISION OF INSURANCE*

December 26, 1989

Honorable Steve Frank  
Alaska State Senate  
1125 Sunset Drive  
Fairbanks, AK 99709

Dear Senator Frank:

RE: SB 309

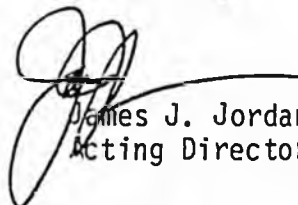
Your staff person, Rick Solie, contacted me several weeks ago inquiring about the division's position on SB 309. Enclosed is a copy of the Bill Analysis for SB 309.

As you can see, the position on this bill is neutral. The primary reason for this position is the concern for a person injured by an uninsured, judgement proof driver. The presumption that a person excluded from coverage (while the remaining drivers in a household were covered) would not drive is suspect. Should, for example, the habitual abuser of alcohol and drunk, excluded driver injure another person in an automobile accident, the remainder of the family, though insured, may lose all of its assets (e.g., equity in a home) through a judgement. The question remains whether, as a public policy matter, it is better to, in effect, force the excluded person to be covered and have the household rated accordingly and take the risk of the entire household going uninsured due to cost or to hope the excluded driver does not drive and does not injure someone else possibly leaving both the injured party and the excluded driver's household destitute.

From the standpoint of encouraging more people to have automobile liability insurance coverage, SB 309 has merit. However, it is questionable whether the foregoing benefit exceeds the social and economic costs that may occur when an excluded driver operates a car without coverage and injures another innocent party. The division does not have a factual basis on which to solve this "risk equation." Therefore, this has resulted in our neutral position.

Let me know should you wish to engage in further discussion pertaining to SB 309.

Sincerely,



James J. Jordan  
Acting Director

JJJ/dg16005D/122689b  
Enclosure



**STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
BILL ANALYSIS**

DEPARTMENT Commerce & Econ. Dev.	COMMISSION Insurance	BILL NUMBER SB 309 (L&C)	SPONSOR Frank, Duncan, Zharoff, Fischer, Binkley, Uehling and Faiks
SHORT TITLE OF BILL Excluding a named driver from a motor vehicle policy and providing for an effective date			
DEPARTMENT POSITION Neutral			
PREPARED BY Bob Sims, Insurance Market Analyst	DATE 5-4-89	COMMISSIONER'S SIGNATURE <i>[Signature]</i>	DATE 5/14/89

**SUMMARY**

OTHER AGENCIES AFFECTED BY BILL	CONSTITUENT GROUPS AFFECTED BY BILL
ORGANIZATIONAL SUPPORT FOR BILL	ORGANIZATIONAL OPPOSITION TO BILL

FISCAL IMPACT:       NONE       FISCAL NOTE ATTACHED

**BACKGROUND/LEGISLATIVE HISTORY**

This bill provides for an insurance company to exclude a named driver from an automobile insurance policy. It also does not allow that company to change a premium for or change a rate based on the driving record of the excluded. It also provides that the insurer is not liable for damages or claims arising out of use or operation of the insured automobile by the excluded person.

**ANALYSIS OF BUDGETARY EFFECTS**

This bill will allow families to exclude drivers from an automobile insurance policy whose claims, experience or driving record make the excluded drivers a high risk. Thus, the cost of the policy will be reflective of the driving record of only the persons named on the policy. Insurers will not be liable for damages or claims arising out of use of operation of the insured automobile by the excluded drivers.

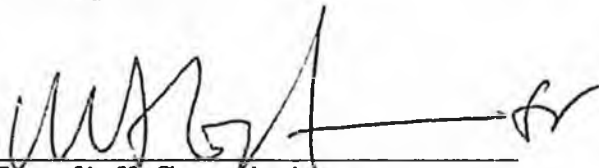
**AMENDMENTS PROPOSED**

4064D-2  
U50489A

SB 309: "An Act relating to excluding a named driver from a motor vehicle insurance policy; and providing for an effective date."

The position of the department on this bill is neutral. The primary reason for this position is the concern for a person injured by an uninsured, judgement proof driver. The presumption that a person excluded from coverage would not drive is suspect. For example, if the habitual abuser of alcohol and drunk excluded driver injures another person in an automobile accident, the remainder of the family, though insured, may lose all of its assets (e.g., equity in a home) through a judgement. As a public policy matter, is it better to force the excluded person to be covered and have the household rated accordingly and take the risk of the entire household going uninsured due to cost? Or, is it better to hope that the excluded driver does not drive and does not injure someone else?

From the standpoint of encouraging more people to have automobile liability insurance coverage, SB 309 has merit. However, it is questionable whether the benefit exceeds the social and economic costs that may occur when an excluded driver operates a car without coverage and injures another innocent party. The division does not have a factual basis on which to solve this "risk equation." Therefore, this has resulted in our neutral position.



\_\_\_\_\_  
Larry Mercurieff, Commissioner

Date: 19/1/90

LM/DPK/dgl6151D  
11990a

A M E N D M E N T

OFFERED IN THE SENATE

BY SEN. FRANK

TO: CSSB 309(L&C)

Page 2, line 5:

Delete "damages or"

Insert "any coverage, including defense or indemnity coverage under any provision of the policy for damages, including claims against other persons insured under the policy,"

Delete "use or"

Page 2, line 7:

Delete "damages or"

Insert "any coverage, including defense or indemnity coverage under any provision of the policy for damages, including claims against other persons insured under the policy,"

Page 2, line 8:

Delete "use or"

Page 2, lines 12 - 17:

Delete all material.

Insert "that the insurer is not liable for any coverage, including defense or indemnity coverage under any provision of the policy for damages or claims, including claims against other persons insured under the policy

or claims against the excluded person, sustained while a vehicle insured under this policy is operated by (name of excluded person) following the effective date of this endorsement."

Page 2, after line 17:

Insert "The required policy provision contained in this subsection shall also be provided to the insured as a notice separate from the policy and typed in bold face print. The notice must be signed by the insured in order for the exclusion of the named driver and the limitation of the insurer's liability under this subsection to be effective."

Page 2, line 21:

Delete "July 1, 1990"

Insert "January 1, 1991"

Not used

6-0773E  
Ford  
3/8/90

Original sponsor(s): SEN. FRANK, Duncan, Zharoff, Fischer, Binkley,  
Uehling, Faiks

1 IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 309 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to excluding a named driver from a  
7 motor vehicle insurance policy; and providing for an  
8 effective date."

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

10 \* Section 1. AS 21.36.210(a) is amended to read:

11 (a) An insurer may not exercise its right to cancel a policy of  
12 personal automobile insurance except for the following reasons:

13 (1) nonpayment of premium; or

14 (2) the driver's license or motor vehicle registration of  
15 either the named insured or of an operator who resides in the same  
16 household as the named insured or who customarily operates a motor  
17 vehicle insured under the policy has been under suspension or revoca-  
18 tion during the policy period or, if the policy is a renewal, during  
19 its policy period or the 180 days immediately preceding its effective  
20 date; this paragraph does not apply to a person who is excluded from  
21 coverage under AS 21.36.215.

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

23 Sec. 21.36.215. EXCLUDING NAMED DRIVER FROM AUTOMOBILE INSURANCE  
24 POLICY. (a) An insurer may not refuse to exclude a person from  
25 coverage under an automobile insurance policy, if the claim experience  
26 or driving record of the person would have justified cancellation,  
27 nonrenewal, or an increase in the premium. A premium charged on a  
28 policy that excludes a person from coverage may not reflect the  
29 claims, experience, or driving record of the excluded person. This

1 subsection does not apply to an automobile liability insurance policy  
2 required under AS 28.20.

3 (b) An automobile insurance policy providing that a person is  
4 excluded from coverage may also provide that the insurer is not liable  
5 for any coverage, including damage, defense, or indemnity coverage  
6 under any provision of the policy, including claims against other  
7 persons insured under the policy arising out of the operation of the  
8 insured automobile by the excluded person. An automobile insurance  
9 policy providing that the insurer is not liable as allowed under this  
10 subsection shall contain the following provision:

11 Exclusion of Named Driver: In consideration of the  
12 premium for which the policy is written, it is agreed  
13 that the insurer is not liable for any coverage,  
14 including damage, defense, or indemnity coverage under  
15 any provision of the policy, including claims against  
16 other persons insured under the policy or claims  
17 against the excluded person, sustained while a vehicle  
18 insured under this policy is operated by (name of  
19 excluded person) following the effective date of this  
20 endorsement.

21 (c) The required policy provision contained in (b) this section  
22 shall also be provided to the insured as a notice separate from the  
23 policy and typed in bold face print. The notice must be signed by the  
24 insured in order for the exclusion of the named driver and the limita-  
25 tion of the insurer's liability under this section to be effective.

26 \* Sec. 3. APPLICABILITY. This Act applies to automobile insurance  
27 policies that are entered into or renewed on or after the effective date of  
28 this Act.

29 \* Sec. 4. This Act takes effect January 1, 1991.

Not passed

6-0773E  
Ford  
2/9/90

Original sponsor(s): SEN. FRANK, Duncan, Zharoff, Fischer, Binkley,  
Uehling, Faiks

Addition highlighted

1 IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 309 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to excluding a named driver from a  
7 motor vehicle insurance policy; and providing for an  
8 effective date."

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

10 \* Section 1. AS 21.36.210(a) is amended to read:

11 (a) An insurer may not exercise its right to cancel a policy of  
12 personal automobile insurance except for the following reasons:

13 (1) nonpayment of premium; or

14 (2) the driver's license or motor vehicle registration of  
15 either the named insured or of an operator who resides in the same  
16 household as the named insured or who customarily operates a motor  
17 vehicle insured under the policy has been under suspension or revoca-  
18 tion during the policy period or, if the policy is a renewal, during  
19 its policy period or the 180 days immediately preceding its effective  
20 date; this paragraph does not apply to a person who is excluded from  
21 coverage under AS 21.36.215.

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

23 Sec. 21.36.215. EXCLUDING NAMED DRIVER FROM AUTOMOBILE INSURANCE  
24 POLICY. (a) An insurer may not refuse to exclude a person from  
25 coverage under an automobile insurance policy, if the claim experience  
26 or driving record of the person would have justified cancellation,  
27 nonrenewal, or an increase in the premium. A premium charged on a  
28 policy that excludes a person from coverage may not reflect the  
29 claims, experience, or driving record of the excluded person. This

1 subsection does not apply to an automobile liability insurance policy  
2 required under AS 28.20.

3 (b) An automobile insurance policy providing that a person is  
4 excluded from coverage may also provide that the insurer is not liable  
5 for damages or claims arising out of use or operation of the insured  
6 automobile by the excluded person. An automobile insurance policy  
7 providing that the insurer is not liable for damages or claims arising  
8 out of the use or operation of the insured automobile by the excluded  
9 person shall contain the following provision:

10 Exclusion of Named Driver: In consideration of the  
11 premium for which the policy is written, it is agreed  
12 that the insurer is not liable and that liability or  
13 obligation of any kind may not be attached to the  
14 insurer for damages or claims sustained after the  
15 effective date of this endorsement while a motor vehi-  
16 cle insured under this policy is driven or operated by  
17 (name of excluded person).

18 \* Sec. 3. APPLICABILITY. This Act applies to automobile insurance  
19 policies that are entered into or renewed on or after the effective  
20 date of this Act.

21 \* Sec. 4. This Act takes effect July 1, 1990.  
22  
23  
24  
25  
26  
27  
28  
29

passed out

6-0773E  
Ford  
3/12/90

Original sponsor(s): SEN. FRANK, Duncan, Zharoff, Fischer, Binkley,  
Uehling, Faiks

*Highlighted areas are changes  
from original Bill*

1 IN THE SENATE

BY THE LABOR & COMMERCE COMMITTEE

2 CS FOR SENATE BILL NO. 309 (L&C)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

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14 (2) the driver's license or motor vehicle registration of  
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16 household as the named insured or who customarily operates a motor  
17 vehicle insured under the policy has been under suspension or revoca-  
18 tion during the policy period or, if the policy is a renewal, during  
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25 coverage under an automobile insurance policy, if the claim experience  
26 or driving record of the person would have justified cancellation,  
27 nonrenewal, or an increase in the premium. A premium charged on a  
28 policy that excludes a person from coverage may not reflect the  
29 claims, experience, or driving record of the excluded person. This

1 subsection does not apply to an automobile liability insurance policy  
2 required under AS 28.20.

3 (b) An automobile insurance policy providing that a person is  
4 excluded from coverage may also provide that the insurer is not liable  
5 for any coverage, including defense or indemnity coverage under any  
6 provision of the policy for claims or damages, including claims  
7 against other persons insured under the policy, arising out of the  
8 operation of the insured automobile by the excluded person. An auto-  
9 mobile insurance policy providing that the insurer is not liable as  
10 allowed under this subsection shall contain the following provision:

11 Exclusion of Named Driver: In consideration of the  
12 premium for which the policy is written, it is agreed  
13 that the insurer is not liable for any coverage, in-  
14 cluding defense or indemnity coverage under any pro-  
15 vision of the policy for claims or damages, including  
16 claims against other persons insured under the policy  
17 or claims against the excluded person, sustained while  
18 a vehicle insured under this policy is operated by  
19 (name of excluded person) following the effective date  
20 of this endorsement.

21 (c) The required policy provision contained in (b) this section  
22 shall also be provided to the insured as a notice separate from the  
23 policy and typed in bold face print. The notice must be signed by the  
24 insured in order for the exclusion of the named driver and the limita-  
25 tion of the insurer's liability under this section to be effective.

26 \* Sec. 3. APPLICABILITY. This Act applies to automobile insurance  
27 policies that are entered into or renewed on or after the effective date of  
28 this Act.

29 \* Sec. 4. This Act takes effect January 1, 1991.

STEVE COWPER, GOVERNOR

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

February 12, 1990

The Honorable Steve Frank  
Alaska State Legislature  
P.O. Box V  
Juneau, Alaska 99811

Re: SB 306 -- excluding a named driver  
from a motor vehicle insurance policy  
Our file: 663-90-0295

Dear Senator Frank:

You have asked for our opinion on the likelihood that the named driver exclusion provision of SB 309 would be upheld if challenged in court. Senate Bill 309 (SB 309) relates to the exclusion of a named driver from a motor vehicle insurance policy. Although named driver exclusions are not uncommon in individual automobile insurance policies, we have found few states which have enacted statutes to provide for such exclusions.

The purpose of a named driver exclusion is to exclude from coverage insured automobiles while they are driven or operated by a particular individual. Such exclusions are typically used in policies covering automobiles which may be driven by more than one person where an individual (typically a family member) has a poor driving record.

You have specifically asked for our opinion as to whether a named driver exclusion provision would be upheld by the Alaska courts. Our research has revealed no case law in Alaska that addresses the validity of either named driver exclusions or of the related "household" or "family" exclusions. Without such case law precedent, it is difficult to predict the reaction of the Alaska courts to such provisions with any degree of certainty. However, we have reviewed the treatment of named driver exclusions in other states which provide for them by statute, and our opinion is based on the experiences in those states.

In general, courts in those states which do not have statutory provisions for named driver exemptions on automobile insurance policies have held that such exemptions are valid only

REPLY TO:

1031 W 4th AVENUE SUITE 200  
ANCHORAGE, ALASKA 99501-1994  
PHONE: (907) 276-3550  
FAX: (907) 276-3697

1st NATIONAL CENTER  
100 CUSHMAN ST. SUITE 400  
FAIRBANKS, ALASKA 99701-4679  
PHONE: (907) 452-1568  
FAX: (907) 456-1317

P.O. BOX K—STATE CAPITOL  
JUNEAU, ALASKA 99811-0300  
PHONE: (907) 465-3600  
FAX: (907) 463-5295

in relation to coverage exceeding the minimum level of liability of coverage mandated, so that the public policy of mandatory uninsured motorist coverage is maintained. See, e.g., Allstate Insurance Co. v. United States Fidelity & Guaranty Co., 619 P.2d 329 (Utah 1980). The underlying tenet is that if any provision of an automobile liability insurance policy conflicts with the requirements of the statute regulating such policies, it is invalid.

Our research has revealed six states (Colorado, Arizona, Pennsylvania, New Mexico, Maryland, and Michigan) having statutes which provide for named driver exclusions in automobile insurance policies similar to that in SB 309. The courts in those states have generally upheld the exclusions. See Parsons v. Erie Insurance Group, 569 F.Supp. 572 (D. Maryland 1983)(if the uninsured motorist coverage on a vehicle was deemed applicable when the driver is excluded from the vehicle's ordinary liability coverage, then the insurer would in effect still be insuring the liable driver, who had a bad claims or driving record, but the insurer would be denied the appropriate premium); Sersion v. Dairyland Insurance Co., 757 P.2d 1169 (Colo, App. 1988)(the application of the statute cannot be limited or invalidated on public policy grounds where the language of the legislative intent is clear and unambiguous); Nationwide Mutual Insurance Co. v. Miller, 505 A.2d 1338 (Md. 1986)(named driver exclusion prevented insured passenger from collecting uninsured motorist benefits when insured in car driven by the excluded driver); Garza v. Glen Falls Insurance Co., 731 P.2d 363 (N.M.1986)(policy which denied liability coverage in accident caused by named driver excluded in the policy upheld); Muxlow v. Auto Club Insurance Association, 394 N.W.2d 121 (Mich. App. 1986)(the named driver exclusion statute permits the vehicle owner to be named as the excluded driver on policy).

In a strong decision, the court in Allstate Insurance Co. v. Detroit Automobile Inter-Insurance Exchange, 369 N.W.2d 908 (Mich. App. 1985) held that the named driver exclusion in a policy permitted the exclusion of the car owner from liability coverage when injured as a passenger in his own car driven by the named individual. The court reasoned that the opposite result would defeat one of the primary purposes of permitting the exclusion, which is to reduce premiums, and that even if there was a conflict between the named driver exclusion statute and the mandatory liability coverage, the statute on exclusions would prevail since it is a specific statute enacted subsequent to a more general statute covering the same subject matter.

The Honorable Steve Frank  
Alaska State Legislature  
663-90-0295

February 12, 1990  
Page 3

An exception has been found in Arizona, another state which has a named driver exclusion statute. The Supreme Court of Arizona held that the named driver exclusion in an individual insurance policy is void as far as mandatory uninsured motorist coverage is concerned. See Employers Mutual Casualty Co. v. McKeon, 765 P.2d 513 (Ariz.1988) (insurance contract was held contrary to public policy and therefore void as it purported to exclude insureds' son from all coverage including mandatory uninsured motorist coverage where son was injured in accident while driving insured car but was not at fault).

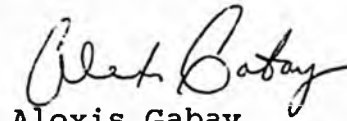
The courts in each of these cases have repeatedly looked at the language of the policy and to legislative intent in reaching their decisions. Therefore, the clearer the legislative intent, the more likely the provision will survive such a challenge.

Thank you for seeking our opinion on this matter. Please do not hesitate to contact this office if you have further questions.

Sincerely,

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By:



Alexis Gabay  
Assistant Attorney General

AG:nb

shattuck & grummett, inc.

ESTABLISHED 1898

insurance • bonds

301 SEWARD STREET

Juneau, Alaska 99801

CURTIS G. SHATTUCK  
ALLEN D. SHATTUCK  
ROGER R. SHATTUCK, C.P.C.U.  
HUD JAEGER

MICHAEL A. GRUMMETT  
ROGER GRUMMETT  
NANCY L. BURNS

February 9, 1990

Senator Steve Frank  
State of Alaska  
PO Box V  
Juneau, Alaska

Re: Senate Bill #309  
Excluding Named Drivers from Auto Insurance Policies

Dear Senator Frank

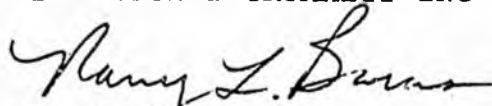
At the request of Rick Solie of your office, I am forwarding samples of automobile insurance premiums comparing some varied situations such as applicants meeting preferred risk rating criteria, and then dealing with the same risk except with adverse driving record, and with and without the proposed Exclusion Endorsement being applied.

I hope the committee will find this practical type of information to be helpful in deliberating SB #309.

If our office can be of further help in this regard, we hope you will contact us again.

Sincerely

SHATTUCK & GRUMMETT INC

  
Nancy L. Burns  
Agent/Broker

NLB/kj

Encl

SAMPLE #1

The following figures are premium ESTIMATES only.

### YOUR LIABILITY

**BODILY INJURY** covers your legal liability for injury to persons. Limits \$50,000 per person and \$100,000 per accident where more than one person is injured, including legal costs ..... \$ 64.50\* & 57.00\*

or

\$100,000 per person, \$300,000 per acc. . \$ \_\_\_\_\_

**PROPERTY DAMAGE** covers your legal liability for damages to property of others. Limit, \$25,000 including legal costs ..... \$ \*Included

or

\$50,000 \$ \_\_\_\_\_

or

\$ \_\_\_\_\_ Combined Single Limit Bodily Injury AND Property Damage Liability \$ \_\_\_\_\_

**UNINSURED MOTORIST** — covers you and your family for Bodily Injury done by an uninsured motorist with limits of \$50,000/100,000 and for damage to your car (\$250 deductible) ..... \$ 11.30 & 20.20

**MEDICAL PAYMENTS** will cover all medical costs of anyone hurt in your car regardless of liability. It also covers each family member injured in or by any other car.

\$1,000 per person limit ..... \$ 2.00 & 2.00

\$2,000 per person limit ..... \$ \_\_\_\_\_

\$5,000 per person limit ..... \$ \_\_\_\_\_

Most of our programs offer higher limits of Liability, Uninsured Motorist and Medical Payments coverages than those shown above, as well as various Deductibles on your car. We also urge you to inquire re our Personal Catastrophe Policy — minimum limits \$1,000,000. In addition, most programs offer Towing, Auto Death and Disability, Rental Reimbursement, Customized Auto Endorsement and other coverages. Inquire for details.

In order to effect this coverage, a completed and signed application is required, and premium or downpayment (inquire re available payment plans.) We will need information including the serial number of your car, odometer reading, dates of birth and drivers license numbers of all drivers, and prior insurance information, if any.

AUTO #1 = 1990 Buick Century Cstm - Loan requires Comprehensive & Collision  
 AUTO #2 = 1982 Ford F150 Pickup 4WD - No Comprehensive or Collision required

TOTAL SIX MONTHS PREMIUM \$338.00 (= \$676.00 IN A YEAR'S TIME)

### YOUR CAR

**COMPREHENSIVE** pays for all damage to your car from any cause except collision or upset. It includes fire, theft, glass breakage, vandalism, windstorm, etc. (but excludes sound equipment not permanently installed.) If you pay the first \$100 of each claim ..... \$ 50.00 - Buick On

**COLLISION OR UPSET** pays for all damage to your car from these two hazards except that you pay the amount of deductible on each claim. If you pay the first \$200. . . \$ \_\_\_\_\_

or

\$250 Deductible \$ 131.00 - Buick On

\$500 Deductible \$ \_\_\_\_\_

#### DESCRIPTION OF THIS RISK IS

Adult married couple  
 Clear driving records (or driving records acceptable in Preferred market)  
 Allstate Insurance Co Preferred Risk Market (both vehicles included on policy)

(The same vehicles are used on each sample)

Samples #2

The following figures are premium ESTIMATES only.

### YOUR LIABILITY

**BODILY INJURY** covers your legal liability for Injury to persons. Limits \$50,000 per person and \$100,000 per accident where more than one person is injured, including legal costs ..... \$ 85.50\* **Buick Only**

or

\$100,000 per person, \$300,000 per acc .. \$ \_\_\_\_\_

**PROPERTY DAMAGE** covers your legal liability for damages to property of others. Limit, \$25,000 including legal costs ..... \$ \*Included

or

\$50,000 \$ \_\_\_\_\_

or

\$ \_\_\_\_\_ Combined Single Limit Bodily Injury AND Property Damage Liability \$ \_\_\_\_\_

**UNINSURED MOTORIST** — covers you and your family for Bodily Injury done by an uninsured motorist with limits of \$50,000/100,000 and for damage to your car (\$250 deductible) ..... \$ 11.30

**MEDICAL PAYMENTS** will cover all medical costs of anyone hurt in your car regardless of liability. It also covers each family member injured in or by any other car.

\$1,000 per person limit ..... \$ 4.00

\$2,000 per person limit ..... \$ \_\_\_\_\_

\$5,000 per person limit ..... \$ \_\_\_\_\_

Most of our programs offer higher limits of Liability, Uninsured Motorist and Medical Payments coverages than those shown above, as well as various Deductibles on your car. We also urge you to inquire re our Personal Catastro, lie Policy — minimum limits \$1,000,000. In addition, most programs offer Towing, Auto Death and Disability, Rental Reimbursement, Customized Auto Endorsement and other coverages. Inquire for details.

In order to effect this coverage, a completed and signed application is required, and premium or downpayment (inquire re available payment plans.) We will need information including the serial number of your car, odometer reading, dates of birth and drivers license numbers of all drivers, and prior insurance information, if any.

TOTAL SIX MONTH PREMIUM \$296.80 (Six Month Premium x 2 = \$593.60)  
BUICK ONLY

### DESCRIPTION OF THIS RISK IS

Insured's spouse has been convicted of Drunk Driving within the past 3 year period with the standard SR-22 (Proof of Insurance) Filing required by the State to reinstate the driver's license.

This spouse has now been EXCLUDED AS A DRIVER ON THE PREFERRED RISK POLICY DUE TO THE DWI, AND HAS A SEPARATE POLICY ON THE PICKUP - SEE PAGE TWO

The policy on the Buick remains in Allstate Insurance Co's Preferred Risk market (with the spouse excluded from driving) and with the deletion of the two car discount.

### YOUR CAR

**COMPREHENSIVE** pays for all damage to your car from any cause except collision or upset. It Includes fire, theft, glass breakage, vandalism, windstorm, etc. (but excludes sound equipment not permanently installed.) If you pay the first \$100 of each claim ..... \$ 50.00 **Buick Only**

**COLLISION OR UPSET** pays for all damage to your car from these two hazards except that you pay the amount of deductible on each claim. If you pay the first \$200.... \$ \_\_\_\_\_

or

\$250 Deductible \$ 146.00

\$500 Deductible \$ \_\_\_\_\_

SAMPLE #2 (cont.)

The following figures are premium ESTIMATES only.

### YOUR LIABILITY

**BODILY INJURY** covers your legal liability for injury to persons. Limits \$50,000 per person and \$100,000 per accident where more than one person is injured, including legal costs ..... \$ 362.00  
 Pickup Only  
 or  
 \$100,000 per person, \$300,000 per acc... \$ \_\_\_\_\_

**PROPERTY DAMAGE** covers your legal liability for damages to property of others. Limit, \$25,000 including legal costs ..... \$ 224.00  
 or  
 \$50,000 \$ \_\_\_\_\_  
 or  
 \$ \_\_\_\_\_ Combined Single Limit Bodily Injury AND Property Damage Liability \$ \_\_\_\_\_

### YOUR CAR

**COMPREHENSIVE** pays for all damage to your car from any cause except collision or upset. It includes fire, theft, glass breakage, vandalism, windstorm, etc. (but excludes sound equipment not permanently installed.) If you pay the first \$100 of each claim ..... \$ \_\_\_\_\_

**COLLISION OR UPSET** pays for all damage to your car from these two hazards except that you pay the amount of deductible on each claim. If you pay the first \$200... \$ \_\_\_\_\_  
 or  
 \$250 Deductible \$ \_\_\_\_\_  
 \$500 Deductible \$ \_\_\_\_\_

**UNINSURED MOTORIST** — covers you and your family for Bodily Injury done by an uninsured motorist with limits of \$50,000/100,000 and for damage to your car (\$250 deductible) ..... \$ 21.00

**MEDICAL PAYMENTS** will cover all medical costs of anyone hurt in your car regardless of liability. It also covers each family member injured in or by any other car.  
 \$1,000 per person limit ..... \$ 32.00  
 \$2,000 per person limit ..... \$ \_\_\_\_\_  
 \$5,000 per person limit ..... \$ \_\_\_\_\_

Most of our programs offer higher limits of Liability, Uninsured Motorist and Medical Payments coverages than those shown above, as well as various Deductibles on your car. We also urge you to inquire re our Personal Catastrophe Policy — minimum limits \$1,000,000. In addition, most programs offer Towing, Auto Death and Disability, Rental Reimbursement, Customized Auto Endorsement and other coverages. Inquire for details.

In order to effect this coverage, a completed and signed application is required, and premium or downpayment (inquire re available payment plans.) We will need information including the serial number of your car, odometer reading, dates of birth and drivers license numbers of all drivers, and prior insurance information, if any.

PLUS SR-22 FILING SURCHARGE = \$50.00 FULLY EARNED (Paid once in three years provided policy is renewed without lapse)

TOTAL ANNUAL PREMIUM = \$689.00 (Ford Pickup only)

#### DESCRIPTION OF MARKET

This policy is being issued through the Alaska Automobile Insurance Plan, commonly known as the Assigned Risk Plan.

#### PREMIUMS THROUGH OTHER MARKETS AVAILABLE TO THIS RISK

Allstate Indemnity Co = \$341.20 per SIX MONTHS (x 2 = \$682.40)

\*\*\*\*\*Progressive Ins Co = \$631.00 ANNUAL (Less 5% if Paid in Full)

The following figures are premium ESTIMATES only.

## YOUR LIABILITY

**BODILY INJURY** covers your legal liability for injury to persons. Limits \$50,000 per person and \$100,000 per accident where more than one person is injured, including legal costs..... \$ 288.50/\$100.00  
Auto 1/Auto 2  
or  
\$100,000 per person, \$300,000 per acc... \$ \_\_\_\_\_

**PROPERTY DAMAGE** covers your legal liability for damages to property of others. Limit, \$25,000 including legal costs ..... \$ \*Included

or  
\$50,000 \$ \_\_\_\_\_  
or

\$ \_\_\_\_\_ Combined Single Limit Bodily Injury AND Property Damage Liability \$ \_\_\_\_\_

## YOUR CAR

**COMPREHENSIVE** pays for all damage to your car from any cause except collision or upset. It includes fire, theft, glass breakage, vandalism, windstorm, etc. (but excludes sound equipment not permanently installed.) If you pay the first \$100 of each claim ..... \$ 88.00-Buick Only

**COLLISION OR UPSET** pays for all damage to your car from these two hazards except that you pay the amount of deductible on each claim. If you pay the first \$200.... \$ \_\_\_\_\_

or  
\$250 Deductible \$ 341.00-Buick On

\$500 Deductible \$ \_\_\_\_\_

**UNINSURED MOTORIST** — covers you and your family for Bodily Injury done by an uninsured motorist with limits of \$50,000/100,000 and for damage to your car (\$250 deductible) ..... \$ 11.30/20.20

**MEDICAL PAYMENTS** will cover all medical costs of anyone hurt in your car regardless of liability. It also covers each family member injured in or by any other car.

\$1,000 per person limit ..... \$ 4.00/4.00

\$2,000 per person limit ..... \$ \_\_\_\_\_

\$5,000 per person limit ..... \$ \_\_\_\_\_

Most of our programs offer higher limits of Liability, Uninsured Motorist and Medical Payments coverages than those shown above, as well as various Deductibles on your car. We also urge you to inquire re our Personal Catastrophe Policy — minimum limits \$1,000,000. In addition, most programs offer Towing, Auto Death and Disability, Rental Reimbursement, Customized Auto Endorsement and other coverages. Inquire for details.

In order to effect this coverage, a completed and signed application is required, and premium or downpayment (inquire re available payment plans.) We will need information including the serial number of your car, odometer reading, dates of birth and drivers license numbers of all drivers, and prior insurance information, if any.

TOTAL SIX MONTH PREMIUM \$857.00 (x 2 = \$1,714)

### DESCRIPTION OF THIS RISK IS

Spouse has the Drunk Driving Conviction & SR-22 Filing Requirement

This sample shows both vehicles insured in Allstate Indemnity Co (i.e. no exclusion applies)

ANOTHER MARKET AVAILABLE (besides the Alaska Auto Ins Plan) is Progressive Ins Co

Same coverages etc as above = \$1,260 ANNUAL (Less 5% if paid in full)

### PROGRESSIVE INS CO ALLOWS EXCLUSIONS

Policy issued under above based on the Buick only with the spouse excluded would require an annual premium of \$1,260 (less 5% if paid in full)

**S B**

**315**

SENATE COMMITTEE REPORT

DATE 2/8/90

FURTHER: Finance

DATE TURNED INTO OFFICE: 2/27/90

C Committee considered SB 315

Long-term disability insurance, efd.

and recommended:

- replace with \_\_\_\_\_ CS SB 315 (L+C)  same title
- or adopt \_\_\_\_\_ CS \_\_\_\_\_  new title
- attached amendment(s)  technical
- \_\_\_\_\_ letter of intent adopted  title change (HB only)

do pass

do not pass

no recommendation

individual recommendations

further referral to \_\_\_\_\_

ATTACHES NEW FISCAL NOTE(S):

APPROVES PREVIOUS:

fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_

fiscal note(s) \_\_\_\_\_ Dept/Date: \_\_\_\_\_

zero fiscal note(s) \_\_\_\_\_  
Dept of Admin 2/12/90  
(for CS SB 315 (L+C))

zero fiscal note(s) \_\_\_\_\_  
Dept of Commerce 2/7/90  
(for CS SB 315 (L+C))

appropriation-no fiscal note

Governor's bill w/fiscal note

SIGNING DO PASS:

OTHER RECOMMENDATIONS:

*[Handwritten signatures]*

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

*[Handwritten signature]*

Chair: Signature and Recommendation

**FISCAL NOTE**

**REQUEST:**

Revision Date: \_\_\_\_\_ Agency Affected: Commerce & Economic Dev.  
 Title: An Act relating to long-term BRU: Insurance  
care disability insurance; and providing for an effective date  
 Sponsor: HESS Committee Components: Operations  
 Requestor: HESS Committee

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

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



**FUNDING: (Thousands of Dollars)**

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

**POSITIONS:**

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

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

Prepared by: Don Koch, Acting Deputy Director  Phone: 465-2577  
 Division: Insurance Date: 2/6/90  
 Approved by Commissioner: Larry Mercurieff  Date: 2/7/90  
 Agency: Department of Commerce & Economic Development

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

FISCAL NOTE

REQUEST:

Revision Date: \_\_\_\_\_  
Title: An Act relating to long-term disability insurance  
Sponsor: Senate HESS  
Requestor: \_\_\_\_\_

Agency Affected: Administration  
BRU: Retirement and Benefits  
Components: Retirement and Benefits

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES	0	0	0	0	0	0
TRAVEL	0	0	0	0	0	0
CONTRACTUAL	0	0	0	0	0	0
SUPPLIES	0	0	0	0	0	0
EQUIPMENT	0	0	0	0	0	0
LAND & STRUCTURES	0	0	0	0	0	0
GRANTS, CLAIMS	0	0	0	0	0	0
MISCELLANEOUS	0	0	0	0	0	0
TOTAL OPERATING	0	0	0	0	0	0
CAPITAL	0	0	0	0	0	0
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

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

POSITIONS:

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

ANALYSIS: (Attach a separate page if necessary)

The long-term care insurance coverage offered to retirees under the Public Employees', Teachers', Judicial, or the Elected Public Officers' Retirement systems are not affected by this bill.

Prepared by: Sally Smith  
Division: Retirement and Benefits

Phone: 465-4470

Date: Feb 5 1990

Approved by Commissioner: Frank S. Baxter  
Agency: Department of Administration

Date: 2/12/90

Distribution (by preparer):

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



STATE OF ALASKA  
OFFICE OF THE GOVERNOR

BILL ANALYSIS

DEPARTMENT Administration	DIVISION Retirement & Benefits	BILL NUMBER CSSB315	SPONSOR Senate HESS
SHORT TITLE OF BILL An Act relating to long-term Disability Insurance			
DEPARTMENT POSITION Support			
PREPARED BY Sally Smith <i>Sally Smith</i>	DATE 1-22-90	COMMISSIONER'S SIGNATURE <i>Frank Reuter</i>	DATE 2/12/90

SUMMARY

OTHER AGENCIES AFFECTED BY BILL Dept. of Commerce	CONSTITUENT GROUP(S) AFFECTED BY BILL Retirees under the Public Employees, Teachers, Judicial, and Elected Public Officers Retirement system.
ORGANIZATIONAL SUPPORT FOR BILL Unknown	ORGANIZATIONAL OPPOSITION TO BILL Unknown

FISCAL IMPACT:  NONE  FISCAL NOTE ATTACHED

BACKGROUND/LEGISLATIVE INTENT

This bill establishes a framework around which long-term care insurance policies can be issued.

ANALYSIS OF BILL/PROGRAM EFFECTS

The Department of Administration makes a group long-term care insurance policy available to individuals at the time of their retirement in the systems noted above. The proposed framework would require no changes in this coverage.

AMENDMENTS PROPOSED

PLEASE ATTACH A SEPARATE SHEET FOR ADDITIONAL COMMENTS OR ANALYSIS.

CSSB 315 (HESS): "An Act relating to long-term care disability insurance; and providing for an effective date.

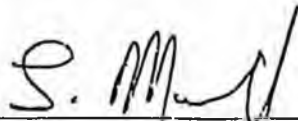
The department supports this legislation. This bill establishes a specific regulatory framework for insurance contracts that provide for long-term care benefits. It establishes certain standardized contract provisions in order to require certain minimum benefits and to facilitate public understanding and comparison shopping.

Funding of long-term care is a critical issue throughout the nation that impacts all third-party and out-of-pocket payers of medical care for older persons. "Long-term care" is the term that pertains to a continuum of care that ranges from some assistance in the home to the extreme of 24-hour skilled care in a medical facility. Our average population is getting older and is living longer, thus, increasing the likelihood of more people requiring some form of long-term care. Medicare currently provides almost no coverage for long-term care. Medicaid provides the majority of the funding for long-term care nationwide and provides for nearly all of the funding for skilled nursing service care in Alaska. Most Americans are not financially prepared to meet the cost of long-term care in their later years. This results in those people spending down both assets and income in order to qualify for public assistance primarily through Medicaid.

The insurance industry has been slow to develop insurance products to cover this risk. The most important reason for this is the lack of reliable statistical data on which to base rates, coupled with the fact that correct projection of costs far into the future is required and is extremely difficult to accomplish. Although this attitude is changing, the general population has held the misperception that there is little or no need for such coverage and also that, if long-term care is needed, Medicare would provide the necessary benefits.

Without mechanisms such as insurance products to prefund long-term care, publicly-funded care is expected to increase, perhaps to a point beyond that which public resources can readily bear. It is important to encourage the growth of insurance products to help finance long-term care needs. However, this needs to be done in a manner that provides appropriate elements of consumer protection.

SB 315 is based on the National Association of Insurance Commissioners (NAIC) Model Long-Term Care Act. The NAIC is encouraging the adoption of this model by the various states in lieu of federal intervention. Abuses have occurred in other states with a large senior population. These abuses have received Congressional scrutiny, with indications that the federal government should regulate long-term care if the states do not.



Larry Mercurieff, Commissioner

Date: 2/7/90

STATE OF ALASKA  
THE LEGISLATURE

FOUCH Y STATE CAPITOL  
JUNEAU ALASKA 99811  
907 465 3600

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 14, 1990

SUBJECT: Long-term care disability insurance -  
CSSB 315(HESS)

TO: Senator Paul Fischer

FROM: Michael F. Ford *M.F.*  
Legislative Counsel

The following is a sectional analysis of CSSB 315(HESS):

Section 1 - Purpose section.

Section 2

Sec. 21.53.010 - Prohibits sale or marketing unless the insurance complies with the provision of this chapter and other applicable provisions of law.

Sec. 21.53.020 - Provides disclosure and performance standards for long-term disability insurance.

Sec. 21.53.030 - Establishes criteria for excluding coverage as a result of a preexisting condition.

Sec. 21.53.040 - Prohibits conditioning eligibility on prior hospital or institutional care. Allows limitations or conditions on eligibility, if not prohibited and if clearly set out in a separate paragraph of the policy.

Sec. 21.53.050 - Provides that an insured has the right to return a policy within 30 days after delivery. Requires the insurer to deliver an outline of coverage to a prospective applicant. Establishes items that must be included in the outline of coverage.

Sec. 21.53.060 - Requires a policy summary be included with an individual life insurance policy, if the policy provides long-term care disability insurance benefits. Establishes

items that must be included in the summary. Requires a report of benefits paid, if the benefits are paid by acceleration of the policy death benefit. Establishes items that must be included in the report.

Sec. 21.53.070 - Provides that group long-term care disability insurance cannot be offered to a resident of this state, under a group policy in another state, unless the state in which the policy is offered has similar statutory or regulatory provisions.

Sec. 21.53.080 - Prohibits group long-term care disability insurance being offered to an association, unless the association meets the requirements of this section.

Sec. 21.53.090 - Requires the director of the division of insurance to adopt certain regulations.

Sec. 21.53.200 - Definitions.

Section 3 - Provides that AS 21.53 applies to fraternal benefit societies.

Section 4 - Provides that AS 21.53 applies to hospital or medical service corporations.

Section 5 - Effective date.

MFF:pl  
WKP2/046

# Alaska State Legislature

SENATOR PAUL FISCHER, Chairman  
SENATOR JIM DUNCAN, Vice Chairman  
SENATOR AL ADAMS  
SENATOR LLOYD JONES  
SENATOR TIM KELLY



P.O. BOX V  
ROOM 508  
STATE CAPITOL  
(907) 465-3762

## Senate Committee on Health, Education and Social Services

TO: MEMBERS OF THE SENATE LABOR AND COMMERCE  
COMMITTEE.

FROM: SENATOR PAUL FISCHER, CHAIRMAN, SENATE HEALTH,  
EDUCATION AND SOCIAL SERVICES COMMITTEE *PF.*

DATE: FEBRUARY 9, 1990

RE: CS SB 315 - LONG TERM CARE INSURANCE.

---

THIS BILL IS BASED UPON A MODEL ACT DEVELOPED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS. IT ESSENTIALLY ALLOWS PROVIDERS TO DELIVER LONG TERM CARE INSURANCE IN THE STATE OF ALASKA. CERTAIN REQUIREMENTS MUST BE MET IN ORDER TO BE ALLOWED TO DO THIS.

TO DATE, 38 STATES HAVE DEVELOPED SIMILAR VERSIONS OF THIS MODEL ACT. SEVERAL OTHER STATES HAVE SIMILAR MEASURES UNDER CONSIDERATION.

ESSENTIALLY, THIS BILL PROVIDES A METHOD FOR OUR CITIZENRY TO MEET THE NEEDS OF AN AGING POPULATION. MEDICARE CURRENTLY PROVIDES ALMOST NO COVERAGE FOR LONG TERM CARE. MOST COVERAGE FOR LONG TERM CARE COMES OUT OF MEDICAID.

THIS BILL PROVIDES A PRIVATE SECTOR ALTERNATIVE FOR INDIVIDUALS IN NEED OF LONG TERM CARE. IT WOULD ALSO HELP REDUCE PRESSURES ON THE MEDICAID BUDGET.

THIS BILL ENJOYS THE SUPPORT OF THE DEPARTMENT OF COMMERCE AND THE HEALTH INSURANCE ASSOCIATION OF AMERICA.

A ZERO FISCAL NOTE IS ATTACHED.

I RESPECTFULLY REQUEST THAT THIS MEASURE BE TAKEN UP BY THE LABOR AND COMMERCE COMMITTEE AT ITS EARLIEST POSSIBLE CONVENIENCE.

# 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

February 26, 1990

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

Re: CSSB 315 (HESS)

Dear Senator Eliason:

On behalf of the American Council of Life Insurance (ACLI), I would like to propose two amendments to the Committee for inclusion in CSSB 315, as follows:

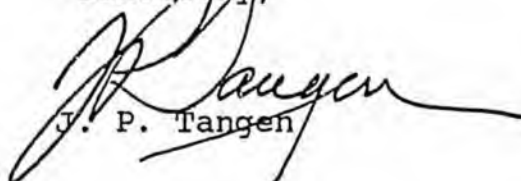
1. Page 5, line 26. The word "Group" should be deleted from the title of this section. The section deals with "individual" policies, therefore, the reference to "group" policies in the title is technically erroneous.

2. Page 9, line 15. The word "disability" should be deleted from the defined term. In addition, wherever the defined term is used, the corresponding correction should be made.

These corrections will make the bill more in keeping with the NAIC model.

I am privileged to state that the Health Insurance Association of America and the Alaska Division of Insurance have indicated that they do not object to these amendments.

Sincerely,

  
J. P. Tangen

cc: Julie Spiezio

JPT:2QACLI

Draft: December 5, 1989

Adds Prohibition Against Post-Claims Underwriting, pp. 8-10

Adds Standards for Home Health Care Benefits, p. 2, 10

Adds Requirement to Offer Inflation Protection, p. 11

## LONG-TERM CARE INSURANCE MODEL REGULATION

### Table of Contents

Section 1.	Purpose
Section 2.	Authority
Section 3.	Applicability and Scope
Section 4.	Definitions
Section 5.	Policy Definitions
Section 6.	Policy Practices and Provisions
Section 7.	Required Disclosure Provisions
Section 8.	<u>Prohibition Against Post Claims Underwriting</u>
Section 9.	<u>Minimum Standards for Home Health Care Benefits in Long-Term Care Insurance Policies</u>
Section 10.	<u>Requirement to Offer Inflation Protection</u>
Section 8- 11.	Requirements for Replacement
Section 9- 12.	Discretionary Powers of Commissioner
Section 10- 13.	Reserve Standards
Section 11- 14.	Loss Ratio
Section 12- 15.	Filing Requirement
Section 13- 16.	Standard Format Outline of Coverage

### Section 1. Purpose

The purpose of this regulation is to implement [cite section of law which sets forth the NAIC Long-Term Care Insurance Model Act], to promote the public interest, to promote the availability of long-term care insurance coverage, to protect applicants for long-term care insurance, as defined, from unfair or deceptive sales or enrollment practices, to facilitate public understanding and comparison of long-term care insurance coverages, and to facilitate flexibility and innovation in the development of long-term care insurance.

### Section 2. Authority

This regulation is issued pursuant to the authority vested in the Commissioner under [cite sections of law enacting the NAIC Long-Term Care Insurance Model Act and establishing the Commissioner's authority to issue regulations].

### Section 3. Applicability and Scope

Except as otherwise specifically provided, this regulation applies to all long-term care insurance policies delivered or issued for delivery in this state on or after the effective date hereof, by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations.

Drafting Note: This regulation like the NAIC Long-Term Care Insurance Model Act, is intended to apply to policies, contracts, subscriber agreements, riders and endorsements whether issued by insurers; fraternal benefit societies; nonprofit health, hospital and medical service corporations; prepaid health plans; health maintenance organizations and all similar organizations. In order to include such organizations, regulations should identify them in accordance with statutory terminology or by specific statutory citation. Depending upon state law and regulation, insurance department jurisdiction, and other factors, separate regulations may be required. In any event, the regulation should provide that the particular terminology used by these plans, organizations and arrangements (e.g., contract, policy, certificate, subscriber, member) may be substituted for, or added to, the corresponding terms used in this regulation.

#### Section 4. Definitions

For the purpose of this regulation, the terms "long-term care insurance," "group long-term care insurance," "commissioner," "applicant," "policy" and "certificate" shall have the meanings set forth in Section 4 of the NAIC Long-Term Care Insurance Model Act.

Drafting Note: Where the word "Commissioner" appears in this regulation, the appropriate designation for the chief insurance supervisory official of the state should be substituted. To the extent that the model act is not adopted, the full definition of the above terms contained in that model act should be incorporated into this section.

#### Section 5. Policy Definitions

No long-term care insurance policy delivered or issued for delivery in this state shall use the terms set forth below, unless the terms are defined in the policy and the definitions satisfy the following requirements:

- A. "Acute condition" means that the individual is medically unstable. Such an individual requires frequent monitoring by medical professionals, such as physicians and registered nurses, in order to maintain their health status.
- B. "Home health care services" means medical and nonmedical services provided to ill, disabled or infirm persons in their residences. Such services may include homemaker services, assistance with activities of daily living and respite care services.
- A: C. "Medicare" shall be defined as "The Health Insurance for the Aged Act, Title XVIII of the Social Security Amendments of 1965 as Then Constituted or Later Amended," or "Title I, Part I of Public Law 89-97, as Enacted by the Eighty-Ninth Congress of the United States of America and popularly known as the Health Insurance for the Aged Act, as then constituted and any later amendments or substitutes thereof," or words of similar import.

B: D. "Mental or nervous disorder" shall not be defined to include more than neurosis, psychoneurosis, psychopathy, psychosis, or mental or emotional disease or disorder.

G: E. "Skilled nursing care," "intermediate care," "personal care," "home care," and other services shall be defined in relation to the level of skill required, the nature of the care and the setting in which care must be delivered.

B: F. All providers of services, including but not limited to "skilled nursing facility," "extended care facility," "intermediate care facility," "convalescent nursing home," "personal care facility," and "home care agency" shall be defined in relation to the services and facilities required to be available and the licensure or degree status of those providing or supervising the services. The definition may require that the provider be appropriately licensed or certified.

Drafting Note: State laws relating to nursing and other facilities and agencies are not uniform. Accordingly, specific reference to or incorporation of the individual state law may be required in structuring each definition.

Comment: This section is intended to specify required definitional elements of several terms commonly found in long-term care insurance policies, while allowing some flexibility in the definitions themselves.

#### Section 6. Policy Practices and Provisions

A. Renewability. The terms "guaranteed renewable" and "noncancellable" shall not be used in any individual long-term care insurance policy without further explanatory language in accordance with the disclosure requirements of Section 7 of this regulation.

(1) No such policy issued to an individual shall contain renewal provisions less favorable to the insured than "guaranteed renewable." However, the Commissioner may authorize nonrenewal on a statewide basis, on terms and conditions deemed necessary by the Commissioner, to best protect the interests of the insureds, if the insurer demonstrates:

(a) That renewal will jeopardize the insurer's solvency; or

(b) That:

(i) The actual paid claims and expenses have substantially exceeded the premium and investment income associated with the policies; and

(ii) The policies will continue to experience substantial and unexpected losses over their lifetime; and

(iii) The projected loss experience of the policies cannot

be significantly improved or mitigated through reasonable rate adjustments or other reasonable methods; and

(iv) The insurer has made repeated and good faith attempts to stabilize loss experience of the policies, including the timely filing for rate adjustments.

(2) The term "guaranteed renewable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums and when the insurer has no unilateral right to make any change in any provision of the policy or rider while the insurance is in force, and cannot decline to renew, except that rates may be revised by the insurer on a class basis.

(3) The term "noncancellable" may be used only when the insured has the right to continue the long-term care insurance in force by the timely payment of premiums during which period the insurer has no right to unilaterally make any change in any provision of the insurance or in the premium rate.

B. Limitations and Exclusions. No policy may be delivered or issued for delivery in this state as long-term care insurance if such policy limits or excludes coverage by type of illness, treatment, medical condition or accident, except as follows:

(1) Preexisting conditions or diseases;

(2) Mental or nervous disorders; however, this shall not permit exclusion or limitation of benefits on the basis of Alzheimer's Disease;

(3) Alcoholism and drug addiction;

(4) Illness, treatment or medical condition arising out of:

(a) War or act of war (whether declared or undeclared);

(b) Participation in a felony, riot or insurrection;

(c) Service in the armed forces or units auxiliary thereto;

(d) Suicide (sane or insane), attempted suicide or intentionally self-inflicted injury; or

(e) Aviation (this exclusion applies only to non-fare-paying passengers).

(5) Treatment provided in a government facility (unless otherwise required by law), services for which benefits are available under Medicare or other governmental program (except Medicaid).

any state or federal workers' compensation, employer's liability or occupational disease law, or any motor vehicle no-fault law, services provided by a member of the covered person's immediate family and services for which no charge is normally made in the absence of insurance.

- (6) This Subsection B is not intended to prohibit exclusions and limitations by type of provider or territorial limitations.

Drafting Note: Paragraph (6) is intended to permit (a) exclusions and limitations for payment for services provided outside the United States and (b) legitimate variations in benefit levels to reflect differences in provider rates.

C. Extension of Benefits. Termination of long-term care insurance shall be without prejudice to any benefits payable for institutionalization if such institutionalization began while the long-term care insurance was in force and continues without interruption after termination. Such extension of benefits beyond the period the long-term care insurance was in force may be limited to the duration of the benefit period, if any, or to payment of the maximum benefits and may be subject to any policy waiting period, and all other applicable provisions of the policy.

D. Continuation or Conversion.

- (1) Group long-term care insurance issued in this state on or after the effective date of this section shall provide covered individuals with a basis for continuation or conversion of coverage.
- (2) For the purposes of this section, "a basis for continuation of coverage" means a policy provision which maintains coverage under the existing group policy when such coverage would otherwise terminate and which is subject only to the continued timely payment of premium when due. Group policies which restrict provision of benefits and services to, or contain incentives to use certain providers and/or facilities may provide continuation benefits which are substantially equivalent to the benefits of the existing group policy. The Commissioner shall make a determination as to the substantial equivalency of benefits, and in doing so, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.
- (3) For the purposes of this section, "a basis for conversion of coverage" means a policy provision that an individual whose coverage under the group policy would otherwise terminate or has been terminated for any reason, including discontinuance of the group policy in its entirety or with respect to an insured

class, and who has been continuously insured under the group policy (and any group policy which it replaced), for at least six months immediately prior to termination, shall be entitled to the issuance of a converted policy by the insurer under whose group policy he or she is covered, without evidence of insurability.

- (4) For the purposes of this section, "converted policy" means an individual policy of long-term care insurance providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to or in excess of those provided under the group policy from which conversion is made. Where the group policy from which conversion is made restricts provision of benefits and services to, or contains incentives to use certain providers and/or facilities, the Commissioner, in making a determination as to the substantial equivalency of benefits, shall take into consideration the differences between managed care and non-managed care plans, including, but not limited to, provider system arrangements, service availability, benefit levels and administrative complexity.
- (5) Written application for the converted policy shall be made and the first premium due, if any, shall be paid as directed by the insurer not later than thirty-one (31) days after termination of coverage under the group policy. The converted policy shall be issued effective on the day following the termination of coverage under the group policy, and shall be renewable annually.
- (6) Unless the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy from which conversion is made. Where the group policy from which conversion is made replaced previous group coverage, the premium for the converted policy shall be calculated on the basis of the insured's age at inception of coverage under the group policy replaced.
- (7) Continuation of coverage or issuance of a converted policy shall be mandatory, except where:
  - (a) Termination of group coverage resulted from an individual's failure to make any required payment of premium or contribution when due; or
  - (b) The terminating coverage is replaced not later than thirty-one (31) days after termination, by group coverage effective on the day following the termination of coverage:
    - (i) Providing benefits identical to or benefits determined by the Commissioner to be substantially equivalent to

or in excess of those provided by the terminating coverage; and

- (ii) The premium for which is calculated in a manner consistent with the requirements of Paragraph (6) of this section.
- (8) Notwithstanding any other provision of this section, a converted policy issued to an individual who at the time of conversion is covered by another long-term care insurance policy which provides benefits on the basis of incurred expenses, may contain a provision which results in a reduction of benefits payable if the benefits provided under the additional coverage, together with the full benefits provided by the converted policy, would result in payment of more than 100 percent of incurred expenses. Such provision shall only be included in the converted policy if the converted policy also provides for a premium decrease or refund which reflects the reduction in benefits payable.
- (9) The converted policy may provide that the benefits payable under the converted policy, together with the benefits payable under the group policy from which conversion is made, shall not exceed those that would have been payable had the individual's coverage under the group policy remained in force and effect.
- (10) Notwithstanding any other provision of this section, any insured individual whose eligibility for group long-term care coverage is based upon his or her relationship to another person, shall be entitled to continuation of coverage under the group policy upon termination of the qualifying relationship by death or dissolution of marriage.
- (11) For the purposes of this section: a "Managed-Care Plan" is a health care or assisted living arrangement designed to coordinate patient care or control costs through utilization review, case management or use of specific provider networks.

#### Section 7. Required Disclosure Provisions

- A. Renewability. Individual long-term care insurance policies shall contain a renewability provision. Such provision shall be appropriately captioned, shall appear on the first page of the policy, and shall clearly state the duration, where limited, of renewability and the duration of the term of coverage for which the policy is issued and for which it may be renewed. This provision shall not apply to policies which do not contain a renewability provision, and under which the right to nonrenew is reserved solely to the policyholder.

Drafting Note: The last sentence of this subsection is intended to apply to long-term care policies which are part of or combined with life insurance

policies, since life insurance policies generally do not contain renewability provisions.

- B. Riders and Endorsements. Except for riders or endorsements by which the insurer effectuates a request made in writing by the insured under an individual long-term care insurance policy, all riders or endorsements added to an individual long-term care insurance policy after date of issue or at reinstatement or renewal which reduce or eliminate benefits or coverage in the policy shall require signed acceptance by the individual insured. After the date of policy issue, any rider or endorsement which increases benefits or coverage with a concomitant increase in premium during the policy term must be agreed to in writing signed by the insured, except if the increased benefits or coverage are required by law. Where a separate additional premium is charged for benefits provided in connection with riders or endorsements, such premium charge shall be set forth in the policy, rider or endorsement.
- C. Payment of Benefits. A long-term care insurance policy which provides for the payment of benefits based on standards described as "usual and customary," "reasonable and customary" or words of similar import shall include a definition of such terms and an explanation of such terms in its accompanying outline of coverage.
- D. Limitations. If a long-term care insurance policy or certificate contains any limitations with respect to preexisting conditions, such limitations shall appear as a separate paragraph of the policy or certificate and shall be labeled as "Preexisting Condition Limitations."
- E. Other Limitations or Conditions on Eligibility for Benefits. A long-term care insurance policy or certificate containing any limitations or conditions for eligibility other than those prohibited in [insert citation to state law corresponding to Section 6D(2) of the Long-Term Care Insurance Model Act] shall set forth a description of such limitations or conditions, including any required number of days of confinement, in a separate paragraph of the policy or certificate and shall label such paragraph "Limitations or Conditions on Eligibility for Benefits."

Section 8. Prohibition Against Post-Claims Underwriting

- A. All applications for long-term care insurance policies or certificates except those which are guaranteed issue shall contain clear and unambiguous questions designed to ascertain the health condition of the applicant.
- B. (1) If an application for long-term care insurance contains a question which asks whether the applicant has had medication prescribed by a physician, it must also ask the applicant to list the medication that has been prescribed.

- (2) If the medications listed in such application were known by the insurer, or should have been known at the time of application, to be directly related to a medical condition for which coverage would otherwise be denied, then the policy or certificate shall not be rescinded for that condition.

C. Except for policies or certificates which are guaranteed issue:

- (1) The following language shall be set out conspicuously and in close conjunction with the applicant's signature block on an application for a long-term care insurance policy or certificate:

Caution: If your answers on this application are incorrect or untrue, [company] has the right to deny benefits or rescind your policy.

- (2) The following language, or language substantially similar to the following, shall be set out conspicuously on the long-term care insurance policy or certificate at the time of delivery:

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

- (3) Prior to issuance of a long-term care policy or certificate to an applicant age eighty (80) or older, the insurer shall obtain one of the following:

- (a) A report of a physical examination;
- (b) An assessment of functional capacity;
- (c) An attending physician's statement; or
- (d) Copies of medical records.

D. A copy of the completed application or enrollment form (whichever is applicable) shall be delivered to the insured no later than at the time of delivery of the policy or certificate unless it was retained by the applicant at the time of application.

E. Every insurer or other entity selling or issuing long-term care insurance benefits shall maintain a record of all policy or certificate rescissions, both state and countrywide, except those which the insured voluntarily effectuated and shall annually furnish

this information to the Insurance Commissioner in the format prescribed by the National Association of Insurance Commissioners.

Section 9. Minimum Standards for Home Health Care Benefits in Long-Term Care Insurance Policies

A. A long-term care insurance policy or certificate may not, if it provides benefits for home health care services, limit or exclude benefits:

- (1) By requiring that the insured/claimant would need skilled care in a skilled nursing facility if home health care services were not provided;
- (2) By requiring that the insured/claimant first or simultaneously receive nursing and/or therapeutic services in a home or community setting before home health care services are covered;
- (3) By limiting eligible services to services provided by registered nurses or licensed practical nurses;
- (4) By requiring that a nurse or therapist provide services covered by the policy that can be provided by a home health aide, or other licensed or certified home care worker acting within the scope of his or her licensure or certification.
- (5) By requiring that the insured/claimant have an acute condition before home health care services are covered;
- (6) By limiting benefits to services provided by Medicare-certified agencies or providers.

B. Home health care coverage may be applied to the nonhome health care benefits provided in the policy or certificate when determining maximum coverage under the terms of the policy or certificate.

Drafting Note: Subsection B permits the home health care benefits to be counted toward the maximum length of long-term care coverage under the policy. The subsection is not intended to restrict home health care to a period of time which would make the benefit illusory. It is suggested that fewer than 40 visits amount to an illusory home health care benefit.

Section 10. Requirement to Offer Inflation Protection

A. No insurer may offer a long-term care insurance policy unless the insurer also offers to the policyholder the option to purchase a policy that provides for benefit levels to increase with benefit maximums or reasonable durations which are meaningful to account for reasonably anticipated increases in the costs of long-term care

services covered by the policy. Insurers must offer to each policyholder, at the time of purchase, the option to purchase a policy with an inflation protection feature no less favorable than one of the following:

- (1) Increases benefit levels annually, [in a manner so that the increases are compounded annually];
- (2) Guarantees the insured individual the right to periodically increase benefit levels without providing evidence of insurability or health status so long as the option for the previous period has not been declined; or
- (3) Covers a specified percentage of actual or reasonable charges.

B. Where the policy is issued to a group, the required offer in Subsection A above shall be made to the group policyholder; except, if the policy is issued to a group defined in [Section 4E(4) of the act] other than to a continuing care retirement community, the offering shall be made to each proposed certificateholder.

C. The offer in Subsection A above shall not be required of:

- (1) Life insurance policies or riders containing accelerated long-term care benefits, nor
- (2) Expense incurred long-term care insurance policies.

D. Insurers shall include the following information in or with the outline of coverage:

- (1) A graphic comparison of the benefit levels of a policy that increases benefits over the policy period with a policy that does not increase benefits. The graphic comparison shall show benefit levels over at least a twenty (20) year period.
- (2) Any expected premium increases or additional premiums to pay for automatic or optional benefit increases. If premium increases or additional premiums will be based on the attained age of the applicant at the time of the increase, the insurer shall also disclose the magnitude of the potential premiums the applicant would need to pay at ages 75, and 85 for benefit increases.

An insurer may use a reasonable hypothetical, or a graphic demonstration, for the purposes of this disclosure.

Drafting Note: It is intended that meaningful inflation protection be provided. It is suggested that a minimum of five percent (5%) (compounded) annual cost increase be used as a base for determining future costs and premiums. Meaningful benefit minimums or durations could include providing increases to attained age, or for a period such as at least 20 years, or for

some multiple of the policy's maximum benefit, or throughout the period of coverage.

Section 8: 11. Requirements for Replacement

- A. Question Concerning Replacement. Individual and direct response solicited long-term care insurance application forms shall include a question designed to elicit information as to whether the proposed insurance policy is intended to replace any other accident and sickness or long-term care insurance policy presently in force. A supplementary application or other form to be signed by the applicant containing such a question may be used.
- B. Solicitations Other than Direct Response. Upon determining that a sale will involve replacement, an insurer; other than an insurer using direct response solicitation methods, or its agent; shall furnish the applicant, prior to issuance or delivery of the individual long-term care insurance policy, a notice regarding replacement of accident and sickness or long-term care coverage. One copy of such notice shall be retained by the applicant and an additional copy signed by the applicant shall be retained by the insurer. The required notice shall be provided in the following manner:

NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF INDIVIDUAL ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with an individual long-term care insurance policy to be issued by [company name] Insurance Company. Your new policy provides ten (10) ~~thirty~~ (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, be certain to truthfully and completely answer all questions on the application concerning your

medical health history. Failure to include all material medical information on an application may provide a basis for the company to deny any future claims and to refund your premium as though your policy had never been in force. After the application has been completed and before you sign it, reread it carefully to be certain that all information has been properly recorded.

The above "Notice to Applicant" was delivered to me on:

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Applicant's Signature)

- C. Direct Response Solicitations. Insurers using direct response solicitation methods shall deliver a notice regarding replacement of accident and sickness or long-term care coverage to the applicant upon issuance of the policy. The required notice shall be provided in the following manner:

**NOTICE TO APPLICANT REGARDING REPLACEMENT  
OF ACCIDENT AND SICKNESS OR LONG-TERM CARE INSURANCE**

According to [your application] [information you have furnished], you intend to lapse or otherwise terminate existing accident and sickness or long-term care insurance and replace it with the long-term care insurance policy delivered herewith issued by [company name] Insurance Company. Your new policy provides thirty (30) days within which you may decide, without cost, whether you desire to keep the policy. For your own information and protection, you should be aware of and seriously consider certain factors which may affect the insurance protection available to you under the new policy.

1. Health conditions which you may presently have (preexisting conditions), may not be immediately or fully covered under the new policy. This could result in denial or delay in payment of benefits under the new policy, whereas a similar claim might have been payable under your present policy.
2. You may wish to secure the advice of your present insurer or its agent regarding the proposed replacement of your present policy. This is not only your right, but it is also in your best interest to make sure you understand all the relevant factors involved in replacing your present coverage.
3. [To be included only if the application is attached to the policy.] If, after due consideration, you still wish to terminate your present policy and replace it with new coverage, read the copy of the application attached to your new policy and be sure that all

questions are answered fully and correctly. Omissions or misstatements in the application could cause an otherwise valid claim to be denied. Carefully check the application and write to [company name and address] within thirty (30) days if any information is not correct and complete, or if any past medical history has been left out of the application.

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(Company Name)

Section 9: 12. Discretionary Powers of Commissioner

The Commissioner may upon written request and after an administrative hearing, issue an order to modify or suspend a specific provision or provisions of this regulation with respect to a specific long-term care insurance policy or certificate upon a written finding that:

- A. The modification or suspension would be in the best interest of the insureds; and
- B. The purposes to be achieved could not be effectively or efficiently achieved without the modification or suspension; and
- C. (1) The modification or suspension is necessary to the development of an innovative and reasonable approach for insuring long-term care; or  
(2) The policy or certificate is to be issued to residents of a life care or continuing care retirement community or some other residential community for the elderly and the modification or suspension is reasonably related to the special needs or nature of such a community; or  
(3) The modification or suspension is necessary to permit long-term care insurance to be sold as part of, or in conjunction with, another insurance product.

Drafting Note: This provision is intended to provide the Commissioner with limited discretion and flexibility to accommodate specific and innovative long-term care insurance products which are shown to be in the public's best interest. This provision is intended to be used sparingly for this purpose.

Section 10: 13. Reserve Standards

- A. When long-term care benefits are provided through the acceleration of benefits under group or individual life policies or riders to such policies, policy reserves for such benefits shall be determined in accordance with [cite the standard valuation law for life insurance, which contains a section referring to "special benefits" for which tables must be approved by the commissioner]. Claim reserves must

also be established in the case when such policy or rider is in claim status.

Reserves for policies and riders subject to this subsection should be based on the multiple decrement model utilizing all relevant decrements except for voluntary termination rates. Single decrement approximations are acceptable if the calculation produces essentially similar reserves, if the reserve is clearly more conservative, or if the reserve is immaterial. The calculations may take into account the reduction in life insurance benefits due to the payment of long-term care benefits. However, in no event shall the reserves for the long-term care benefit and the life insurance benefit be less than the reserves for the life insurance benefit assuming no long-term care benefit.

In the development and calculation of reserves for policies and riders subject to this subsection, due regard shall be given to the applicable policy provisions, marketing methods, administrative procedures and all other considerations which have an impact on projected claim costs, including, but not limited to, the following:

- (1) Definition of insured events;
- (2) Covered long-term care facilities;
- (3) Existence of home convalescence care coverage;
- (4) Definition of facilities;
- (5) Existence or absence of barriers to eligibility;
- (6) Premium waiver provision;
- (7) Renewability;
- (8) Ability to raise premiums;
- (9) Marketing method;
- (10) Underwriting procedures;
- (11) Claims adjustment procedures;
- (12) Waiting period;
- (13) Maximum benefit;
- (14) Availability of eligible facilities;
- (15) Margins in claim costs;
- (16) Optional nature of benefit;

- (17) Delay in eligibility for benefit;
- (18) Inflation protection provisions; and
- (19) Guaranteed insurability option.

Any applicable valuation morbidity table shall be certified as appropriate as a statutory valuation table by a member of the American Academy of Actuaries.

- B. When long-term care benefits are provided other than as in Subsection A above, reserves shall be determined in accordance with [cite law referring to minimum health insurance reserves, the NAIC version of which requires reserves "using a table established for reserve purposes by a qualified actuary and acceptable to the commissioner"].

#### Section 11: 14. Loss Ratio

Benefits under individual long-term care insurance policies shall be deemed reasonable in relation to premiums provided the expected loss ratio is at least sixty percent, calculated in a manner which provides for adequate reserving of the long-term care insurance risk. In evaluating the expected loss ratio, due consideration shall be given to all relevant factors, including:

- A. Statistical credibility of incurred claims experience and earned premiums;
- B. The period for which rates are computed to provide coverage;
- C. Experienced and projected trends;
- D. Concentration of experience within early policy duration;
- E. Expected claim fluctuation;
- F. Experience refunds, adjustments or dividends;
- G. Renewability features;
- H. All appropriate expense factors;
- I. Interest;
- J. Experimental nature of the coverage;
- K. Policy reserves;
- L. Mix of business by risk classification; and
- M. Product features such as long elimination periods, high deductibles and high maximum limits.

Drafting Note: The enumeration of the thirteen items includes factors traditionally not allowed in calculating rates. Because of the desire to foster development of the long-term care product, the drafters' intention is that the consideration of these factors will provide sufficient latitude to achieve the sixty percent loss ratio.

Section 12: 15. Filing Requirement

Prior to an insurer or similar organization offering group long-term care insurance to a resident of this state pursuant to Section 5 of the Long-Term Care Insurance Model Act, it shall file with the Commissioner evidence that the group policy or certificate thereunder has been approved by a state having statutory or regulatory long-term care insurance requirements substantially similar to those adopted in this state.

Section 13: 16. Standard Format Outline of Coverage

This section of the regulation implements, interprets and makes specific, the provisions of [Section 6G of the Long-Term Care Insurance Model Act] [cite provision of law requiring the Commissioner to prescribe the format and content of an outline of coverage] in prescribing a standard format and the content of an outline of coverage.

- A. The outline of coverage shall be a free-standing document, using no smaller than ten point type.
- B. The outline of coverage shall contain no material of an advertising nature.
- C. Text which is capitalized or underscored in the standard format outline of coverage may be emphasized by other means which provide prominence equivalent to such capitalization or underscoring.
- D. Use of the text and sequence of text of the standard format outline of coverage is mandatory, unless otherwise specifically indicated.
- E. Format for outline of coverage:

[COMPANY NAME]

[ADDRESS - CITY & STATE]

[TELEPHONE NUMBER]

LONG-TERM CARE INSURANCE

OUTLINE OF COVERAGE

[Policy Number or Group Master Policy and Certificate Number]

[Except for policies or certificates which are guaranteed issue, the following caution statement, or language substantially similar, must appear as follows in the outline of coverage.]

Caution: The issuance of this long-term care insurance [policy] [certificate] is based upon your responses to the questions on your application. A copy of your [application] [enrollment form] [is enclosed] [was retained by you when you applied]. If your answers are incorrect or untrue, the company has the right to deny benefits or rescind your policy. The best time to clear up any questions is now, before a claim arises! If, for any reason, any of your answers are incorrect, contact the company at this address: [insert address]

1. This policy is [an individual policy of insurance]([a group policy] which was issued in the [indicate jurisdiction in which group policy was issued]).
2. PURPOSE OF OUTLINE OF COVERAGE. This outline of coverage provides a very brief description of the important features of the policy. You should compare this outline of coverage to outlines of coverage for other policies available to you. This is not an insurance contract, but only a summary of coverage. Only the individual or group policy contains governing contractual provisions. This means that the policy or group policy sets forth in detail the rights and obligations of both you and the insurance company. Therefore, if you purchase this coverage, or any other coverage, it is important that you READ YOUR POLICY (OR CERTIFICATE) CAREFULLY!
3. TERMS UNDER WHICH THE POLICY OR CERTIFICATE MAY BE RETURNED AND PREMIUM REFUNDED.
  - (a) [Provide a brief description of the right to return--"free look" provision of the policy.]
  - (b) [Include a statement that the policy either does or does not contain provisions providing for a refund or partial refund of premium upon the death of an insured or surrender of the policy or certificate. If the policy contains such provisions, include a description of them.]
4. THIS IS NOT MEDICARE SUPPLEMENT COVERAGE. If you are eligible for Medicare, review the Medicare Supplement Buyer's Guide available from the insurance company.
  - (a) [For agents] Neither [insert company name] nor its agents represent Medicare, the federal government or any state government.
  - (b) [For direct response] [insert company name] is not representing Medicare, the federal government or any state government.
5. LONG-TERM CARE COVERAGE. Policies of this category are designed to provide coverage for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or

personal care services, provided in a setting other than an acute care unit of a hospital, such as in a nursing home, in the community or in the home.

This policy provides coverage in the form of a fixed dollar indemnity benefit for covered long-term care expenses, subject to policy [limitations] [waiting periods] and [coinsurance] requirements. [Modify this paragraph if the policy is not an indemnity policy.]

6. BENEFITS PROVIDED BY THIS POLICY.

- (a) [Covered services, related deductible(s), waiting periods, elimination periods and benefit maximums.]
- (b) [Institutional benefits, by skill level.]
- (c) [Non-institutional benefits, by skill level.]

[Any benefit screens must be explained in this section. If these screens differ for different benefits, explanation of the screen should accompany each benefit description. If an attending physician or other specified person must certify a certain level of functional dependency in order to be eligible for benefits, this too must be specified. If activities of daily living (ADLs) are used to measure an insured's need for long-term care, then these qualifying criteria or screens must be explained.]

7. LIMITATIONS AND EXCLUSIONS.

[Describe:

- (a) Preexisting conditions;
- (b) Non-eligible facilities/provider;
- (c) Non-eligible levels of care (e.g., unlicensed providers, care or treatment provided by a family member, etc.);
- (d) Exclusions/exceptions;
- (e) Limitations.]

[This section should provide a brief specific description of any policy provisions which limit, exclude, restrict, reduce, delay, or in any other manner operate to qualify payment of the benefits described in (6) above.]

THIS POLICY MAY NOT COVER ALL THE EXPENSES ASSOCIATED WITH YOUR LONG-TERM CARE NEEDS.

8. RELATIONSHIP OF COST OF CARE AND BENEFITS. Because the costs of long-term care services will likely increase over time, you should consider whether and how the benefits of this plan may be adjusted. [As applicable, indicate the following:

- (a) That the benefit level will not increase over time;
  - (b) Any automatic benefit adjustment provisions;
  - (c) Whether the insured will be guaranteed the option to buy additional benefits and the basis upon which benefits will be increased over time if not by a specified amount or percentage;
  - (d) If there is such a guarantee, include whether additional underwriting or health screening will be required, the frequency and amounts of the upgrade options, and any significant restrictions or limitations;
  - (e) And finally, describe whether there will be any additional premium charge imposed, and how that is to be calculated.]
9. TERMS UNDER WHICH THE POLICY (OR CERTIFICATE) MAY BE CONTINUED IN FORCE OR DISCONTINUED.
- [(a) Describe the policy renewability provisions;
  - (b) For group coverage, specifically describe continuation/conversion provisions applicable to the certificate and group policy;
  - (c) Describe waiver of premium provisions or state that there are not such provisions;
  - (d) State whether or not the company has a right to change premium, and if such a right exists, describe clearly and concisely each circumstance under which premium may change.]
10. ALZHEIMER'S DISEASE AND OTHER ORGANIC BRAIN DISORDERS.
- [State that the policy provides coverage for insureds clinically diagnosed as having Alzheimer's disease or related degenerative and dementing illnesses. Specifically describe each benefit screen or other policy provision which provides preconditions to the availability of policy benefits for such an insured.]
11. PREMIUM.
- [(a) State the total annual premium for the policy;
  - (b) If the premium varies with an applicant's choice among benefit options, indicate the portion of annual premium which corresponds to each benefit option.]
12. ADDITIONAL FEATURES.
- [(a) Indicate if medical underwriting is used;
  - (b) Describe other important features.]